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DEPARTMENT OF
WATER RESOURCES

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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 Case No. 39576	Subcase Nos. 01-02017, 01-02032, 01-02046, 01-10382, 01-10383, 01-10384, 01-10531, and 01-10532 (American Falls Hydropower Natural Flow Subcases) Subcase Nos. 01-10485, 01-10486, 01-10487, and 01-02064 (American Falls Hydropower Storage Subcases) **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 1	Report of Board of Engineers to Consider Projects in Snake River Valley which may affect the Proposed American Falls Reservoir (Apr. 10, 1920)
Exhibit 2	1923 American Falls Contract - Contract Between the United States and the Idaho Power Company, Relative to Power Rights at American Falls, Idaho, Contract No. I1r-733 (June 15, 1923)
Exhibit 3	Order Issuing License, Project No. 18 (FPC May 11, 1934)
Exhibit 4	Order Issuing License, Project No. 1971 (FPC Aug. 4, 1955)
Exhibit 5	Letter from K. Holum, Ass't Sec. of the Interior, to J.C. Swidler, Chairman, FPC (Aug. 30, 1962)
Exhibit 6	American Falls Dam Replacement: Information Report (USBOR Dec. 1966)
Exhibit 7	Letter from J.G. Watt, Ass't Sec'y of the Interior, to Chairman, FPC (Dec. 16, 1969)
Exhibit 8	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 (IDWR Oct. 1, 1970)
Exhibit 9	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 (IDWR Dec. 1, 1970)
Exhibit 10	Memorandum Decision, In the Matter of Permit Nos. 01-2041 and 01-2065 in the Name of Idaho Power Company (IDWR Apr. 21, 1971)
Exhibit 11	American Falls Dam Replacement: Executive Summary Report (USBOR Dec. 1972)
Exhibit 12	Idaho Power Company Proposal Presented to Executive Committee of Spaceholders (Feb. 27, 1973)

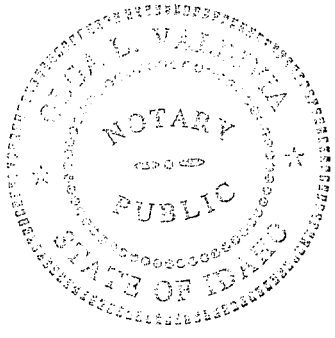
Exhibit 13	Letter from L.E. Lanham, Director of Public Affairs, Idaho Power Company to Senator Frank Church (Feb. 28, 1973)
Exhibit 14	American Falls Spaceholders' Minutes (Mar. 2, 1973)
Exhibit 15	Memorandum from Dan Dreyfus, Staff Member of Committee on Interior and Insular Affairs, to Senator Church (Mar. 11, 1973)
Exhibit 16	S. 1528 (1973)
Exhibit 17	S. 1529 (1973)
Exhibit 18	Hearing before the Senate Subcommittee on Water and Power Resources on S. 1528 and S. 1529, 93rd Cong. (1973)
Exhibit 19	S. Rep. No. 93-223 (1973)
Exhibit 20	Hearing before the House Subcommittee on Water and Power Resources on H.R. 6781, H.R. 6782, and S. 1529 to Authorize the Replacement of the American Falls Dam in Idaho, 93rd Cong. (1973)
Exhibit 21	Pub. L. 93-206, 87 Stat. 904 (1973)
Exhibit 22	Petition of AFRD to Intervene in Support of Application for License (Jan. 25, 1974)
Exhibit 23	Final Envt'l Statement: American Falls Dam Replacement and Powerplant (Department of Interior Nov. 13, 1974)
Exhibit 24	Letter from P. Holm, Chapman and Cutler, to D. C. Alexander, IRS Comm'r (Nov. 27, 1974)
Exhibit 25	Brief of AFRD to IRS (Jan. 31, 1975)
Exhibit 26	Order Issuing Major License (Constructed), Project No. 2258 (FPC Mar. 31, 1975)
Exhibit 27	Order Issuing Major License (Unconstructed), Project No. 2736 (FPC Mar. 31, 1975)
Exhibit 28	S. Rep. No. 94-263 (1975)
Exhibit 29	121 Cong. Rec. 21385 (1975)
Exhibit 30	121 Cong. Rec. 31515 (1975)
Exhibit 31	H.R. Rep. No. 94-531 (1975)

Exhibit 32	121 Cong. Rec. 31868 (1975)
Exhibit 33	S. Rep. No. 94-570 (1975)
Exhibit 34	Pub. L. 94-164, 89 Stat. 970 (1975)
Exhibit 35	1976 Government Contract - Contract between the United States and the AFRD for Construction and Operation and Maintenance of the American Falls Replacement Dam Program, Contract No. 14-06-100-9041 (Mar. 31, 1976)
Exhibit 36	1976 Falling Water Contract - Falling Water Contract by and between AFRD and Idaho Power Company (Mar. 31, 1976)
Exhibit 37	1976 Spaceholder Contract - Spaceholder Contract among the United States, the AFRD, 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 (Mar. 31, 1976)
Exhibit 38	Memorandum in Support of Defendants Motion to Dismiss, Kerner v. United States, Civ. No. 1-76-204 (D. Idaho Feb. 28, 1977)
Exhibit 39	Memorandum Decision, In the Matter of the Petition of the Boards of Directors of the American Falls Reservoir District, CV No. 28378 (Idaho 5th Dist. Ct. Mar. 7, 1977)
Exhibit 40	Amended Findings of Fact and Conclusions of Law, In the Matter of the Petition of the Boards of Directors of the American Falls Reservoir District, CV No. 28378 (Idaho 5th Dist. Ct. May 18, 1977)
Exhibit 41	Transcript on Appeal, Kerner v. Johnson, 99 Idaho 433, 583 P.2d 360 (1978)
Exhibit 42	Answers and Objections of Idaho Power Company to Plaintiff's First Request for Admissions at 56–56, Kerner v. United States, CV. No. 1-76-204 (D. Idaho July 25, 1978)
Exhibit 43	Reply Brief of the Non-Federal Defendants, Kerner v. United States, CV. No. 1-76-204 (D. Idaho Apr. 6, 1979)
Exhibit 44	Bond Counsel Opinion at 15 (Chapman and Cutler Dec. 1, 1980)
Exhibit 45	Bond Counsel Opinion at 20 (Chapman and Cutler Feb. 21, 1990)
Exhibit 46	Upper Snake River Basin: A Description of Bureau of Reclamation System Operations Above Milner Dam (USBOR Jan. 1996)

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 4th day of December 2009.



Notary Public for Idaho
Residing at Boise, ID
My Commission expires: 2/8/2012

CERTIFICATE OF SERVICE

I certify that on this 4th day of December 2009, I caused to be served the original and copies of the **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: JIM LOCHHEAD BROWNSTEIN HYATT ET AL 410 17TH STREET, SUITE 2200 DENVER, CO 80202	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: ☐ Statehouse Mail
AMERICAN FALLS RESERVOIR Represented by: C THOMAS ARKOOSH 301 MAIN ST PO BOX 32 GOODING, ID 83330	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: ☐ Statehouse Mail
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:	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: ☐ Statehouse Mail

CANDICE MCHUGH
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHTD.
101 CAPITOL BLVD., STE. 208
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BURLEY IRRIGATION DISTRICT
FALLS IRRIGATION DISTRICT
Represented by:
ROGER D LING
615 H ST
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RUPERT, ID 83350-0396

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NORTH SIDE CANAL CO LTD
TWIN FALLS CANAL COMPANY
Represented by:
TRAVIS L THOMPSON
113 MAIN AVE W, STE 303
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TWIN FALLS, ID 83303-0485

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MINIDOKA IRRIGATION DISTRICT
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1200 OVERLAND AVE
PO BOX 248
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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

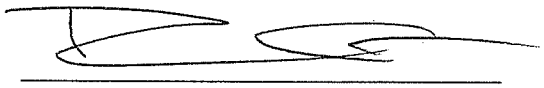
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UNITED STATES OF AMERICA
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DAVID I. STANISH
Deputy Attorney General

Exhibit 1

Report of Board of Engineers to Consider Projects in Snake River Valley which may affect the Proposed American Falls Reservoir (Apr. 10, 1920)

REPORT OF BOARD OF ENGINEERS

to consider Projects in Snake River Valley which may affect the proposed AMERICAN FALLS RESERVOIR and the Available Water supply therefor.

Prepared by Board of Engineers, composed of

Mr. I. W. McConnell
Mr. F. W. Hanna
Mr. E. B. Darlington
Mr. W. G. Swendsen
Mr. J. C. Wheelon
Mr. James Munn

April 10, 1920

REPORT OF BOARD OF ENGINEERS

to consider Projects in Snake River Valley which may affect the proposed

AMERICAN FALLS RESERVOIR, IDAHO

Prepared by Board of Engineers, composed of

Mr. I. W. McConnell
Mr. F. W. Hanna
Mr. E. B. Darlington
Mr. W. G. Swendsen
Mr. J. C. Wheelon
Mr. James Munn

April 10, 1920

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Chief of Construction's letter of March 30, 1920 instructing Board of Engineers.	Exhibit "A"
Map of Snake River Basin.	Exhibit "B"
Relation of Irrigation Draft to Reservoir Capacity (blue print)	Exhibit "C"
Shortages and Wastes for assumed Irrigation drafts and storage for period of 1896 to 1918 based on Snake River records at Neeley (tabulation) . .	Exhibit "D"
Paul S. A. Bickel's report on Shelley Canal . .	Exhibit "E"
Map of Bruneau Project.	Exhibit "F"

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DEPARTMENT OF THE INTERIOR

UNITED STATES RECLAMATION SERVICE

Burley, Idaho, April 10, 1920.

Chief of Construction,
U. S. Reclamation Service,
Denver, Colorado.

Dear Sir:

There is transmitted herewith a report of the Board of Engineers called to consider projects in the Snake River Valley, which may affect the proposed American Falls Reservoir. The conclusions of the Board are set out in detail in the body of the report, which may be briefly summarized as follows:

The Board convened at Burley, Idaho, on April 5 to consider matters referred to it by the Chief of Construction of the U. S. Reclamation Service, and related problems which subsequently developed. The studies of the Board have covered:

(a) Water supply of Snake River

(b) The lands irrigable from Snake River

(c) Storage capacity required for the utilization of the waters applicable to irrigation.

(d) The relation of the proposed American Falls reservoir to the storage problem.

(e) The substitution of power rights which will be destroyed at American Falls by the construction of American Falls Reservoir.

(f) Snelley Canal as proposed by Mr. Paul S. A. Bickel.

(g) The Bruneau project and its relation to the general irrigation program.

(h) Storage in Yellowstone Lake.

The board is of the opinion that all of the water of Snake River susceptible of economical diversion should be dedicated to irrigation. The lowest point on the river at which diversion is practicable in large amounts is Milner Dam. The unappropriated water of Snake river can be made available ov the development of approximately 3,900,000 acre-feet of storage capacity. In addition to the draft already prevailing for the existing irrigation enterprises in the upper valley, there will be provided a draft of 5,720,000 acre-feet which will supply (a) supplementary rights for existing enterprises above American Falls Dam; (b) total present requirements including supplementary rights for all existing enterprises below American Falls Dam; (c) water necessary for the development of about 450,000 acres of new land.

The available water supply is not sufficient for the irrigation of all the land which can be reached from the river. New areas above american Falls amount to about 400,000 acres; areas below American Falls amount to

approximately a million acres. There is insufficient information available to pass upon the relative feasibility of various projects. It is pointed out however that extensive development above American Falls will preclude extensive development below American Falls and vice versa.

The American Falls reservoir will be essential to a complete development of the irrigation resources. In the plans for irrigation discussed in the report, which are used as illustrations only the storage requirement at American Falls reservoir would vary from 1,400,000 acre-feet to 2,800,000 acre-feet. Manifestly any storage not provided in American Falls reservoir must be provided in other sites. The Board recommends the early construction of the American Falls Reservoir as a progressive step in the final development of irrigation resources. In the absence of any other definite plan, the present plan for development proposed by the Reclamation Service should be supported and advanced by all interests involved.

The construction of American Falls reservoir will destroy developed power to the amount of 6000 horse power, more or less and a partially developed site for a total

capacity of about 30,000 horse power. As a substitution for American Falls power, the Board recommends the development of some suitable site to be subsequently determined, which will eliminate any loss of irrigation water.

The construction of American Falls reservoir involves no loss of power for irrigation pumping since the flow in the river during the irrigation season will be ample for all pumping requirements.

The Shelley Canal as proposed by Mr. Paul P. A. Bickel is not regarded as a practicable source of power for substitution at American Falls.

The Shelley Canal may be feasible as an irrigation enterprise for watering lands between Shelley and American Falls; information available on this point is not sufficient to form a basis for conclusion. For the irrigation of lands in the proposed Minidoka Pumping Project and lands to the westward thereof, the Shelley Canal is not considered feasible.

The unappropriated water supply of the Snake River is sufficient for the development of the Bruneau Project provided that development is undertaken prior to the inauguration of

other similar enterprises of large extent. If the Bruneau Project is initiated however, it will absorb a large portion of the unappropriated waters and will preclude the development of large projects in other portions of the river. The development of the Bruneau Project would not necessarily interfere with the supply of supplementary rights to existing enterprises and the development of the Minidoka Pumping Project. The Board expresses no opinion as to the feasibility of the Bruneau Project.

The Board makes no recommendation as to the feasibility of diverting water from Yellowstone Lake into the Snake River drainage.

Very truly yours

J. N. McComb

Chairman, Board of Engineers

DEPARTMENT OF THE INTERIOR

UNITED STATES RECLAMATION SERVICE

Burley, Idaho, April 10, 1920

From: the Board of Engineers to consider projects in the Snake River Valley which may affect the proposed American Falls Reservoir

To: the Honorable D. W. Davis, Governor of Idaho, and the Chief of Construction of the U. S. Reclamtion Service.

1. In conformity with an understanding had between the Director of the U. S. Reclamation Service and the Governor of Idaho, a joint Board of Engineers was designated to consider projects in the Snake River Valley, particularly those affecting the proposed American Falls Reservoir.

2. Under date of March 30, 1920, the Chief of Construction of the U. S. Reclamation Service directed the designated Chairman of the Board as to the matters to be considered. Copy of this letter is attached hereto as Exhibit "A".

3. The instructions cover specifically the following points:

(1) The examination of a project proposed by Mr. I. B. Perrine contemplating a diversion near Shelley, Idaho, the canal line extending thence to the vicinity of American Falls, where the water carried during winter is to be turned back into the reservoir above the

American Falls dam for the purpose of producing power. By a proposed extension this canal could also cover the lands of the Minidoka Pumping Project and other lands to the westward thereof.

(2) The consideration of a proposal by Mr. Perrine for the Bruneau project.

(3) The consideration of the various proposals for power to replace the power developed and undeveloped now controlled by the Idaho Power Company at American Falls.

4. In addition to these specific instructions the Board was directed to consider any other matters which might be presented by the Governor of Idaho, or Project Manager Dibble, having a bearing on the construction of the American Falls Reservoir.

5. This board convened at Burley, Idaho, on April 5 with the following members present:

I. W. McConnell, Chairman

W. G. Swendsen, State Commissioner of Reclamation

E. B. Darlington, Chief Engineer, Twin Falls North Side Land and Water Co.

J. C. Wheelon, General Manager, Twin Falls Canal Co.

James Munn, Consulting Engineer, U. S. Reclamation Service

F. W. Hanna, Consulting Engineer " " "

6. At the first session, it was pointed out by Mr. Swendsen that the State officials believed the time had come for the formation of a definite plan for the

development of the remaining resources of the Snake River water supply on a broad and comprehensive basis which would insure to the state the maximum utility of the possibilities of the stream.

7. Mr. Paul S. A. Bickel presented a plan for the utilization of the waters which might be available for irrigation; said plan involving the construction of the American Falls reservoir; the Shelley Canal, with its extension to the Wood River country, and the irrigation of the Bruneau tract.

8. It became apparent from preliminary consideration of the subject that no one of the principal problems involved could be properly considered without taking into account its effect upon the general problem of the conservation of the waters of Snake River. The Board has therefore given consideration to the following questions:

(1) The total water supply available in the Snake River basin for irrigation.

(2) The quantity of storage required for the utilization of the water supply and the relation of that supply to the size of the American Falls Reservoir and other reservoirs which may be necessary.

(3) The power rights to be lost at American Falls thru the appropriation of all waters available for irrigation and the possible substitution by which such loss of power rights can be compensated.

(4) The Shelley Canal as proposed by Mr. Bickel.

(5) The various irrigation projects which can be developed in the Snake River Valley.

(6) Storage in Yellowstone Lake.

9. The Board spent two days in examination of the field conditions in connection with the Shelley Canal. The study of data available was then taken up at the Burley Office. On April 9th Governor Davis came to Burley and discussed the situation with the Board.

10. The Board has had access to a large number of reports and estimates and has had the advice of the officials of the Reclamation Service at Burley who have studied the problems involved for a number of years past. Most of the maps, tabulations, graphic curves, and other information introduced into this report as exhibits were obtained from the records of the Burley office, including reports by Mr. A. J. Wiley, or from Reports furnished by the State Engineer of Idaho, and from the report by Mr. Bickel in connection with his proposal for the Shelley Canal and the Bruneau project. Specific acknowledgment is made of valuable assistance rendered the Board by Project Manager Dibble, Engineer Banks, and Engineer Phelps.

11. The Board expresses the opinion that the greatest use of the water of Snake River will be found in the dedication of the entire flow of the stream to irrigation in so far as the water can be economically appropriated. The physical conditions surrounding the problem render it possible to divert from the stream at numerous points in its course, and with the requisite storage to utilize a very large percentage of all the waters originating in the watershed above Milner dam. It is demonstrated by the data available to the Board that the amount of water available in the river is the limiting factor. There is an excess of land for the amount of water which can probably be brought upon it. The net effect of this condition will be to dry up the river below Milner Dam during the irrigation seasnn, also to as great an extent as possible below American Falls Reservoir, during the non-irrigation seasom. The waters flowing in the stream below Milner Dam are not susceptible of diversion to any considerable amount, and therefore become of primary use in connection with the production of power. The principle involved therefore is to secure as nearly as possible a total use of the waters for irrigation above Milner Dam, and to secure the greatest possible use for power below Milner Dam. To a moderate extent these

interests conflict with each other but fortunately on account of the large accretions to the stream below Milner Dam the power resource is restored at Upper Salmon Falls and the injury to that resource which would be susceptible of future development is relatively not very great.

AMERICAN FALLS RESERVOIR

12. The American Falls Reservoir is clearly a necessity for the maximum utilization of the waters of the Snake River. This point is generally conceded, and the efforts of all interests involved should be concentrated and directed towards the commencement of work upon this facility at the earliest possible date. The Reclamation Service now has under consideration a contract to be entered into by the various water users concerned, wherein these water users agree to provide funds for the early development of the reservoir. This plan, contemplating as it does the eventual completion of the reservoir to full capacity of approximately 3,000,000 acre-feet, offers a definite basis for early progress. In the absence of any other definite proposal looking to the same end, it is believed that the interests of all parties concerned will be best advanced by concentrating support behind the Reclamation Service proposal with a view to securing the early completion of the entire reservoir in order that this very essential facility may be available as rapidly as enterprises can be initiated to bring additional lands under cultivation.

IRRIGABLE LAND

13. There are now irrigated about 1,296,000 acres of land in Snake River Valley from the waters of the Snake River and from the waters of its tributarites above American Falls. In addition to this area there are about 1,439,000 acres of lands that are popularly considered irrigable from the water supply of the Snake River. Of these new areas about 1,039,000 acres lie below American Falls and about 400,000 acres lie above this point. These areas do not include the Pocatello-American Falls tract of about 45,000 acres and some minor smaller areas. In table No. 1 following are given both the old and the new areas. Exhibit "B" attached hereto, entitled Snake River Basin, shows the various tracts of land referred to in this report.

Table 1

Old Snake River Irrigation projects

Projects	Present acreage	Extension	Total
North Side Twin Falls	175,000	50,000	225,000
South Side Twin Falls	200,000	0	200,000
Minidoka	121,000	0	121,000
Idaho Falls district	500,000	0	500,000
North Fork district	300,000	0	300,000
Total	1,296,000	50,000	1,346,000
New Snake River Irrigation projects			
Below American Falls			
Minidoka Pumping		115,000	115,000
Hansen butte		24,000	24,000
Wood River		40,000	40,000
Bruneau		400,000	400,000
Mt. Home		400,000	400,000
Total		989,000	989,000
Above American Falls			
Dubois		200,000	200,000
Idaho Falls Pumping		100,000	100,000
Shelly-American Falls		100,000	100,000
Total		400,000	400,000

SNAKE RIVER WATER SUPPLY

14. For convenience in the consideration of the water supply of the Snake River there has been brought together in Table 2, the storable annual runoff at the outlet of Jackson Lake reservoir for the storage years of 1904 to 1919 inclusive; and in Table 3, the total annual runoff at American Falls for the same period. Table 2 shows the minimum annual storable runoff at Jackson Lake to be 452,900 acre-feet; the mean to be 958,800 acre-feet and the maximum to be 1,372,800 acre-feet. Even without any hold over from a previous year, Jackson Lake Reservoir would have filled in this period in all but four years. With the present capacity of 850,000 acre-feet, and without previous holdover, the shortages would have been quite large for the years 1905, 1915 and 1919. No study has been made of the amounts of holdover water that would have been available for these years. Table 3 shows the minimum annual runoff at American Falls for the period of 1896 to 1919 to be 4,147,000 acre-feet, the mean to be 6,656,000 acre-feet, and the maximum to be 8,778,000 acre-feet.

Table 2

Storable Annual runoff at Jackson Lake reservoir

Year	1903-4	1904-5	1905-6	1906-7	1907-8	1908-9	1909-10	1910-11	1911-12
Storable runoff	1,064,900	452,900	711,600	1252,400	915,600	1372,800	965,100	1168,300	1039,000
Prior rights	237,100	324,100	188,400	148,600	189,400	102,200	286,900	178,200	181,000
Total	1,302,000	777,000	900,000	1401,000	1105,000	1475,000	1252,000	1346,500	1220,000

Year	1912-13	1913-14	1914-15	1915-16	1916-17	1917-18	1918-19	
Storable runoff	1173,100	990,400	525,600	1051,800	1079,400	1119,800	458,900	
Prior rights	263,900	162,600	244,400	171,200	146,600	150,200	230,100	
Total	1437,000	1153,000	770,000	1223,000	1226,000	1270,000	689,000	mean 958,800

Note: The storable runoff at Jackson Lake is considered to be the entire runoff between ~~kkm~~ Oct. 1st and the time when prior rights would demand the release of natural flow through the dam. This date is obtained by subtracting one day from the date that the discharge of Snake river at Heise reached 10,000 second feet or four days from the date that the discharge at Heeley reached 9000 second feet and taking the earliest date.

Table 3

Discharge of Snake River at American Falls in thousands of acre-feet.

Year	Discharge	Year	Discharge
1896	6436	1914	7595
97	7412	15	4886
98	5903	16	5944
99	7514	17	8163
1900	6156	18	7501
01	5082	19	4607
02	4568	Average	6656
03	5377		
04	7279		
05	4147		
06	5503		
07	8625		
08	6875		
09	8467		
10	7268		
11	7062		
12	8778		
13	8589		

15. As a means of determining an equation between the available water supply of Snake River at American Falls and the needs of the land susceptible of irrigation from Snake River, Table 4 following has been compiled. This table lists both the old and the new irrigable areas giving the use from natural flow in acre-feet for the old areas and the storage in acre-feet needed by each of the old areas, together with a column giving the total quantity of water needed by each of the old and the new areas. This table is to be used as a means of determining the irrigation draft that will be required for various combined developments of the areas of land listed in the table.

Table 4

Irrigation Drafts on Available Water Supply at American Falls for all old and new areas

Project	Natural Flow: acre-feet	Storage : acre-feet	Total : acre-feet
OLD			
North Side Twin Falls	613,000	600,000	1,213,000
South Side Twin Falls	762,000	200,000	962,000
Minidoka	325,000	350,000	675,000
Idaho Falls district	----	450,000	450,000
North Fork dist.	-----	200,000	200,000
	1,700,000	1,800,000	3,500,000
NEW			
Minidoka Pumping			520,000
Hansen Butte			110,000
Wood River			200,000
Bruneau			2,000,000
Mountain Home			2,000,000
Dubois			900,000
Idaho Falls Pumping			450,000
Shelley-American Falls			500,000

Note: In computing the irrigation drafts the actual uses and stated needs of the old lands have been used and a use of 5 acre-feet per acre at the reservoirs or stream diversions have been used except for pumping projects and Dubois project in which case 4.5 acre-feet has been used. It should be definitely understood that these duties of water are based on present and past practice, and as better methods of application and use are adopted the requirements will and should be reduced. The adoption of a higher duty of water than here used will, of course, permit of the irrigation of a correspondingly greater area of land.

16. The Board has based a study of the water supply on an assumed irrigation draft of 5,720,000 acre-feet on the available supply at American Falls with a total reservoir capacity of 3,900,000 acre-feet. For this draft and reservoir capacity there will be shortages for all users of about 20% for 1902, 15% for 1903, 20% for 1905, and 12% for 1906. In this assumption the Board has had access to the valuable memorandum of January 26, 1920, on Snake River Storage, to the Chief of Construction by Harold Conkling. Exhibit "C" entitled--Relation of irrigation draft to Reservoir capacity--attached hereto, coupled with Exhibit "D", entitled---Shortages and wastes for Assumed Irrigation Drafts and Storage for period of 1896 to 1919 Based on Snake River Records at Neeley--are taken from the Conkling report. It will be possible to eliminate only two out of these four serious shortages even by providing reservoir capacity to the extent of 6,800,000 acre-feet. In order to eliminate the shortages entirely, storage capacity for this draft would have to be provided to the extent of about 9,800,000 acre-feet. It is appreciated that the stated shortages are as large as can wisely be made, particularly as it may not be possible in the earlier stages of the development to induce those holding prior rights to accept their proportionate shares of the shortages. In view of the impossibility of eliminating the shortages of 1905 and 1906, even with a large storage capacity

of approximately 7,000,000 acre-feet, an approximate limit of 3,900,000 acre-feet has been placed on storage development, as a basis for this study. Under the assumed draft and storage there would be waste in only 7 years out of 24, and no waste whatever for the period of 12 years from 1896 to 1907 inclusive, based on an empty reservoir at the beginning of 1896. The total waste, however, would aggregate in the 24-year period 11,190,000 acre-feet. In the preparation of the diagram referred to above, an allowance has been made of 200,000 acre-feet for the development of power below the American Falls Reservoir; but no allowance has been made for increased draft due to irrigation development above American Falls since the water supply records were obtained. Inasmuch as this study does not involve an allowance for power at American Falls, it has been assumed that the increased draft in the Upper Valley would be taken care of by the allowance made for power in the preparation of this diagram.

17. In the utilization of the water supply of Snake River it is the opinion of the Board that preference should be given to supplementing the present water supply of existing projects. Reference to Table 4 will show that the total estimated draft for the lands now under irrigation, including such additional supplemental supplies as they need is 3,500,000 acre-feet. Deducting the draft from the total assumed maximum

irrigation draft of 5,720,000 acre-feet, there remains 2,220,000 acre-feet for use in new developments at whatsoever places conditions dictate.

18. For the purpose of further study and comparison of results, the Board has set up three irrigation plans based on the assumptions set forth in the following pages:

Irrigation Plan 1

19. Irrigation Plan 1 contemplates (a) supplying all old rights with needed irrigation water; (b) supplying proposed areas below American Falls; and (c) applying the remainder of the available water to proposed areas above American Falls.

20. It has been indicated that there will be approximately 2,220,000 acre-feet of Snake River water available for use on new land. If preference is given to the Minidoka Pumping project, the Hansen Butte Pumping project, and the Wood River projects, requiring a total of 830,000 acre-feet, there will be left a balance of 1,390,000 acre-feet, which is sufficient for the development of approximately 275,000 acres on any tract available below American Falls. If the Minidoka Pumping project alone is given preference, there will remain 1,700,000 acre-feet, which will be sufficient for the development of a large project of about 340,000 acres below American Falls.

21. There will be no supply available for lands above American Falls under item (c).

22. The storage of 3,900,000 acre-feet as applied to Irrigation Plan 1, can best be secured by the use of Jackson Lake reservoir with a capacity of 850,000 acre-feet; Lake Walcott with a capacity of 80,000 acre-feet; Bechler Swamp Reservoir with a capacity of 200,000 acre-feet; and American Falls Reservoir with a capacity of 2,800,000 acre-feet.

Irrigation Plan 2

23. Irrigation Plan 2 contemplates (a) supplying all old rights with needed irrigation water; (b) supplying proposed new projects above American Falls; (c) applying the remaining water to lands below American Falls.

24. As in irrigation Plan 1, there will be required to supply the old lands under Irrigation Plan 2 about 3,500,000 acre-feet, leaving a balance of 2,200,000 acre-feet for new lands. There are three large tracts of land in the Upper Snake River Valley to which a portion of this available supply may be applied. These tracts consist of the Dubois project of 200,000 acres, the Idaho Falls Pumping Project of 100,000 acres, and the Shelley-American Falls project of 100,000 acres, making a total of approximately 400,000 acres. Reference to Table 4 shows the irrigation draft for these projects to be 1,850,000 acre-feet, practically all of which will have to be supplied from storage on account of the deficiency of natural flow supply in low years.

25. On an average, the natural flow supply for these lands will be exhausted on July 16, as shown from the consideration of the flow of Snake River from the years 1904 to 1919 inclusive. However, it is necessary to provide a storage capacity equivalent to the entire annual draft in order to provide holdover capacity for a succession of low years, such as the period 1902 to 1906 inclusive.

26. The old lands in the territory above American Falls, exclusive of the area served from the North Fork, require about 450,000 acre-feet to supplement the natural supply, and developments now under way on the North Fork of Snake River contemplate the impounding of about 200,000 acre-feet for the old lands deriving water from this branch of Snake River. These requirements when added to the demands for the new lands would make a total of approximately 2,500,000 acre-feet of up river storage. The old lands on the North Fork have under projection plans for 200,000 acre-feet of storage in Bechler Swamp reservoir; Jackson Lake reservoir will provide for 850,000 acre-feet. This leaves 1,450,000 acre-feet to be provided for, 550,000 acre-feet of which can be stored in Island Park reservoir, and 900,000 acre-feet in Swan Valley Reservoir.

27. Deducting the 1,850,000 acre-feet of irrigation draft for the new up-stream lands from the total supply available for new lands, there remains 370,000 acre-feet, for use on

lands below American Falls. This would leave sufficient water for about 82,000 acres of the Minidoka Pumping Project, with no remaining supply for other new projects below American Falls.

28. With a total assumed storage of 3,900,000 acre-feet and an estimated up-stream storage of 2,500,000 acre-feet, there would remain 1,400,000 acre-feet to be provided for in the American Falls reservoir and Lake Walcott.

Irrigation Plan No. 3

29. Irrigation plan 3 contemplates (a) supplying all old rights with needed additional water; (b) supplying 300,000 acres of new lands above American Falls; (c) applying the remaining water to lands below American Falls.

30. As in both of the preceding irrigation plans, there are 2,220,000 acre-feet of Snake River water available for use under this irrigation plan. If 300,000 acres of additional land are irrigated above American Falls, this will require about 1,350,000 acre-feet of water, leaving available for lands below American Falls approximately 870,000 acre-feet. This quantity is insufficient for the irrigation either of the Bruneau or Mountain Home tracts. It would however, irrigate the Minidoka Pumping project, requiring 520,000 acre-feet, the Wood River projects requiring 200,000 acre-feet, and the Hansen Butte project requiring 110,000 acre-feet.

There would also be left a small surplus of 40,000 acre-feet.

31. In regard to storage requirements under Irrigation Plan 3, the old lands in the Idaho Falls project would require 450,000 acre-feet of storage, the new area of 300,000 acres would require approximately 1350,000 acre-feet, with a duty of 4.5 acre-feet per acre, and the old lands on the North Fork would require about 200,000 acre-feet. The total requirement would therefore be about 2,000,000 acre-feet. Of this amount 850,000 acre-feet could be supplied from Jackson Lake Reservoir, 200,000 from Bechler Swamp Reservoir, and the remainder from Island Park and Swan Valley Reservoirs. There would therefore have to be supplied in Lake Walcott and American Falls Reservoirs approximately 1,900,000 acre-feet.

32. Irrigation Plan 2 is of interest chiefly as illustrating the complications which can come into the general problem. Either Plan 1 or Plan 3 probably has more elements of practicability taking all facts of the actual situation into account.

33. It should be noted also that from the standpoint of water supply, the immediate initiation of water rights, in accordance with the statutes, for either Bruneau or Mountain Home, would with proper storage, insure an ample supply for either project, leaving other developments to take advantage of the remaining rights as their opportunities would justify.

POWER

34. One of the results of the development of the American Falls Reservoir will be to destroy as a source of firm power, the present power plants and the partial development of the additional rights of the Idaho Power Company, located at American Falls. The present resources consist of an old plant of 2000 horse power and a more modern plant of 4000 horse power. The Idaho Power Company contemplates and has partially completed the development of the site to a total amount of 30,000 horse power more or less, and this is the amount for which they are asking compensation or substitution.

35. It is understood that the Idaho Power Company is willing to accept in lieu of the American Falls power, an equivalent amount of power delivered at this point, and in that connection with this adjustment they are willing to apply to the production of the new power resource the amount of money, which they would be compelled to utilize to develop the same resource at American Falls.

36. The total power resources of Snake River from American Falls down stream to and inclusive of the Upper Salmon Falls is shown in the following Table No. 5:

Table 5

Power Possibilities on the Snake River from American Falls to Swan Falls, inclusive.

SITE	Head: Feet:	Now delevered: H.P.	Firm Power at site under present conditions. H.P.	Firm Power at site under Proposed conditions H.P.	Power at site for Irrig. Pumping H.P.
American Falls	45	6,000	18,000	0	55,000
Eagle Rock	45		18,000	0	35,000
Minidoka	45	10,000	15,000	0	23,000
Milner	45			0	0
Cedar Rapids	90			0	0
Dry Creek Falls	125			0	0
Twin Falls	125		5,000	5,000	Firm Powe
Shoshone Falls	200	1,500	8,000	8,000	" "
Auger Falls	120		7,000	7,000	" "
Upper Salmon Falls	85		38,000	38,000	" "
Lower Salmon Falls	50	4,000	20,000	20,000	" "
Crane Falls	27		13,000	13,000	" "
Swan Falls	23	13,500	10,500	10,500	" "

*Proposed Conditions: All flow stopped at American Falls in non-irrigation season. All flow except waste waters to be diverted at Milner Dam or above in all seasons.

37. It is recognized generally that the establishment of the American Falls Reservoir is essential to the further development of dependable irrigation possibilities on the Snake River, also that the development of that reservoir will shut off the winter flow at that point which will thereby to a very large extent deprive the remaining power sites of the winter water which now passes American Falls. This condition is complicated however, by the fact that the diversions for irrigation at Minidoka Dam and at Milner Dam are prior rights over any of the power rights lower down and consequently under natural flow conditions the power sites below Milner Dam reach the condition of lowest flow and therefore their period of least firm power production in the summer season, whem practically all water is taken from the river at Milner Dam. It is well understood however, that accretions from springs and return flow accrue to the stream to a slight extent between Milner Dam and Twin Falls, which is the next lower power site, and to a very large extent below Shoshone Falls and above Upper Salmon Falls.

38. It will appear therefore from an analysis of the situation that the stoppage of winter flow at American Falls Reservoir will to a large extent eliminate the flow of the power sites above Salmon Falls, but will not materially modify the value of that site and sites lower down from the standpoint of the production of firm power.

39. Several alternative schemes have been proposed for the production of power at the various sources on the Snake River, and the principal ones considered with particular reference to the sibstitution for the American Falls plant are as follows:

(1) Shoshone Falls with a larger amount of water.

(2) Twin Falls-Shoshone Falls with a smaller amount of water.

(3) Upper Salmon Falls

(4) Shelley Canal

40. The Shelley Canal development is that suggested by Mr. Paul S. A. Bickel, Engineer for Mr. I. B. Perrine, and would result from the construction of a high line canal from 80 to 100 miles in length heading at Shelley and discharging thru a head of 85 ft. or more into a tail-race leading back into the American Falls Reservoir above the American Falls Dam. This plan has in its favor the element of total conservation of the water, leaving the power sites below American Falls Dam to be developed to whatever capacity they will stand without the absorption of any of that resource in the restoration of the American Falls power. The Shelley Canal plant also would have the advantage of delivering the power close to American Falls, eliminating the necessity for a long transmission line with its attendant cost and operating expense. The plan,

however, will be an expensive one to develop without including any part of the cost of the Shelley Canal, and is regarded for commercial power loads as a practical impossibility from an operating standpoint on account of the long canal and the attendant difficulties in connection therewith during the winter months.

41. All other plants proposed in sibstitution for the American Falls power must include a transmission line ranging in length from about 106 miles for the Upper Salmon plant to about 82 miles from a plant at Twin Falls.

42. This board has had access to a number of reports and suggestions covering this situation, as follows:

(1) A report by Mr. A. J. Wiley bearing date of April, 1918, in which Mr. Wiley suggests the discharge of sufficient stored water from the American Falls reservoir to supplement the winter flow. The water supply figures available indicate that the net result of this procedure would be the loss of about 1,000,000 acre-feet of water for irrigation with a reduction in the winter power possibilities at Eagle Rock, Minidoka and Milner dams, but with an increase in the power possibilities on the lower sites, the net result from the standpoint of the total potential power possibilities of the Snake River Valley being an increase.

Table 6

Comparative power costs delivered at American Falls from different sites

Power sites	Plant capacity h.p.	Plant cost	Transmission line cost	Grand total	Cost per h.p.	Operation cost per h.p.
American Falls	30,000	$2,614,000	0	$2,614,000	$87.00	$14.60
Shoshone Falls	46,500	2,350,000	1,208,000	3,558,000	76.50	11.90
Twin Falls-Shoshone Falls	46,500	3,243,000	1,208,000	4,451,000	96.00	14.60
Upper Salmon	38,000	2,530,000	1,656,000	4,186,000	110.00	16.40
Shelley canal	30,000	3,150,000	100,000	3,250,000	108.00	22.50

(2) Reports prepared by the Reclamation Service at the Denver office, and submitted by Mr. Dibble at Burley office. These reports set up tentative estimates showing comparative costs of various plants. The following tabulation shows the comparative capital costs per horse power and the comparative cost per horse power for operation as set out in the reports, for power delivered at American Falls. (see attached Table No. 6).

It will be observed that the costs include power stations and transmission lines where needed.

(3) A report submitted to this board by Mr. Bickel indicates the approximate location of the power site in connection with the Shelley Canal, but there is no detail in his report either as to location upon which a tentative estimate could be based without a long study or any estimate as to costs. The board expresses the opinion that the approximate capital cost of power development in connection with the Shelley Canal, and without including any portion of the cost of the Shelley Canal down to the power site, would not be less than $100 per horse power. Inserting in the cost of operation the same factors for interest, depreciation, etc., which have been utilized in other power estimates, the cost of operation for this proposed project will run above those for other

proposed plans and render this proposal impracticable at the present time. If the Shelley Canal is ever built, its potential asset for the production of winter power may at some future date be of sufficient value to justify its development. It is not apparent however, that such development is practicable in the near future or worthy of consideration as an offset against the cost of the Shelley Canal or the American Falls Reservoir at the present time.

43. The Board has made some examination of the estimates submitted and listed in the foregoing tabulation and is unable, without an extended examination of the sites and requirements to make modifications or criticisms tending to greater accuracy. It is believed however, that the estimates furnished by the Reclamation Service give a sufficient basis for a comparison of the various sites. The actual process of reaching an agreement with the Idaho Power Company concerning this substitution will unquestionably lead to a very thorough discussion of all of the items involved both as to cost and as to effectiveness of the devices proposed for the purpose required. The Board expresses the opinion however, that the down-stream sites below American Falls furnish the practicable opportunities for substitutions. The utilization of the Upper Salmon Falls will leave the largest residue of water applicable to irrigation, as it requires

no supplementary flow from the American Falls Reservoir during any part of the year. It is possible that return flow greater than nowappreciated will set up when an effort is made to impound all waters at American Falls and thereby to dry up the stream during the non-irrigation season, to the greatest extent possible below that point, with subsequent increase of the irrigated acreage. If such a situation should develop with the progressive expansion of irrigation use, the effect would be to restore a power resource of greater or less value, but of an amount not now predictable with any accuracy, at the sites between American Falls and Upper Salmon. If therefore a development based upon the maximum use of water for irrigation of a dependable character must be outlined at the present time, the Board is of the opinion that the development for substitution should be made at Upper Salmon Falls with the idea that such power resources as subsequently are in evidence at the upper sites can be utilized when their value can be predicted in a dependable way.

44. The proposal made by Mr. Wiley might eliminate the necessity for adjustments of vested power rights during the winter months at Minidoka Dam, but im the detail consideration of these problems in the future the relative value of the amount of water necessary to maintain the vested power rights at Minidoka can be equated as between its irrigation value or its

power value or the cost of substitution from other sources. From the standpoint of this report, it is believed that dependable information as to return flow and other accretions to the stream usable for power above Upper Salmon is not sufficient to permit the prediction of value as to reasonable expansions to be expected in that field, and the opinion is expressed that the best position at this time is to lay out future development on the basis of the dedication of all water to irrigation use. Under this proposal commercial power plants from American Falls to Shoshone Falls inclusive, would require adjustment for the near future with subsequent development as circumstances permit.

45. There will be an abundant power resource at American Falls, Eagle Rock and Minidoka Dam for all probable demands for irrigation pumping. This resource will arise from the waters turned down the river to be diverted at Minidoka Dam and Milner.

46. Since the complete utilization of the Snake River water supply above Milner Dam for irrigation purposes will, under normal conditions require a considerable length of time, it is possible that power plants constructed in the near future for pumping purposes may, until such time as irrigation developments are completed, be used to supply

commercial winter power, and by reason of such possible use winter power rights might initiate which would mitigate later against a complete use of this water resource for irrigation purposes. In granting power rights in the future the Federal Government and the State should so far as possible provide restrictions requiring its eventual surrender when and as the waters are required for application to the land.

SHELLEY CANAL

47. Mr. Bickel's proposal is to construct a diversion dam at Shelley and a lined canal 84 miles long with capacity of about 6700 second-feet from that point to a point west of American Falls, where a drop, for the development of power, is contemplated, at the same time returning the water into the proposed reservoir at American Falls. From the power drop an extension is contemplated to carry a sufficient supply of water to serve 240,000 acres, including 120,000 acres on the proposed North Side Minidoka Extension project and other lands beyond; the purpose being to eliminate pumping to the Minidoka tract. The maps indicate that the length of this extension would be about 120 miles, or a total length of about 200 miles of Main canal. He estimates the cost of construction for 387,000 acres at $23,560,000, which with

the cost of storage brings the cost for actual field construction to about $90.00 per acre. The general scheme is given in the attached statement submitted by Mr. Bickel, Exhibit "E", and the location on the attached map, Exhibit "F".

48. The history of irrigation development indicates that the construction cost should probably be doubled to cover expenditures incident to getting large projects upon a going basis, such as financing and promotion expenses, contingencies, unusual disasters, legal expense, taxes, interest, insurance, operation and maintenance during the development period, etc.

49. In addition to its possibilities for irrigation the construction of the Shelley Canal is expected to supply winter power which will not be available at the present location after storage is provided by the construction of American Falls Reservoir, and the power possibilities of the canal bulk so largely in Mr. Bickel's plan that it is proposed to charge over $14,000,000 of its cost to the American Falls storage, because it is a means of saving water and compensates for the destruction of power thru the building of the reservoir. It is shown elsewhere in this report that the development of power by means of the proposed canal line is inadvisable. It is also believed that it is more practicable

to pump to the Minidoka North Side Extension than to undertake the hazards of operation on a long line of canal, where a break or other accident near the head might mean interruption in deliveries for a disastrous period. Apparently there will be no dearth of good sites for power for summer pumping.

50. An inspection of the proposed location from American Falls to Minidoka convinced the Board that construction thru this region would be an expensive undertaking. If it is not justified as a means of eliminating the pumping features of the proposed Minidoka Extension project, there can be little argument for attempting to reach other land below American Falls, as a considerable part of the area proposed to be so served can be served by modifications of present systems having the advantage of much shorter canal lines and a situation upon the river making possible the acquisition of storage in American Falls reservoir.

51. The irrigation possibilities of the Shelley line are affected by limitations of the Snake River water supply and the fact that other choice lands are available to which the water can be applied. The choicest area covered by the Shelley Line is the Minidoka Extension shown in Mr. Bickel's report as comprising 120,000 acres commencing over 100 miles from the diversion; the balance of the land is not generally

of as choice a character and much waste area will lie under the line which it will be impracticable to irrigate, therefore increasing construction cost when applied per acre to the irrigable area.

52. The U. S. Reclamation Service has also made a preliminary survey and estimate of the Shelley Line covering about the same area but on somewhat different location. This estimate of cost is much higher than that presented by Mr. Bickel, somewhat because of figuring the canal excavation more in cut thus increasing the rock yardage. The estimate by the Reclamation Service covers about 190,000 acres at an average cost of $160 per acre. A classification of the land was also made, the result being a considerably less area suitable for irrigation than assumed in the Bickel estimate. The land classification made by the Reclamation Service was perhaps quite rigid and was necessarily based on meager data but points to the fact that much of the land is of a doubtful character and of a class that will not attract investment while better land is available.

53. It is also possible to water part of the lands at the lower end of the proposed Shelley Canal thru the North Side Twin Falls system and thus supplement the Wood River supply for lands in the vicinity of Gooding.

54. It may be feasible to construct the Shelley Line to a point a short distance southwest of American Falls ending somewhat east of Wapi terminating before it reaches a long stretch of lava thru which it would run if continued further. If deemed at all advisable to provide for winter power, this part of the Shelley Line could be built to a maximum capacity equal to the available winter flow of the river at the point of diversion.

55. Recent investigations indicate that the loss in the river channel in the gravelly section between Shelley and Blackfoot averages about 350 second feet. In fact, at some times there is no apparent loss, and it is still uncertain whether there is any actual loss that is not recovered by return flow at some point far enough up the river for utilization for storage. In any event the loss is not serious and would not warrant much expense in an effort for its recovery. Storage would be necessary for the greater part of the water supply for the Shelley Canal lands. From an inspection of the proposed location, it was manifest that construction would be very expensive and a large part of the land not very desirable from an agricultural standpoint, and there seems substantial ground for the opinion that other projects along the river have greater merit economically.

56. On the whole, it seems manifest that the Shelley Canal is not necessarily an integral part of the American Falls reservoir development. Its merits should be considered independently of its relation to storage at that site, and the contention that its cost is properly chargeable to the reservoir feature is not agreed to, inasmuch as the power situation can probably be more satisfactorily handled in other ways. The burden of cost must therefore be borne by the lands served and the probability seems to be that such cost would be excessive. Applying the test of economic agricultural production, the preponderance of the evidence at hand seems to be against the Shelley line, except possibly for the upper area and it should stand on its own merits as against other propositions.

BRUNEAU PROJECT

57. It is apparent from the analysis of the water supply that sufficient water is not available for the development of all of the lands which can be served by diversions above Milner Dam in addition to a large project approximating 400,000 acres west of Milner Dam. Two large developments of this character have been discussed before the Board, to wit: The Bruneau project and the Mountain Home project.

The information available to this board does not justify it in passing an opinion as to the feasibility of either the Bruneau project or the Mountain Home project. It seems possible however, that both projects possess some expectations as to feasibility, and a definite proposal is now understood to be before the State officials of Idaho asking for the segregation of the Bruneau project, and promising immediate prosecution of the studies necessary for the verification of its feasibility in the event the segregation is made. This board expresses the opinion that by a proper dedication of the water supply of the Snake River, the interests of irrigation enterprises already established in the Snake River Valley can be cared for in addition to which the Minidoka Pumping project amounting to about 115,000 acres can be supplied, and that a sufficient supply will remain to furnish water for a big project either at Bruneau or at Mountain Home. If in the opinion of the State Government of Idaho and that of the United States, a dependable project can be set up at once at Bruneau, the Board sees no reason why that project should not be segregated and the work of investigation taken up promptly provided safeguards as to financial stability are furnished by the promoters of the proposed enterprise. If this step is taken, however, it should be recognized that

a prior right is being established in the interests of the Bruneau project and that practically all other projects in the Upper Snake River Valley will be dependent upon the residue remaining in the watershed after the Bruneau project is developed; also, that present indications are that water for up river projects must be developed from a more uncertain supply and if at all by means of much more expensive storage reservoirs than those now available. The practical effect of such a dedication of the waters of the stream to the Bruneau project will probably be to delay other large developments until such time in the future as the ultimate results of the application of the water there and elsewhere become known. In brief, the State of Idaho must elect, whenever it initiates any large new project on the Snake River to accept a less attractive proposition for later proposals than that which will present itself to the first 450,000 acres, more or less, which may be developed.

58. In the event of the segregation of the Bruneau project at the present time, a prompt prosecution of investigational work should be made mandatory. If such investigations can be brought to a conclusion promptly, no harm will result to the situation since in the event that the Bruneau project is pronounced feasible and is constructed, the State of Idaho will receive the benefit of a large and exceedingly valuable development, and if the Bruneau project is found to be lacking

in merit, the dedication of the waters can be withdrawn and other projects can thereafter be presented.

YELLOWSTONE LAKE

59. A suggestion has been made from several sources that a supply of water, susceptible of feasible diversion by means of a tunnel, into the watershed of Snake River, can be had from the drainage basin of Yellowstone Lake, to aggregate about 800,000 acre-feet. The Board is of the opinion that a use for this amount of water can be eventually realized in the Snake River Valley, but if such use is initiated, it will require the diversion of water, presumably claimed by the State of Montana, from one watershed to another with all the legal and political complications thereby involved. This Board has no information sufficiently definite upon which to pass conclusions concerning this phase of the situation. Furthermore, if the legal and political obstacles were removed, the acquisition of 800,000 acre-feet from Yellowstone Lake would apparently involve the use there, twice in each season, of storage capacity. It is not clear to this Board that such duplication could be made without additional storage to the amount of 400,000 acre-feet in the Snake River valley. It is the opinion of the Board that the proposal to utilize the waters of Yellowstone Lake will not become pressing in the immediate future and that the information

now in hand is not sufficiently definite as a basis for judgment as to the feasibility of the proposal.

RELATIVE FEASIBILITY OF PROJECTS

60. The information available for the use of this Board is not sufficient to pass upon the relative feasibility of a number of projects discussed. The entire problem of the final utilization of the water resource of the Snake River would be enormously aided and placed in definite condition by the preparation of topographic maps covering selected portions of Snake River basin susceptible of irrigation. Such maps could be made the basis of land classification, canal locations and studies for reservoir sites in such manner as to eliminate the great uncertainties which now enter into the situation. If the future development of irrigation in the Snake River Valley should be left to a race between competing promoters who will establish their rights by priority of use, it is probable that, with proper safeguards, a safe development to the amount of 450,000 acres or more can be undertaken without the use of such maps. In the final clean up however of this important resource, there will be a tendency for the potential asset to increase by return flow by the establishment of a higher duty of water, and by more

accurate knowledge as to utilization of the supply of water with perhaps a tendency to embark more and more upon questionable enterprises. If, however, the ultimate development of this problem can at this time be definitely taken in hand by an authorized central agency and sufficient funds appropriated to produce complete topographic maps in the course of the next three or four years, the saving to the state in development expense and in the dependable quality of its enterprises will be very great.

EXHIBIT "A"

Denver, Colorado, March 30, 1920

Mr. I. W. McConnell,
Chairman of the board to consider projects in Snake River Valley which may affect the proposed American Falls Reservoir,
Burley, Idaho.

Dear Mr. McConnell:

The Reclamation Service is considering the construction of a reservoir on the Snake River at American Falls. All of the money for the construction of this reservoir may come from the various canal companies, irrigation districts and canal corporations in the Snake River Valley, or if Congress makes appropriations, part of the money may be furnished by the United States to provide storage for extension to the Minidoka Project.

In view of the uncertainty at this time of the number of acre-feet that may be contracted by various agencies and the uncertainty of the United States advancing funds, the size of the reservoir that will be required has not yet been determined.

Any reservoir constructed, however, will have some effect on the power plant of the Idaho Power Company located at American Falls and if a reservoir of very great capacity is constructed it will be necessary to replace the power plant of the Idaho Power Company and plans have been given consideration to replace the American Falls plant by the construction of a power plant or plants farther down the Snake River.

Mr. I. W. Perrine and associates have under consideration the irrigation of several tracts in the Snake River Valley, one of which is located between Shelley and American Falls. Consequently, they have considered taking a canal out at Shelley which could be used for irrigation during the irrigation season and which could be used to conduct water which could be used to develop power in a plant to be constructed in a drop from this canal to American Falls reservoir above American Falls dam, this power plant to be operated during the winter months to replace the

American Falls plant which would not have water owing to the fact that it would be necessary to store the flow of the river in American Falls reservoir.

Mr. Perrine has also suggested continuing this gravity canal to cover by gravity the same area the Reclamation Service has considered covering by a pumping plant north of the present Minidoka Project. Mr. Perrine's scheme also contemplates continuing that canal farther down the river and also irrigating land on the south side of the Snake by siphoning water accross the river. If these various schemes of Mr. Perrine are undertaken storage will be required for them.

He also has under consideration the possibility of constructing a canal for the Bruneau Project for which storage will be required.

The board should give consideration to all these matters so far as they affect American Falls Reservoir and especially the advisability of replacing the American Falls power plant by building a power plant in a drop from the Shelley High Line Canal or by the construction of a power plant in the Snake River Canyon below Milner.

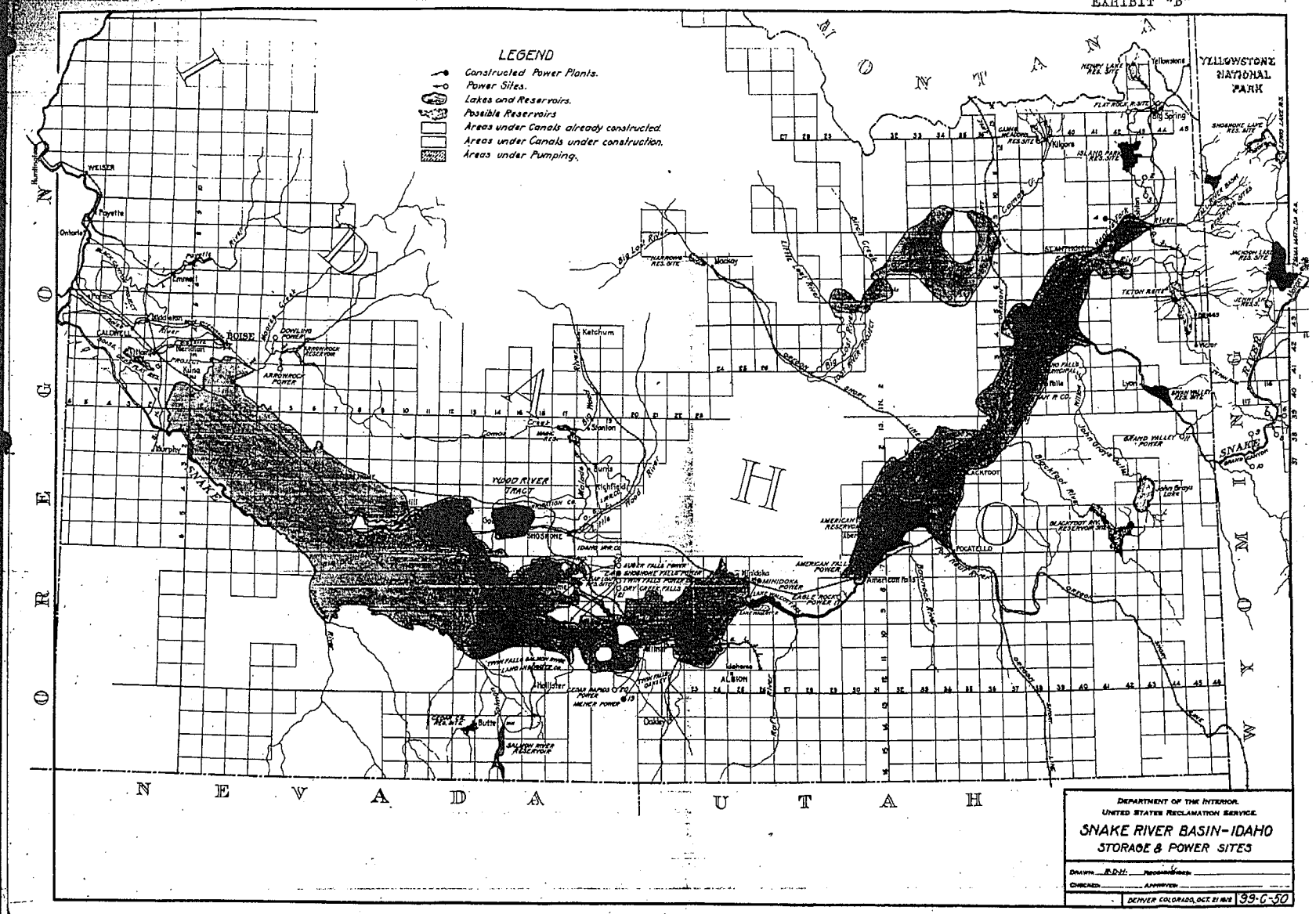
The board should also consider any other matters that Project Manager Dibble believes necessary and advisable or such matters as the Governor of Idaho may present that have a bearing on the construction of the American Falls Reservoir at this time.

Very Truly yours,

(SGD) F. E. Weymouth

Chief of Construction.

EXHIBIT "B"



DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE
SNAKE RIVER BASIN-IDAHO
STORAGE & POWER SITES
DRAWN R.D.H. RECOMMENDED
CHECKED APPROVED
DENVER COLORADO, OCT. 21 1918 99-C-50

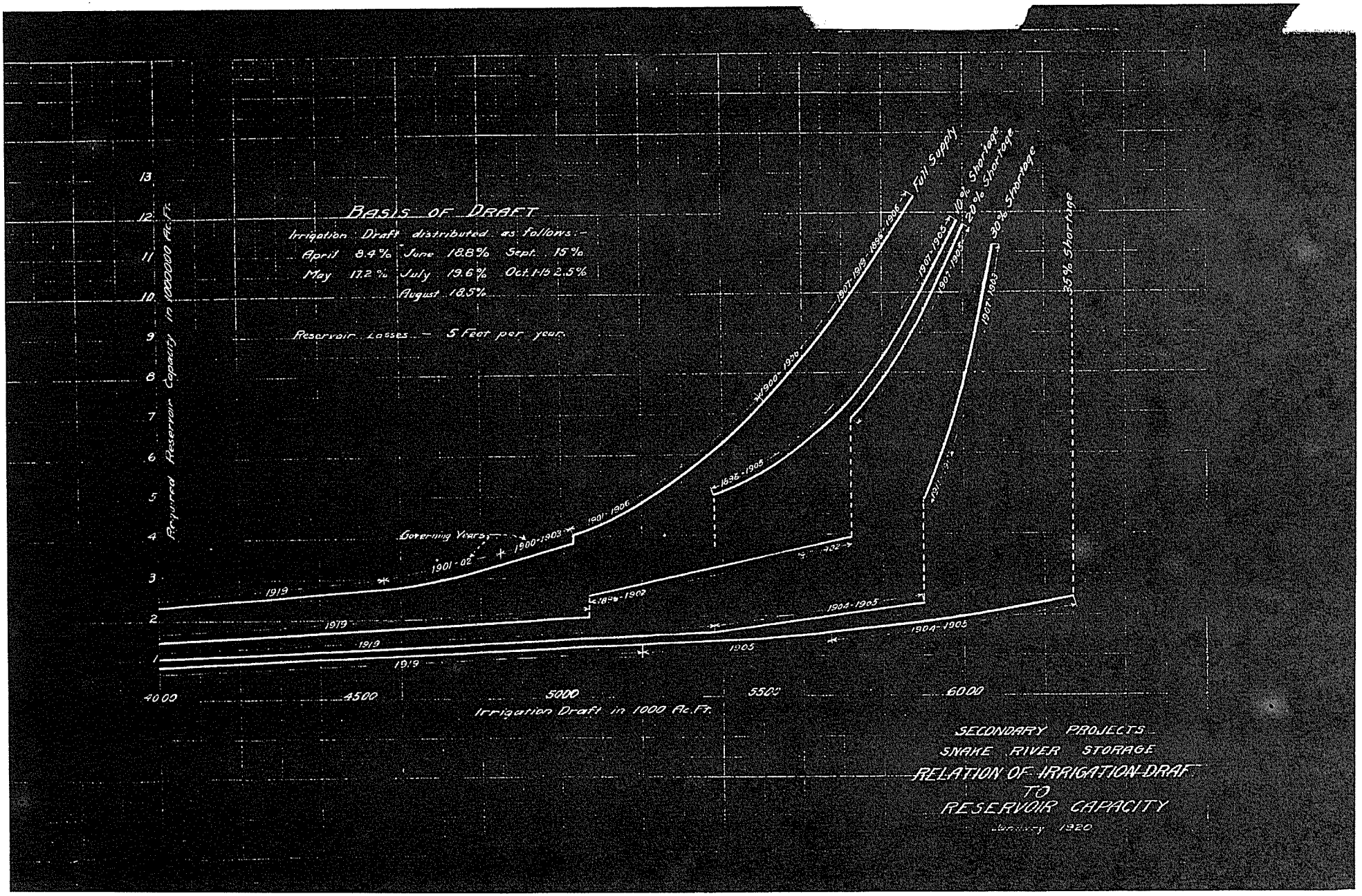

Basis of Draft
Irrigation Draft distributed as follows:-
April 8.4% June 18.8% Sept. 15%
May 17.2% July 19.6% Oct. 1-15 2.5%
August 18.5%
Reservoir Losses — 5 Feet per year.
Required Reservoir Capacity in 1000000 Ac.Ft.
Irrigation Draft in 1000 Ac.Ft.
Governing Years
Full Supply
10% Shortage
20% Shortage
30% Shortage
35% Shortage
1900-1903
1901-1906
1901-02
1900-1906
1836-1905
1907-1919-1838-1906
1907-1905
1907-1908
1907-1903
1911-19
1919
1879
1905
1904-1905
1838-1902
1922
4000
4500
5000
5500
6000
SECONDARY PROJECTS
SNAKE RIVER STORAGE
RELATION OF IRRIGATION DRAFT
TO
RESERVOIR CAPACITY
January 1920

EXHIBIT "D"

Shortages and Wastes for assumed Irrigation Drafts and Storage for period of 1896 to 1919 based on Snake River Records at Neeley.

	Irrigation Draft 5580				5720				5900				6270			
	Maximum Shortage 10%				20%				30%				35%			
Res.	5,000	3,700			6800	3900			4900	2300			9900	2400		
Size	% Short- ege	%	Spill	Short- ege	%	%	Spill	Short- age	%	%	Spill	Short- age	%	%	Spill	Short- age
1896														5		340
1897			170								560				280	
1898			20							3		190		10		630
1899			540													
1900			980								490			1		30
1901										19		1150		27		1680
1902		10		540		20		1140	30	30		1780	34	34		2140
1903		9		510		15		840	16	16		1010	22	22		1380
1904											280					
1905	10	10		540	20	20		1150	30	30		1780	35	35		2200
1906	7	7		380	12	12		710	15	15		910	20	20		1220
1907											820				500	
1908			1240				550				1100				790	
1909			1780				1350				1220				800	
1910			2810				2600			9	2540	520		10	2300	650
1911			150								190					
1912			1810				1160				1260				730	
1913			2980				2700				2610				2300	
1914			2270				1920				1810				1430	
1915			80							25		1490		30		1880
1916						1		70		8		480		13		790
1917			60								710				330	
1918			1930				910				1570				1260	
1919			210							25		1470		30		1910

Exhibit "D"

(copy) EXHIBIT "E"

PAUL S. A. BICKEL
Irrigation Engineer
501 Finney Building
Boise, Idaho.

The SNAKE RIVER LAND AND WATER has for many years been recognized as the greatest asset of the State of Idaho and up to the present time has only been improved in a rough way to 50% of its capacity.

About 500,000 acres in the Upper Valley from Ashton to American Falls which depend upon the natural flow of Snake River, in what we might call the Twin Falls or Lower Valley about 1/2 million acres have been depending upon the natural flow of Snake river and Jackson Lake storage of 800,000 acre-feet.

The Arrowrock tract which has 500,000 acres of land which can be irrigated is also in the Lower Valley, making one million acres in the Lower valley, all of which can be supplied from the American Falls proposed storage reservoir which will hold 3,036,000 acre-feet, enough to irrigate this land with an early irrigation from the natural flow of the River during high water period.

There are 5,600,000 acre-feet of water (as shown by the chart of water flow for 12 years) during the non-irrigation season, --October to April, enough to fill the American Falls reservoir with this water which all goes to waste. It is, therefore, the duty of the State of Idaho to stop this

waste and utilize this resource which nature has intended.

In order to save this water there is only one obstruction in the way to be overcome. The power development at American Falls by the Idaho Power Company will not be available during the winter or non-irrigation season. It is, therefore, necessary to develop power from some other source.

In order to accomplish this I have suggested that a canal be taken out of Snake river on the west bank 3 miles above Shelley in T. 1 N., R. 37 E. at the bridge now crossing Snake river, thence running in a southwesterly direction on the west side of Snake river valley from 1 to 6 miles back from the river for a distance of 80 miles to a point opposite the merican Falls reservoir near the dam site, where the canal would attain an elevation of 114 feet above the highest water surface in the proposed reservoir, thereby creating a power to take the place of any power destroyed during the winter months, and in the summer months during the irrigation season the water could be utilized on the land below the canal and between the canal and Snake river from Shelley to Gooding.

In all there are 2,000,000 acres of land in the Snake river valley under the plan of irrigation which can be irrigated, and it is possible that where the gravity lands are all accounted for pumping propositions and long syphons may

enlarge this amount to 2,200,000 acres.

n average annual flow which may be made available from the Snake river amounts to over 10,000,000 acre-feet.

t and below American Falls an average flow of 7,000,000 acre-feet would have been available had it been regulated by storage.

At Heise and Rexburg 5,943,500 acre-feet and 1,710,000 acre-feet respectively. Between these two points and Blackfoot there are used and lost 2,448,000 acre-feet and the loss and use are about equally divided, but the loss is again made up from return flow springs and other tributaries by the time it reaches American Falls or Heeley, or 700,000 acre-feet.

Below this again a loss in the Lake Walcott appears, but it is again replenished by the time the river reaches the Milner dam.

t Milner dam all the water is at times diverted, which leaves the river dry, and if all the water were diverted the springs from Twin Falls to the Malad River would replenish the river so that there would still be 5,000,000 acre-feet flowing at King Hill.

This is certainly a most wonderful condition.

We therefore, have 10,000,000 acre-feet of water which should be ample to irrigate 2,200,000 acres without a doubt if it is held for the proper time of distribution. Ordinarily the natural flow until July will take care of over 2,000,000 acres of land. But some years this condition does not exist.

It is therefore necessary to store enough water to take care of the later irrigations and the lean years, and it is absolutely necessary to save all the water and particularly the winter water, which can be done in the merican Falls reservoir.

flow loss in these months is very regular and averages 3,600,000 acre-feet, more than enough to fill the reservoir. This will leave all the rest of the natural flow outside of an early irrigation or two for the Upper Snake river and high line on 1,000,000 acres of land.

This reservoir with about 1,500,000 acre-feet and the water which naturally returns from Blackfoot to merican falls, about 1800 second feet per day, and some of the high water flow will be sufficient for the other 1,000,000 acres in the Lower valley,--namely Bruneau, North and South Twin Falls and Minidoka tracts.

Even the low year of 1915 only 2,500,000 acre-feet would have been necessary to draw out of the merican Falls reservoir reserve, and 500,000 acre-feet of the natural flow could have been diverted above in the Upper Valley, and still the American Falls reservoir would have been ample to have taken care of the 1,000,000 acres in the lower valley. By the record of 1915 it will be seen that in order to care for the Upper Valley 3,000,000 acre-feet should be stored above the Upper Valley to furnish enough water to insure the water supply.

Of this amount the Jackson Hole reservoir has 800,000 acre-feet and an additional 2,200,000 acre-feet should be provided for, to meet all shortage for the lean years. Lake Walcott would furnish 80,000 acre-feet, making the actual storage necessary 2,100,000 acre-feet.

I wish to call your attention to the fact that I am not the originator of this plan of utilizing the waters of Snake River as a whole. Since I have studied the matter, I found out that Mr. Foot in 1890 for the Geological Department did suggest and surveyed a line approximately where we located our line and at that time made a plan and recommended the distribution of the waters of Snake river in this way and building reservoirs up above on the South Fork of Snake river. At that time he did not know about the American Falls reservoir.

fter making a study of the water supply of the Snake river and the land most accessible to irrigation, in order to make use of the entire amount, we made a reconnaissance and survey of a line from Shelley to Minidoka, in order to eliminate the necessity of pumping plants Shelley seemed to be the best head for a large canal.

The head is founded on solid rock bottom across the Snake River, which is the only good solid rock foundation on Snake River from American Falls to this point. The line was run with long shots and stadia measurements and elevations checked by

Aneroid Barometric readings from the different points along the O. S. L. Railroad and the Bench Marks of the Geological Survey. A grade of 1 ft. per mile was used. A drop of 20 ft. near Firth, otherwise the grade of 1 ft. was maintained to a point near Wapi, here a drop of about 100 ft. can be made without losing any land of value. There are 2 or 3 miles of heavy lava formation along this line, but not in any way more difficult than we had on the construction of the Twin Falls North Side canal and not so much to be feared when we are planning to cement line the canal throughout, which was not done on the North side canal work.

Between Wapi or a point two miles east of Wapi and Minidoka there is quite a stretch of lava formation that will require some difficult work in the way of concrete lining or flume or rock work.

The greater part of the way earth embankment can be used to build the canal. The slope of the land upon which the canal is to be built is not steep and the general character is rolling, so that there are really no places which would be treacherous for canal construction.

We did not run any line west of Minidoka, but assumed that the general plans of the Reclamation maps or charts would be near enough for a general idea of where the line would go. Also used some of the railway-level elevations to determine approximately where the canal would go.

As this work has all been done by private capital without any assurance that the Government or State would grant any concessions or returns, we did not make any definite locations other than do what was necessary to file water rights, contemplating final locations and details when segregation or contracts are signed. More could not be expected and the parties are ready as soon as the assurance is given, to go ahead and make final surveys and plans when the segregations are granted to the State so that contracts can be drawn up.

We have preliminary surveys and a great deal of final locations on reservoirs which can be used to store the waters of Snake river, that will enable all parties who own and use water on land, on the Snake river lying under this system, and we have filed water right filings to protect them at all times from shortage of water in the future.

No one is overlooked and they can form their own districts and organizations and provide funds or bonds to construction irrigation works, provided it meets with the laws and regulations of the State and United States.

This work had not cost the State anything and will be of great benefit when finally completed. We can expect in a short period of years to get returns amounting to $200,000,000 per year from this great valley.

I have prepared an approximate estimate from the survey of the high line canal from Shelley to a point below American Falls reservoir damsite, and from this point to the Minidoka tract 10 miles west of Minidoka:

Dam: Location below bridge across Snake river 3 miles north of Shelley, Idaho.

Height: Maximum 20 ft. from river bed.

Length: 500 ft., support solid rock bottom and side walls

Estimated cost Multiple arch type $50,000

Canal:

Dimensions 60 ft. wide on bottom
Sides 1 x 1 slope
Water surface 90 ft. wide and 15 ft. deep
Concrete lined 3 inches, screened gravel well rolled and gunite finish of 1-3 mix.
Slope of canal 1 ft. per mile.
Maximum capacity 6700 sec. ft.
Total length, first section 84 miles 5,330,000

Yardage: Earth 13,325,000 cu. yds. @ 40¢	
Rock: 748,700 " " @ 2.00	1,497,400
Canal lining entire length: 45580000 Sq.ft. @ 12¢	5,470,000
Lateral system 147,000 acres to Wapi, $10. @ acre	1,470,000
	15,817,400.
Engineering and supervision----------	1,922,610
3 ft. of water from reservoir @ $10. per acre ft.	4,410,000
Total.	$20,140,010.

/Acreage: 147,000 @ $137.00 per acre.

Land: The land embraced in the first unit of this tract of 183,000 acres, we figure 80% or 147,000 acres is land that can be cultivated and is capable of raising good crops; land which is not too rocky or too steep and as good as land which is now being cultivated and producing crops and which at present on the Twin Falls and Minidoka projects is selling for from $200 to $300 per acre.

Incorporated in this estimate of cost is a main canal large enough to irrigate 500,000 acres and a possibility of power development by filling American Falls reservoir from this system during the non-irrigation season; using the power therefrom to compensate for the loss of power due to the construction of the American Falls reservoir; also the possibility of reclaiming the loss in the river between Shelley and Blackfoot, and the possibility of developing with 5000 sec.ft. of water from the canal with a drop of 114 ft. 45,000 kw.

The fact that this canal is above the main Snake river valley where farms and lands are cultivated a certain amount of return waters can be used over again.

SHELLEY HIGH LINE DIVERSION continued:

Lower end (Wapi to East of Minidoka):

Dimension of Canal:
Bottom width 35 ft. 12 ft. deep
Concrete lined, length 50 miles.

Yardage:

Earth excavation, 2,400,000 cu.yds. @ 40¢		$960,000
Rock " 600,000 " " 2.00		1,200,000.
Concrete lining 18,000,000 sq.ft. @ 12¢		2,160,000.
Lateral system at $10 per acre 240,000 acres.		2,400,000
		6,720,000.
Engineering and supervision		1,008,000.
3 ac.ft. from Storage reservoir @ $10 per a.f.		7,200,000.
Total		14,928,000
		30,140,010
Cost of first and second units, including reservoir		15,068,010.
Cost of 1st and 2d units per acre 337,000 acres @ $90.		

At a comparatively small cost this second section of the main canal could be enlarged to cover 100,000 acres of land by extending the same to lands farther on, so that the price could be lessened; the unit cost per acre being about $80.

Not only the cost of storage water should not be saddled upon the people who buy water from the reservoir, but the cost of the main canal from Shelley to American falls should be added to the reservoir construction, because it is the means of saving water and the means of restoring the damage done by the construction of the reservoir and destruction of the power.

Therefore, the cost of stored water would be as follows;

Main canal high line.	$14,141,960.
American Falls reservoir 3,056,000 a.f.	9,520,000
	23,661,960

or $7.80 per acre foot.

This would furnish water to the Bruneau 1,500,000 acre-feet also to the North and South Twin Falls tract and Minidoka tract; also leave Jackson Lake reservoir of 800,000 acre-feet and normal and natural flow of 500,000 acre-feet for storage on the Upper valley in a year like 1915; other years a great deal more.

We would then in a low year require additional storage of 3,200,000 acre-feet.

The Shelley diversion with 500,000 acres under the plan herein described will require 3 acre feet per acre or 1,500,000 acre-feet, and the Upper valley 350,000 additional acre-feet, or in all 1,850,000 acre-feet.

In the year 1915 there were available 500,000 acre--feet above what was necessary and 800,000 acre-feet in Jackson Lake would reduce the 1,850,000 acre-feet necessary to 1,050,000 acre-feet.

However, to be safe in any event for hold over water in case the storage on the upper Snake would diminish the natural flow to such an extent that it would hinder the actual irrigation from the natural flow, also with an additional area being brought under cultivation that is at present under dry farming, it would seem best to store 1,850,000 acre-feet instead of 1,050,000 acre-feet for the future development and lean years.

The entire storage would then total 5,766,000 acre-feet on Snake river and tributaries.

The Fremont reservoir would store 200,000 acre-feet in addition, making 5,966,000 acre-feet.

This would leave 4,000,000 acre-feet used from natural flow. In order to get this much storage, the following reservoirs are suggested:

Jackson Lake reservoir.	800,000	acre-feet	
Lake Walcott	60,000	" "	
American Falls reservoir	3,036,000	" "	$23,661,960
Lower Jackson Hole " known as the Katherine reser.	800,000	" "	6,000,000
Swan valley reservoir	800,000	" "	6,000,000
Star valley "	500,000	" "	4,000,000
Punch Bowl "	400,000	" "	4,000,000
Total.	6,396,000	" "	$45,661,960

Average cost --$7.80 per acre-foot.

It would seem that a price of $10 per acre-foot for one acre-foot on all lands excepting the Bruneau tract would be a reasonable charge, and a charge of $8.00 per acre-foot on the Bruneau tract.

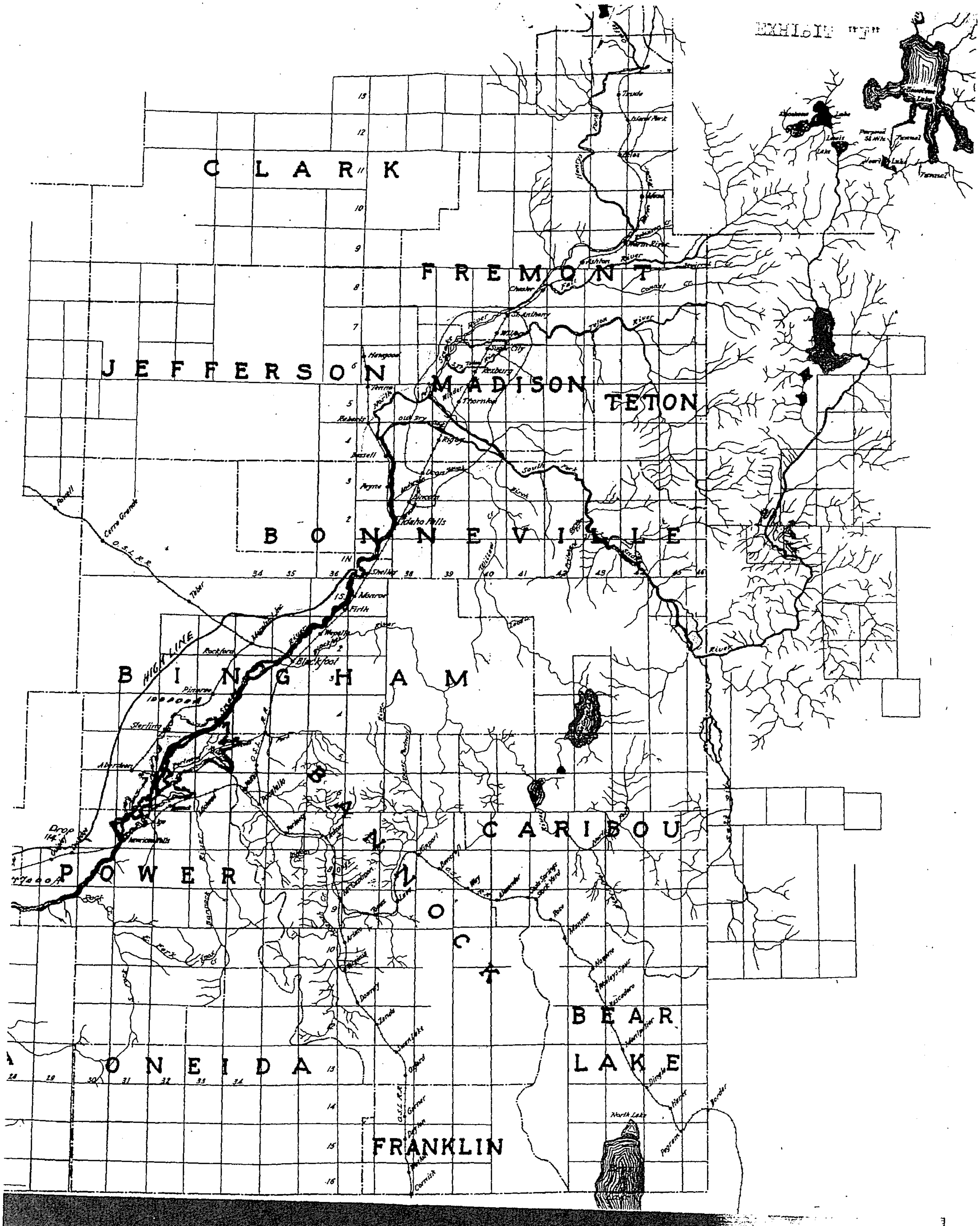
Storage of 800,000 acre-feet could be developed at Yellowstone lake for Snake river if so desired to take the place of one or two of the reservoirs herein mentioned, at a less cost per acre-foot, if the Government approves of the use of same.

The lands under the high line canal should pay at least part of the construction of the main high line canal.

(sgd) Paul S. A. Bickel

Chief Engineer

Boise Idaho



CLARK
FREMONT
JEFFERSON
MADISON
TETON
BONNEVILLE
BINGHAM
CARIBOU
POWER
BEAR LAKE
ONEIDA
FRANKLIN
HIGHLINE
Idaho Falls
Shelley
Firth
Blackfoot
Rigby
Rexburg
Sugar City
St. Anthony
Ashton
Chester
Teton River
South Fork
Aberdeen
Sterling
Pingree
Rockford
Pocatello
American Falls
Drop
North Lake

EXHIBIT "J"

(E RIVER IDAHO WYOMING

BRUNEAU PROJECT.

Parke H. Bechtel Eng. Jan. 1911
Boise Idaho.

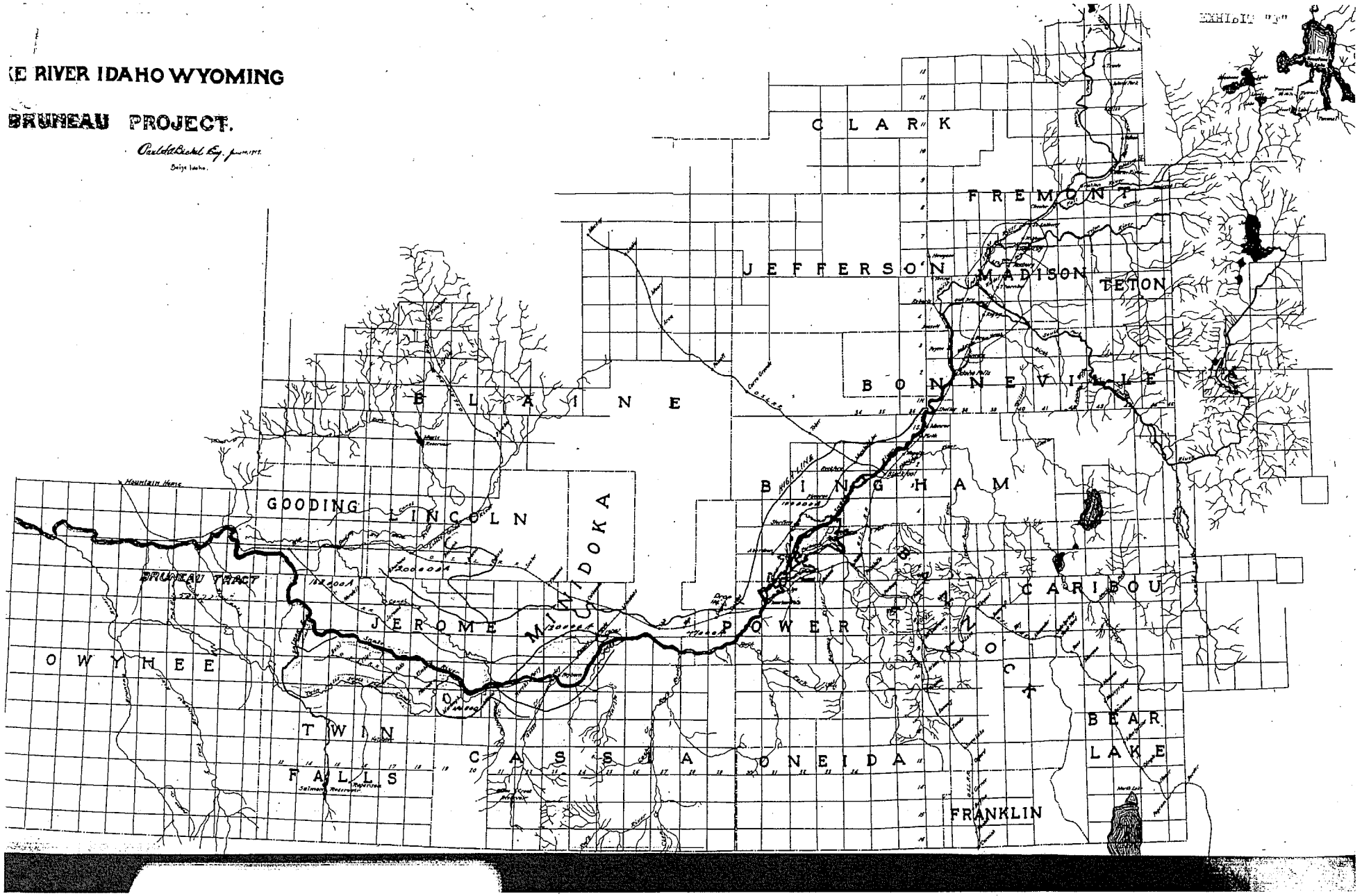


Exhibit 2

1923 American Falls Contract - Contract Between the United States and the Idaho Power Company, Relative to Power Rights at American Falls, Idaho, Contract No. I1r-733 (June 15, 1923)

Symbol Ilr-733

C O N T R A C T

Between the United States and the Idaho Power Company,

Relative to Power Rights at American Falls, Idaho.

Dated June 15, 1923.

DEPARTMENT OF THE INTERIOR

UNITED STATES RECLAMATION SERVICE

MINIDOKA IRRIGATION PROJECT.

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

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Symbol Ilr-733

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

2. Purpose and Plans of United States.

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

3. Company Public Service Corporation.

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

4. Interference with Rights of Company.

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

5. Use of Property Owned by Company.

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

6. Company's Prior Filings at American Falls.

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

to the company under this contract.

7. Need of United States for Power.

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

8. Mutual Covenants.

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

9. Property to be Conveyed to United States.

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

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

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

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

United States and the Company.

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

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

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

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

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

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

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

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

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

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

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

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

12. Company's Additional Summer Power Right.

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

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

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

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

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

for such day.

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

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

15. Outlet Works and Division Dam for Company

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

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

16. Company's Primary Storage Capacity.

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

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

17. Operation and Maintenance Charges

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

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

18. Company's Secondary Storage Capacity.

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

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

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

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

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

20. Company Right to Primary Storage Water.

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

21. Company's Rights below Milner Dam

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

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

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

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

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

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

10. Company's Primary Summer Power Right.

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

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

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

22. Twin Falls Power Site.

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

23. Government's Winter Power Rights.

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

24. Storage Rights of United States and Winter Waste.

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

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

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

25. Release of Liens.

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

26. Abstract.

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

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

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

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

ation upon which to base this agreement.

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

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

29. Distribution System in American Falls.

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

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

30. Reservation in Deed of Reserved Rights.

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

31. Failure of Appropriation.

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

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

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

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

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

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

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

33. Liens and Incumbrances.

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

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

34. Effective when Signed By the Secretary.

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

35. Binding on Successors and Assigns.

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

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

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

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

37. Cooperation with reference to Water Rights.

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

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

38. Agency Clause.

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

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

39. Member of Congress Clause.

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

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

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

UNITED STATES OF AMERICA

By (Sgd) Hubert Work
Secretary of the Interior

IDAHO POWER COMPANY

By (Sgd) F. F. Johnson
President

(Seal)

ATTEST:

(Sgd) Clarence T. Ward
Secy.

(Seal)

Approved except as to Exhibit "C"

(Sgd) W. G. Swendsen
Commissioner of Reclamation

Exhibit 3

Order Issuing License, Project No. 18 (FPC May 11, 1934)

FP-481

JUN 1 - 1954
RECEIVED

FEDERAL POWER COMMISSION

WASHINGTON, D. C.



REPORT ON GOVERNMENT LANDS

Project No. 18, Idaho

Idaho Power Company



U. S. GOVERNMENT PRINTING OFFICE: 1933

FP-481

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. 18 on the records of the Commission, and for authority to construct, maintain and operate, ~~at~~ on 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, waived Orders No. 27, with respect to said project, and, therefore, the determination of the preliminary cost thereof will not be required prior to the issuance of a license; and - - - - - - - - - - - -

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

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

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

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

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

Exhibit J: Sheet 1, Map designated "General Map of Entire Project" (F.P.C. No. 18-10);

Exhibit K: Sheet 3, Map designated "General Plan of Development (F.P.C. No. 18-13);

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 M. 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 J and K: Cited above.

Exhibit L: Plans, in 3 sheets, designated:
"Plan of Power House, Intake, and South Channel Dam" (F.P.C. No. 18-14);

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

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

Exhibit M: Two typewritten sheets designated "Description of Mechanical, Electrical, and Transmission Equipment," signed Idaho 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 J, K, E, L, and M, respectively, and approved ~~by the Executive Secretary for the Commission~~ the Commission's in 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 3,507 feet above sea level, and shall complete the dam to a crest elevation of 3,550 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 center-line 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 /~~or in cooperation with~~ 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 advance to ~~reimburse~~ the said United States Geological Survey / the amounts estimated to be necessary for ~~in~~ such/supervision ~~of~~ cooperation for such/~~part thereof as said District may deem equitable in the circumstances.~~ periods as may be mutually agreed upon. for costs incurred 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 3,507 feet, and before raising the crest of the dam above the initial elevation of 3,507 feet, the Licensee shall prepare and submit plans for preventing erosion below the downstream toe of the structure and shall secure the approval thereof by the Commission.

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

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

This stipulation shall be effective to bind the Licensee and its successors and assigns, without signature or execution by or on behalf of the United States, and shall become effective for such 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 assent to such changes in the location or design of any of its transmission lines as may in the opinion of the Commission be necessary or desirable in order to avoid inductive interference with any telephone line or lines of the United States hereafter constructed or proposed to be constructed, provided such changes are made at the expense of the United States.

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

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

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

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

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

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

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

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

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

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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 [illegible] 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

Frank R. McNinch

Chairman.

Attest:

Executive Secretary.

Acting Secretary.

U. S. GOVERNMENT PRINTING OFFICE 1933

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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. Bowman
Secretary.

U. S. GOVERNMENT PRINTING OFFICE

FFH*EKM
1-11-34

Executed in triplicate.

WWS

Exhibit 4

Order Issuing License, Project No. 1971
(FPC Aug. 4, 1955)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Seaborn L. Digby, Frederick Stueck and William R. Connole

In the Matters of	)	
	)	Projects Nos. 1971, 2132 and 2133
Idaho Power Company	)	

ORDER ISSUING LICENSE (MAJOR)

Application was filed December 15, 1950, by Idaho Power Company, of Boise, Idaho, for a license under the Federal Power Act for a proposed hydroelectric development, known as Oxbow, and designated as Project No. 1971, to be located on Snake River in Idaho and Oregon, and on May 15, 1953, the Company filed applications for licenses for two additional proposed hydroelectric developments on Snake River, known as low Hells Canyon and Brownlee, and designated Projects Nos. 2132 and 2133, respectively. The proposed developments would be located in Adams and Washington Counties, Idaho, and in Wallowa, Baker and Malheur Counties, Oregon. The applications were supplemented by later filings.

Public hearings were held on the Oxbow application (No. 1971) during July 1952, in Baker, Oregon, and Boise, Idaho, respectively, at which all persons desiring to speak either in favor of or against the issuance of a license were heard. After the filing of the applications for low Hells Canyon (No. 2132) and Brownlee (No. 2133), the proceedings upon the three applications were consolidated for purposes of public hearing. A further public hearing was held in Washington, D. C., commencing on July 7, 1953, in which hearing all parties, including the Applicant, the staff of the Commission, as well as the National Hells Canyon Association, Inc., Lewis County Public Utility District of Washington, et al., National Rural Electric Cooperative Association, the State of Washington and other parties participated, and presented testimony and documentary exhibits. After the close of the hearing, briefs were filed by the various parties and by the staff and an initial decision was rendered by the Presiding Examiner containing findings and conclusions. On July 6, 1955, the Commission heard oral argument on the exceptions to the Examiner's decision.

For the reasons set forth in Opinion No. 283 adopted this date and made a part hereof by reference, and upon consideration of the entire record in these matters, including the reports of the Federal and State agencies, protests from interested citizens, the briefs of the parties and the staff filed in connection therewith, the Examiner's decision, and the oral argument thereon, the Commission finds:

(1) The Brownlee, Oxbow and low Hells Canyon developments proposed

by Applicant in the Hells Canyon reach of Snake River would occupy lands of the United States.

(2) The Snake River from its junction with the Columbia River up to the mouth of Henrys Fork is a navigable water of the United States.

(3) The proposed Brownlee, Oxbow and low Hells Canyon developments that would be constructed by Applicant would be located in and along a navigable water of the United States; and they would otherwise affect the interests of interstate or foreign commerce by affecting the downstream navigable capacity of the river.

(4) Under the provisions of Section 23(b) of the Federal Power Act, the Applicant may not construct, operate or maintain any project or part thereof in Hells Canyon reach of Snake River until a license shall have been obtained therefor pursuant to this Act.

(5) The proposed project consists of;

(a) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the applicant or by the United States; the general location of such project area being shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit "J"

FPC No.	Showing
1971-2	General Map of Oxbow Development
2132-1	General Map of Hells Canyon Development
2133-1	General Map of Brownlee Development

(b) All project works consisting of -

(1) The proposed Brownlee development, to consist of a rockfill dam having a maximum height of 395 feet and a crest length of 1320 feet at elevation

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2090 feet in the Snake River at river mile 284.6, and a concrete spillway section surmounted by tainter gates, creating a reservoir with a usable storage capacity of 1,000,000 acre-feet at a drawdown of 101 feet below elevation 2077 feet; a controlled intake, power tunnel and penstocks leading to a powerhouse containing initially four turbines each rated at 139,000 horsepower and connected to a 90,100 kilowatt generator operating under a gross static head of 277 feet, with provision for an additional intake and tunnel and the future installation of two similar units in an extension to the powerhouse; and transmission facilities;

(2) The proposed Oxbow development, to consist of a rockfill dam having a maximum height of 205 feet and a credit length of 725 feet at elevation 1810 feet in the Snake River at river mile 273.2 and a concrete spillway section surmounted by tainter gates, creating a reservoir with a usable storage capacity of 6,200 acre-feet at a drawdown of 5 feet below elevation 1800 feet; a canal, tunnel and penstocks across the Oxbow; a powerhouse containing initially four turbines each rated at 58,000 horsepower and connected to a 37,750 kilowatt generator operating under a gross static head of 117 feet, with provision for an additional tunnel and the future installation of two similar units in an extension to the powerhouse; and transmission facilities; and

(3) The proposed low Hells Canyon development, to consist of a rockfill dam having a maximum height of 320 feet and a crest length of 860 feet at elevation 1696 feet in the Snake River at river mile 247.5 and a concrete spillway section surmounted by tainter gates, creating a reservoir with a usable storage capacity of 11,200 acre-feet at a drawdown of 5 feet below elevation 1683 feet; an intake and power tunnel and penstocks leading to a powerhouse; a powerhouse containing initially five turbines each rated at 84,000 horsepower and connected to a 54,400 kilowatt generator operating under a gross static head of 208 feet, with provision for an additional tunnel and intake and the future installation of two turbines each rated at 105,000 horsepower and connected to a 68,000 kilowatt generator in an extension to the powerhouse; and transmission

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facilities; the location, nature, and character of which are more specifically shown and described by the exhibits heretofore cited and by other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit M

General Description and Specifications of Equipment.

Brownlee Development - Statement in one sheet received in the office of the Commission on May 15, 1953.

Oxbow Development - Statement in two sheets received in the office of the Commission on July 22, 1953.

Low Hells Canyon Development - Statement in one sheet received in the office of the Commission in May 15, 1953.

(c) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable 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; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(6) Two alternative, mutually exclusive, plans of development have been proposed for development of Hells Canyon reach of Snake River and have been designated for purposes of identification as the one-dam and three-dam plans, the latter plan being proposed by Applicant.

(7) The one-dam plan would include the high Hells Canyon Project to be located 247.3 miles above the mouth of Snake River and having: a concrete arch dam to develop a 602-foot head, eight 100,000-kilowatt generating units initially with provision for one additional 100,000-kilowatt generating unit, a total storage capacity of 4,400,000 acre-feet of which 3,880,000 acre-feet would be active storage, a spillway with a capacity of 300,000 cubic feet per second, and an operating head at the power plant varying from a maximum head of 602 feet to a design head of 475 feet and thence to a minimum head of 313 feet.

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(8) The one-dam plan with an initial power installation of 800,000 kilowatts at the high Hells Canyon Project, or the three-dam plan with an initial installation of 783,400 kilowatts, would develop economically the 602-foot head in Hells Canyon reach of Snake River, could utilize the stream flow of the Snake River economically, and would have engineering feasibility.

(9) Projects with safe and adequate structures can be constructed in the Hells Canyon reach of Snake River regardless of whether they be in the one-dam or three-dam plans of development.

(10) Either plan of development hereinbefore described would provide flood control, navigation and recreational benefits in different degrees but would adversely affect fish and wildlife resources.

(11) The one-dam plan of development would provide the 2,300,000 acre-feet of flood control storage the Army contemplates in the main plan whereas the three-dam plan would provide at least 1,000,000 acre-feet of flood control storage and the difference would have to be provided somewhere else. The Department of the Army has not objected to the Applicant's proposal to provide 1,000,000 acre-feet of flood control storage in lieu of the 2,300,000 acre-feet contemplated under the one-dam plan.

(12) The one-dam plan of development would provide more navigation benefits than the three-dam plan would provide, but for either plan such benefits are not substantial dollar-wise when compared to power benefits.

(13) The Chief of Engineers, Department of the Army, has reported that structures which may affect the interests of navigation are satisfactory.

(14) There is a qualitative indication in the record that the one-dam plan would provide somewhat larger recreational benefits than would the three-dam plan, but sufficient comparative data are not available.

(15) None of the developments in either plan of development of Hells Canyon reach of Snake River would directly supply water for irrigation of lands.

(16) Either plan of development of the Hells Canyon reach would result in loss of, and damage to, wildlife resources but such losses could be mitigated in part if lands adjacent to proposed reservoirs were made available for wildlife development purposes.

(17) Either plan of development of the Hells Canyon reach of Snake River would block the runs of anadromous fish and some type of fish facilities would have to be provided for the protection of this resource.

(18) Assuming financing, construction and operation of both plans by the same entity, the ratio of power benefits to power costs of the three-dam plan is greater than that for the one-dam plan, and although the high Hells Canyon Project would produce a greater amount of power than the three-dam plan, the additional amount of power that could be produced by the high Hells Canyon Project would have a benefit-cost ratio of about one to one. Consequently the power features of the one-dam plan have no clear economic advantage over those of the three-dam plan.

(19) Federal construction of either plan of development proposed for the Hells Canyon reach could provide power revenues to subsidize irrigation works if such use is authorized by Congress.

(20) Federal construction of either plan of development proposed for the Hells Canyon reach could make possible a more extensive development of the phosphate resource located on land of the United States in Idaho and Utah than exists today.

(21) Public purposes such as flood control, navigation, recreation, and power production could be effectuated to about the same extent with private construction, as with Federal construction, of the same developments in the Hells Canyon reach of Snake River.

(22) There is a substantial power market in the area that could be served by projects in either plan considered for development of the Hells Canyon reach of Snake River.

(23) The extent to which electro-metallurgical use would be made of electric power that would be produced by development of the Hells Canyon reach would depend, in part, on the cost of such power.

(24) The general public has indicated an active interest in the plans proposed for development of the Hells Canyon reach of Snake River, and many individuals and spokesmen for groups have testified and submitted written comments thereon.

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(25) The Brownlee, Oxbow and low Hells Canyon developments proposed by Applicant would utilize the head and stream flow in an economical manner.

(26) Safe and adequate structures of the type proposed by Applicant can be constructed in the Hells Canyon reach of the Snake River.

(27) The proposed developments could and would be operated to provide flood control storage and navigation benefits.

(28) Recreational facilities and opportunities would be provided by Applicant at the Brownlee, Oxbow and low Hells Canyon developments.

(29) The estimated cost of construction, exclusive of interest during construction, of the Brownlee, Oxbow and low Hells Canyon developments in the amount of $175,766,000 as estimated by the Commission staff appears reasonable. However, the record indicates that the Applicant may be able to construct these developments at a lower cost.

(30) The peak load requirements of the Idaho Power Company system have been increasing at an average annual rate of about 24,000 kilowatts during the 10-year period 1943 through 1952.

(31) The future peak load of Applicant's system is estimated to increase at an average annual rate of about 30,350 kilowatts.

(32) The total dependable capacity of 767,000 kilowatts that would be provided at the Brownlee, Oxbow and low Hells Canyon developments would be fully utilized in the Applicant's own system by about the year 1975 and in the Northwest area about as soon as it could be developed if indicated arrangements with other systems can be firmed up.

(33) The estimated annual at-market cost to the Applicant of the power output that could be produced by the proposed Brownlee, Oxbow and low Hells Canyon developments is $27,921,000 inclusive of annual cost of fish facilities.

(34) The estimated annual value to the Applicant of the power output at market that could be produced by the proposed Brownlee, Oxbow and low Hells Canyon developments is $36,066,000.

(35) The Brownlee, Oxbow and low Hells Canyon developments as proposed by Applicant would be economically feasible as power developments.

(Cont'd)

(36) The Applicant has shown ability to finance the proposed Brownlee, Oxbow and low Hells Canyon developments.

(37) Applicant has investigated power sites on Snake River above the Hells Canyon reach but indications are that such power output would be more expensive than the power output from developments proposed in the Hells Canyon reach.

(38) New steam-electric power stations as sources of power supply alternative to new hydroelectric developments would not be as economical.

(39) The Applicant should provide such fish protective facilities as may be required by the Commission upon the recommendations of the Federal and State fishery authorities.

(40) Applicant should provide means to preserve, to the extent practicable, the wildlife resources.

(41) The Applicant should provide means for conducting an archeological investigation in the Hells Canyon reach of the Snake River.

(42) The Applicant should coordinate the operation of its proposed Brownlee, Oxbow and low Hells Canyon developments and its power system with the Northwest Power Pool.

(43) The Idaho Power Company is a corporation organized under the laws of the State of Maine and is duly authorized to do business in the States of Idaho, Oregon and Nevada, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license for each of the developments, namely, Brownlee, Oxbow and low Hells Canyon.

(44) No conflicting application is before the Commission. Public notice has been given as required by the Act.

(45) The proposed developments will not use any Government navigation 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.

(46) The issuance of a license for the proposed developments as hereafter provided will not interfere or be inconsistent with the purposes for which the Payette, Whitman, and Wallowa National Forests were created or acquired nor with the purposes of any withdrawal of public lands.

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(47) The three proposed power developments should be considered as a single project.

(48) The proposed project is best adapted to a comprehensive plan for improving or developing a waterway for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreation purposes.

(49) The total installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 1,208,000 horsepower.

(50) The amount of annual charges to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act, is reasonable as hereinafter fixed and specified.

(51) In accordance with Section 10(d) of the Act, the rate of return upon the net investment in the proposed project, and the proportion of surplus earnings to be paid into and held in amortization reserves, are reasonable as hereinafter specified.

(52) Inasmuch as the record shows a need for revision of same, the Applicant should be required to file revised Exhibits F, K, and L as hereinafter provided.

(53) The amount of reasonable annual charges for the use, occupancy, and enjoyment of lands of the United States to be occupied by the proposed project, including transmission line right-of-way, shall be hereafter fixed and specified by the Commission.

(54) The following described Exhibit J drawings and Exhibit M, filed as parts of the applications for licenses for Projects Nos. 1971, 2132 and 2133, conform to the Commission's rules and regulations and should be approved as part of the license for the project:

Exhibit J: (FPC No. 1971-2), Oxbow H. E. Development, General Map;

(FPC No. 2132-2), Hells Canyon H. E. Development, General Map;

(FPC No. 2133-1), Brownlee H. E. Development, General Map.

Exhibit M: General description and specifications of equipment for Projects Nos. 1971, 2132 and 2133 (three exhibits)

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(55) It is desirable to reserve for future Commission determination the question of what transmission lines and appurtenant facilities, if any, shall be included in this license.

The Commission orders:

(A) This license is issued to Idaho Power Company under Section 4(e) of the Federal Power Act for a period of fifty (50) years, effective as of the first day of the month in which the acknowledgment of acceptance hereof is filed with the Commission, for the construction, operation, and maintenance of the proposed Brownlee, Oxbow and low Hells Canyon developments (which developments for the purposes of this license, shall be considered as units of one complete project designated in the records of the Commission as Project No. 1971), subject to the terms and conditions of the Act which is incorporated by reference as a 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) This license is also subject to the terms and conditions set forth in Form L-6, December 15, 1953, entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Navigable Waters and Lands of the United States," which terms and conditions are attached hereto and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

Article 28. The Licensee shall construct the project works as follows:

(a) Commence construction of the Brownlee unit within one year of the effective date of this license, and shall thereafter in good faith and with due diligence prosecute such construction; and shall complete that unit in 36 months.

(b) Commence construction of the Oxbow unit within four years of the effective date of this license, and shall thereafter in good faith and with due diligence prosecute such construction; and shall complete that unit in 24 months.

(c) Commence construction of the low Hells Canyon unit within six years of the effective date of this license, and shall thereafter in good faith and with due diligence prosecute such construction; and shall complete that unit in 36 months.

Cont'd)

Article 29. The Licensee shall submit, in accordance with the Commission's rules and regulations, revised Exhibit L, and Licensee shall not begin construction of the project works in any unit until the Commission approves the exhibits relating to that unit.

Article 30. The final design of the spillways at the dams of the proposed project shall be based on model tests.

Article 31. The Licensee shall, within one year from the date of commencement of construction of each unit, file with the Commission Exhibits F and K in accordance with the rules and regulations of the Commission.

Article 32. The Licensee shall prior to flooding clear lands in the bottoms and margin of the reservoirs up to high water level, and shall dispose of all temporary structures, unused timber, brush, refuse, or inflamable material resulting from the clearing of the lands or from the construction and maintenance of the projects works. In addition, all trees along the margin of the reservoirs which may die during the operation of the project shall removed. The clearing of the lands and the disposal of the material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission.

Article 33. The Licensee shall cooperate with the Smithsonian Institution in the salvage of archeological values at four sites recommended by that Institution in a report dated January 1951 (Exhibit 10), and the Licensee shall, upon request of the Institution and further order of the Commission, contribute to that Institution the sum of $12,000 for archeological excavations.

Article 34. The Licensee shall make available to the Secretary of the Interior, upon his request and further order of the Commission, a sum up to $250,000 for use by the Fish and Wildlife Service to carry out detailed studies of the extent and character of the fishery resource of the project areas and to devise means and measures for mitigating losses to that resource.

Article 35. The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such fish ladders, fish

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traps or other fish handling facilities or fish protective devices and provide fish hatchery facilities for the purpose of conserving the fishery resources and comply with such reasonable modifications of the project structures and operation in the interest of fish life as may be prescribed hereafter by the Commission upon its own motion or upon the recommendations of the Secretary of the Interior and the conservation agencies of the States of Idaho and Oregon.

Article 36. The Licensee shall negotiate with the Fish and Game Commission of the State of Oregon and Department of Fish and Game of the State of Idaho with respect to the amount the Licensee shall pay each year to defray a reasonable portion of the operation and maintenance cost of fishery facilities to be provided under the license. Should the Licensee and the State agencies fail to agree on the amount to be paid by the Licensee for such purpose, the Commission reserves the right to determine the amount of this annual payment after notice and opportunity for hearing.

Article 37. The Licensee shall negotiate with the Game Commission of the State of Oregon and the Department of Fish and Game of the State of Idaho with respect to the acquisition by the Licensee for the State agencies of island and marsh areas along the Snake River for development as substitutes for waterfowl nesting areas to be lost by reservoir inundation. Should the Licensee and the State agencies fail to agree on the acquisition of such lands, the Commission reserves the right to make a final determination in this matter after notice and opportunity for hearing.

Article 38. The Licensee shall make available to the Secretary of the Interior, upon his request and further order of the Commission, a sum up to $60,000 for the preparation by the National Park Service in cooperation with Licensee, of a recreational master plan.

Article 39. The Licensee shall operate the project and its system in coordination with the Northwest Power Pool, and shall arrange for such transmission facilities as may be required for such operation.

Article 40. At such time as the Commission may direct and to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing, the Licensee shall install additional generating units at the Brownlee, Oxbow, and/or low

Article 41. 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 waterhead.

Article 42. In the interest of flood control the Licensee shall operate the project as follows:

(a) The total live storage space of about 1,000,000 acre-feet between elevation 1976 and elevation 2077 mean sea level will be made available for flood control use if and as required.

(b) The reservoir level elevation will be no higher than elevation 2034 by 1 March of each year to provide about 500,000 acre-feet of storage space for flood control use at that time each year.

(c) Additional storage space required up to 500,000 acre-feet will be obtained by evacuation as necessary during the month of March in a manner to insure availability on or before 1 April of the total storage capacity needed for flood control, as estimated by the Corps of Engineers. This space will be retained until capture of flood flows is requested by the Corps of Engineers, subject to possible involuntary storage as may be required due to temporary inflows in excess of outlet capacity, or until refilling in the interest of power output is authorized by the Corps of Engineers. In the event of involuntary storage, full capacity will be regained as soon as possible.

(d) During the flood storage period controlled outflows will be as requested by the Corps of Engineers. Daily outflows of 30,000 acre-feet, as a minimum, will be permitted when required for power purposes.

(e) In order to achieve the above operation for flood control, discharge capacity of 65,000 c.f.s. at minimum pool, evaluation 1976, including gated outlet capacity plus one-half of the ultimate turbine capacity, is to be provided by the Licensee.

(f) The above conditions will be subject to review from time to time as requested by the Licensee or the Corps of Engineers.

IPC015826

Article 43. The project shall be operated in the interest of navigation to maintain 13,000 c.f.s. flow in the Snake River at Lime Point (river mile 172) a minimum of 95% of the time, when determined by the Chief of Engineers to be necessary for navigation. Regulated flows of less than 13,000 c.f.s. will be limited to the months of July, August, and September, during which time operation of the project would be in the best interest of power and navigation, as mutually agreed to by the Licensee and the Corps of Engineers. The minimum flow during periods of low flow or normal minimum plant operations will be 5,000 c.f.s. at Johnson's Bar, at which point the maximum variation in river stage will not exceed one foot per hour. These conditions will be subject to review from time to time as requested by either party.

Article 44. The Licensee shall pay the United States the following annual charges for the purpose of reimbursing it for the costs of administration of Part I of the Act: One (1) cent per horsepower on the authorized installed capacity (1,208,000 horsepower) plus two and one half (2-1/2) cents per 1000 kilowatt-hours of gross energy generated by the project during the calendar year for which charge is made. The Licensee shall also pay to the United States such charges as may be specified hereafter for the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands, including transmission line right-of-way.

Article 45. The Commission expressly reserves the right to determine at a later date the question of what transmission lines and appurtenant facilities, if any, shall be covered in this license and included as part of the project works.

(C) The exhibits described in finding (54) above are approved as part of the license for the project.

(D) This order shall become final thirty (30) days from the date of its issuance unless application for rehearing shall be filed as provided by Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgement of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within sixty (60) days from the date of issuance of this order.

By the Commission.

Leon M. Fuquay,
Secretary

Adopted: July 27, 1955

Issued: August 4, 1955

IPC015827

IN TESTIMONY OF ACCEPTANCE of all the provisions, terms, and conditions of this license, Idaho Power Company this 9th day of August, 1955, has caused its corporate name to be signed hereto by T E Roach, its President, and its corporate seal to be affixed hereto and attested by A C Inman, its Secretary, pursuant to a resolution of its Board of Directors duly adopted on the 9th day of August, 1955, a certified copy of the record of which is attached hereto.

IDAHO POWER COMPANY

By s/ T. E. Roach
President

Attest:

s/ A. C. Inman
Secretary

(Executed in quadruplicate)

RESOLUTION

"RESOLVED that all the terms and conditions of the Federal Power Act, and all the provisions, terms and conditions prescribed in conformity therewith by the Federal Power Commission in its Order Issuing License (Major) for Project No 1971--Brownlee, Oxbow, Hells Canyon, issued August 4, 1955, be and the same are hereby accepted, and the officers of Idaho Power Company are hereby authorized and directed to execute the acceptance of said license, as contained and expressed therein, for and on behalf of, and as the act and acceptance of said licensee and of all the provisions, terms and conditions thereof by this Company."

STATE OF IDAHO)
) ss
COUNTY OF ADA)

I, A C INMAN, Secretary of Idaho Power Company, do hereby certify that the above and foregoing is a true, full and correct copy of a resolution unanimously passed and adopted by the Board of Directors of said Company at a special meeting of said Board held on Tuesday, the 9th day of August, 1955, of which meeting due notice was given, and that a quorum was present and voting throughout the meeting and at the time of the passage and adoption of said resolution; that the said resolution has never been modified or rescinded, and the same is in full force and effect as of the date of this certificate.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of said Company this 9th day of August, 1955.

(CORPORATE SEAL)

A C Inman
A C Inman, Secretary.

Exhibit 5

Letter from K. Holum, Ass't Sec. of the Interior, to J.C. Swidler, Chairman, FPC (Aug. 30, 1962)

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON 25, D. C.

AUG 30 1962

Dear Mr. Swidler:

As indicated in previous correspondence, this Department has had under consideration the preparation of suitable comments and recommendations with respect to the application of the Idaho Power Company for a license under Project No. 2258 for the facilities heretofore constructed by the power company on the Snake River in Idaho at American Falls, at Shoshone Falls, and at Upper Salmon Falls, together with certain described transmission facilities. The time permitted the Department to look into this matter, which involves a history of complicated arrangements with the Idaho Power Company prior to and including the time of the first enactment of the Federal Water Power Act in 1920, is appreciated.

The hydroelectric installations sought to be licensed by the Idaho Power Company under Project No. 2258 are located in part on Federal lands reserved for use in connection with Federal reclamation projects which are the responsibility of this Department. Specifically, the hydroelectric plant at American Falls is located in part on public lands and on lands acquired by the Department for the construction of the American Falls Reservoir, a feature of the Minidoka Federal Reclamation Project, and water stored in that project for project uses is infringed upon by the installation proposed to be licensed by the Idaho Power Company. The hydroelectric stations at Shoshone Falls and at Upper Salmon Falls as shown on the drawing submitted by the Idaho Power Company's application as being lands owned by the company include public lands of the United States. Descriptions of the public lands involved will be transmitted at an early date. No authorization has been given for occupancy of the Federal lands in question.

The American Falls installation of the Idaho Power Company is immediately downstream from the American Falls storage project of the United States which was constructed in 1926. The impoundment of the water in the forebay of the Idaho Power Company's plant backs up to and infringes upon the downstream toe of the American Falls Dam of the United States. To evacuate all the stored water from the active storage capacity of American Falls Reservoir of the United States requires the lowering of the forebay elevation of water in the plant constructed by the Idaho Power Company. In these circumstances, to protect the integrity of operation of the Federal reclamation project which is a responsibility

FEDERAL POWER COMMISSION
DOCKETED
AUG 30 1962
DOCKET SECTION

of this Department, it is essential that the license contain appropriate provisions with respect to the requirements of the Idaho Power Company in connection with its operation of the American Falls plant constructed by it.

It is therefore the view of this Department that the Idaho Power Company as a condition to the issuance of the license be directed to obtain from this Department with respect to the American Falls powerplant an appropriate operating agreement which should include the following:

1. The company shall operate its facilities at American Falls in such a manner as not to interfere with the release of water by the Government at American Falls Dam, and when required by the United States, acting through this Department, the company shall draw down the elevation of water in its forebay pool sufficiently to permit the waters to flow from the Government's American Falls Dam into the forebay of the power company's installation at rates of flow required for irrigation operations as determined by this Department.

2. The power company shall agree for itself, its successors and assigns, that all rights for the use of water for power purposes heretofore or hereafter acquired for the development of power at the company's site, shall be held and considered at all times inferior and subordinate to all rights heretofore or hereafter acquired by the United States or other parties for irrigation or other beneficial uses.

3. The company shall cooperate with the United States Department of the Interior, Bureau of Reclamation, in making the maximum justifiable development of the power resources of the site. Such cooperation shall include: (a) the use of the company's water entitlements together with other water releases at American Falls Dam for operation of the authorized Government powerplant, or (b) the use of Government and other water releases together with the company's water entitlements for operation of the company's plant at American Falls Dam in whatever combinations from time to time as will maximize the production of electricity at this site. Under such arrangement the company would receive the same amount of energy from the combined

operations as it could have produced at its own plant (without using the water developed by the Government) as determined by the Secretary of the Interior. The arrangements should include provision that prior to the construction and operation of the authorized Government powerplant at American Falls Dam, the company, upon the request of the Secretary of the Interior, shall generate for the United States electrical energy using the water entitlements of the United States provided in the contract made between the Government and the company in June of 1923 (a copy of that contract is attached). The electric energy so produced for the United States should be furnished to the United States at a nominal voltage of 46 kilovolts or such other voltage as may be agreed upon by the Secretary of the Interior and the company at the American Falls substation of the company or at the Michaud Flats pumping plant substation of the United States in the following amounts: (a) during the period April 1 to October 31 for operation of the irrigation pumping installations up to a maximum rate of delivery of 19,000 kilowatts, and (b) during the period November 1 to March 31 for purposes described in articles 19 and 23 of the contract of June 1923 up to a maximum rate of delivery of 10,000 kilowatts. The arrangement would contain provisions for reimbursement to the company for the use of its generating facilities at a rate per kilowatt-hour which would cover a ratable portion of the company's hydroelectric production expenses prescribed and recorded under the Federal Power Commission uniform system of accounts, accounts Nos. 535 to 545, inclusive.

The foregoing provisions of an operating agreement with the Idaho Power Company are the minimum essentials needed to protect the operating integrity and financial investment of the United States in the existing American Falls Reservoir Federal Reclamation Project upon which the Idaho Power Company has located its constructed American Falls plant. The costs of the project include not only $1,000,000 which was paid to the Idaho Power Company by the United States for interference with the Company's alleged power rights at American Falls, but also includes the cost of providing special penstocks through the dam for the company's use in developing the capabilities of the power site at American Falls. The company, without consulting with this Department, or so far as is known, with the Federal Power Commission, determined on its own motion not to utilize these specially constructed penstocks, but the company proceeded to build the plant for which it is now required to have a license. The Government's project at American Falls from its authoriza-

tion in 1920 has included a power installation which powerplant was reauthorized by the Congress in 1950 (64 Stat. 1083). Under items 1 and 2 above, the company would be required to provide a return to the United States of the energy from the water rights which were purportedly sold to the United States by the company under the 1923 agreement. Also, it would provide a commitment by the company to subordinate its entitlements at American Falls to the principal purpose for which the storage reservoir at American Falls was constructed, that is, for the irrigation of arid lands in the State of Idaho. Supporting details concerning the provisions of the 1923 contract and the engineering facts concerning the water entitlements involved will be provided in a supplemental communication.

The Shoshone Falls plant of the Idaho Power Company proposed to be licensed under Application No. 2258 is immediately downstream from the Twin Falls plant of the company which was licensed under Project No. 18. The Twin Falls plant, like the Shoshone Falls plant, involves the utilization of public lands of the United States. The Shoshone plant is located downstream from Milner Dam, the control point for the utilization of the waters of the Snake River for development of public lands of the United States through irrigation. The Idaho Power Company officials have been repeatedly advised, beginning with the early negotiations concerning the development of stored water for irrigation at American Falls, that the best development of the waters of the Snake River require there be no power developments below Milner Dam which rely upon flows of water past Milner Dam for power production. The United States, acting through this Department, has constructed upstream from Milner a reservoir system in excess of 4,500,000 acre-feet, all of which is operated with the objective of conserving the water to minimize spills past Milner Dam. This matter was the subject of extended negotiations with the Idaho Power Company in connection with the issuance of the license under Project No. 18 at the Twin Falls site. In view of this long history of the obvious need for the conservation of water above Milner Dam, and in view of the many public statements of the officials of the Idaho Power Company, including those made to your Commission in connection with the issuance of the license in the Hells Canyon reach of the Snake River, there should be no objection, and it is in the public interest, that the license for the Shoshone Falls plant should clearly subordinate the water supply for that plant to the use of water for development of irrigated areas upstream. Accordingly, it is recommended that any license contain provisions along these lines:

> "The power company shall agree for itself, its successors and assigns, that all rights for the use of water for power purposes heretofore or

hereafter acquired for the development of power at the company's site, shall be held and considered at all times inferior and subordinate to all rights heretofore or hereafter acquired by the United States or other parties for irrigation or other beneficial uses."

The Upper Salmon Falls development is also located downstream from the Milner Dam and its water supply should also be clearly subordinate to upstream irrigation development. This Department has underway an extensive program of investigations and project proposals which will provide further multiple purpose storage and irrigation development in the Snake River Basin above Milner Dam. These include, of course, the Burns Creek Project, the Fremont Project, and others. We are prepared to provide the Commission with detailed information concerning these presently recommended and potential irrigation developments.

The records available to this Department indicate that the projects of the Idaho Power Company described in Project No. 2258 were in existence at American Falls and Shoshone Falls prior to 1920 and the Upper Salmon Falls installation was undertaken in 1937. As these projects involve the unauthorized use of the public lands of the United States, it is appropriate to comment with respect to the term of license. It is recommended that the license as issued not exceed the 50-year period from the time of first enactment of the Federal Water Power Act or from the beginning of construction by the company, whichever is later. This recommendation is particularly appropriate in order to discourage further unauthorized entry on public lands for the construction of hydroelectric stations and not to give advantage to companies which do so. Our records indicate that the Idaho Power Company had notice of the existence of the applicability of the provisions of the Federal Power Act in connection with these specific projects. An application for a preliminary permit at Upper Salmon Falls was made to the Federal Power Commission on June 17, 1920 (Project No. 19). Also, the 1923 contract which was negotiated with the Idaho Power Company officials during 1919 and 1920 contains a specific article (Article 36) which provides that the execution of the contract was not to relieve the Idaho Power Company of its responsibility to comply with the provisions of the Federal Water Power Act with respect to obtaining licenses at the American Falls site and downstream sites on the Snake River. Article 36 reads as follows:

"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 W. G. Swendsen Rec. Comm. 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."

The transmission lines included in this project are an essential part of the major transmission grid for which this Department has made arrangements to wheel power, through a relatively recent contract with the Idaho Power Company. We therefore request that any license that might be issued recognize and protect the basic elements of these wheeling arrangements, and provide that the applicant will, during the term of the license, make its transmission facilities available for the wheeling of Government power on such terms and conditions as may be mutually satisfactory to the applicants and the Department of the Interior.

Fish resources of the development areas are resident species, principally rainbow trout, which are supplemented with stocked fish released by local, State, and Federal fish hatcheries. A good trout fishery occurs below the diversion dams at Upper Salmon Falls, and below Shoshone Falls and American Falls. Sturgeon inhabit the river below Shoshone Falls, and bass and bluegills have been introduced in the pool above the falls. Species of fish which compete to the detriment of game fish are numerous throughout this reach of Snake River. There are no anadromous fish associated with the three developments. Except for a short section of the river below American Falls Dam, the stream is open to fishing throughout the year and is well utilized by fishermen.

Existing fish facilities include ladders at the two diversion dams at the Upper Salmon Falls development. The ladder at the downstream diversion provides access for rainbow trout to spawning grounds in the section of river between the diversion and the upstream powerhouse. The ladder at the upper diversion receives little use.

Peak-power releases of upstream developments result in increases of streamflow which are not all passed through the reject spillway at the Upper Salmon Falls development. This causes an increase in flow over the upper diversion dam, excessive flow through the fish ladder, and side-spills from the canal leading to the upper powerhouse. In addition to being a hazard to fishermen, such flows adversely affect fish and wildlife habitat by creating unstable water conditions. Emergency closure of gates controlling flows to generator penstocks creates similar conditions, although the reject spillway at the powerhouse releases most of these flows. The hazard to fishermen is greatest below this

point because of the large volume of water that is released. The channel below the spillway has been fenced to exclude fishermen from this section. Signs warning fishermen that a sudden increase in water levels in the river may occur unexpectedly have also been installed along the river by the company.

Fish and wildlife resources would benefit if surplus upstream releases, which overflow facilities associated with the upper powerhouse, could be diverted through one or two outlets into one river channel. This could be accomplished by either enlarging the reject spillway and passing additional flows through the present structure, or by releasing flows through a gate in the canal near the diversion dam. To prevent side-spills from the canal, the wall for about one-half mile upstream from the powerhouse would have to be increased in height by about 12 inches to match the remaining portion upstream.

Snake River streamflow in the Shoshone Falls development area is affected by heavy irrigation diversion at Milner Dam, about 24 miles upstream from Shoshone Falls. Springs and irrigation return flows contribute significant amounts, and there is a sizable streamflow at Shoshone Falls. During normal flows, all water is diverted through the powerhouse at the Shoshone Falls development. Discharge from the powerplant is made directly into the Snake River channel and is adequate to maintain fish in this portion of the river. When facility repairs are being made at Shoshone Falls, upstream reservoirs are operated to store water and none is released through the powerplant to the river below the falls. If repairs were continued for extended periods, adverse effects on the fishery below Shoshone Falls development would result. To avoid such losses, an outlet structure should be provided to release unused water into the river channel for fish. At no time should this flow be interrupted for a period longer than six hours. Construction of roads to the powerhouse has improved the access for fishing in this section of Snake River.

Extreme fluctuations and periods of very low streamflow downstream from American Falls Dam have resulted in substantial fish losses. The company has deepened the stream channel immediately downstream from the powerplant to provide a sanctuary for fish during periods of minimum releases. The company also has installed lights near the channel to attract fish into the deeper water when low flows occur at night.

No formal negotiations regarding fish and wildlife resources associated with the developments have ever been conducted between the company and conservation agencies. The Idaho Department of Fish and Game and the Idaho Power Company have informally agreed that, in the interest

of economy, it is considered unnecessary to operate the fish ladder at the diversion dam at upper Salmon Falls during the period from March 1 to September 1 of each year. Negotiations are planned between conservation agencies and the Bureau of Reclamation in an attempt to find a method for providing sustained flows below American Falls Dam. If sustained flows could be maintained below the Idaho Power Company developments, additional benefits to fish and wildlife resources would result.

Ring-necked pheasant, valley quail, muskrat, mink, and numerous species of waterfowl inhabit the thick cover on islands and shorelines of Snake River within the project areas. Wildlife resources are not significantly affected by the company's operations except at the Upper Salmon Falls development where wildlife habitat is subject to inundation as a result of flow increases over the diversion dam. This operating procedure precludes use of the area by nesting waterfowl.

In order to protect the fish and wildlife resources affected by the project, it is recommended that, in addition to the appropriate L-form provisions, the following special conditions be included in any license issued for this project:

(1) The Licensee shall construct, maintain, and operate or shall arrange for the construction, maintenance, and operation of such fishways, including fish traps, or other fish facilities or fish protective devices and supporting facilities for artificial propagation and shall comply with such reasonable modifications of the project structures and operations in the interest of fish life, provided that such modifications shall be reasonably consistent with the primary purpose of the project and not unduly impair the power value of the project, as may be prescribed hereafter by the Secretary of the Interior (pursuant to Section 18 of the Act) upon consultation with the Licensee, the Commission, and the Idaho Department of Fish and Game.

(2) The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of such protective devices (exclusive of facilities which may be prescribed by the Secretary of the Interior pursuant to Section 18 of the Act) and shall comply with such reasonable modifications of project structures and operation in the interest of fish and wildlife resources, provided that such modifications shall be reasonably consistent with the primary purpose of the project and not unduly impair the power value of the project, as may be pre-

scribed hereafter by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the Idaho Department of Fish and Game after notice and opportunity for hearing and upon a finding based on substantial evidence that such modifications are necessary and desirable, and consistent with the provisions of the Act.

(3) Whenever the United States shall desire, in connection with the project, to construct fish handling facilities or to improve existing fish handling facilities at its expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interests in lands, reservoirs, waterways, and project works as may be reasonably required to complete such fish handling facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be prescribed by the Commission, consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish handling facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish handling facilities or to relieve the Licensee of any obligation under this license.

(4) The Licensee shall, at the Upper Salmon Falls development, eliminate or minimize overflows at the upper diversion dam, excessive flows through the fish ladder, and side-spills from the powerhouse canal.

(5) The Licensee shall, at the upper powerplant of Upper Salmon Falls development, provide an automatic warning device designed to alert anyone immediately downstream from the reject spillway simultaneously with increased water releases.

(6) The Licensee shall release all unused flows into the river below Shoshone Falls development during periods when facility repairs are required.

If it becomes necessary to interrupt flows, they shall not be interrupted for a period exceeding six hours.

Sincerely yours,

[redacted]

Secretary of the Interior

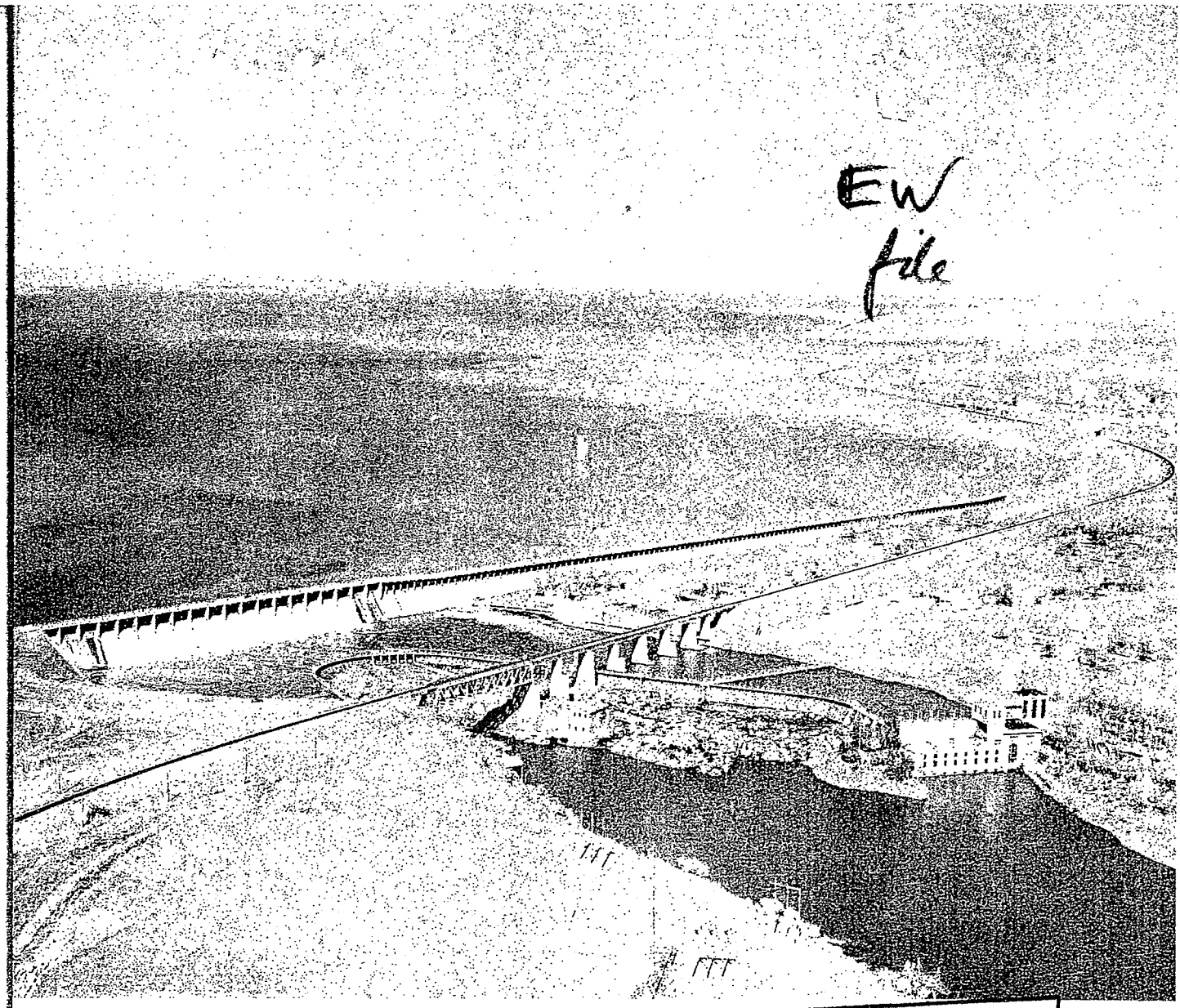
Hon. Joseph C. Swidler
Chairman
Federal Power Commission
Washington 25, D. C.

Enclosure

Exhibit 6

American Falls Dam Replacement: Information Report (USBOR Dec. 1966)

EW
file



MSS 6 LEN B. JORDAN COLLECTION
Box 45 Folder 22

AMERICAN FALLS DAM REPLACEMENT

IDAHO

BUREAU OF RECLAMATION
REGION 1 DEC. 1966

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AMERICAN FALLS DAM
REPLACEMENT
IDAHO

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INFORMATION REPORT

Bureau of Reclamation
Region 1
December 1966

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FOREWORD

This is an information report outlining the results of the Bureau of Reclamation's studies on the required replacement and the possible enlargement of the 40-year-old American Falls Dam. All interested organizations and individuals will be given time to review and comment on this report. After these comments have been evaluated, Reclamation's studies will be completed, and a detailed feasibility report will be prepared for further consideration and for action by Congress.

As early as 1930, abnormal cracking in the dam's concrete was observed. This type of deterioration, which has been observed in a number of concrete structures throughout the country, was identified in the early 1940's as a chemical reaction between the aggregate and the alkalis in the cement used. In 1964 cores were drilled from the dam and subjected to laboratory analyis. From this analysis the Chief Engineer of the Bureau of Reclamation has concluded that the dam no longer meets Bureau of Reclamation safety standards. The Chief Engineer also concluded that the existing dam cannot (1) be permanently rehabilitated to permit continued storage at full capacity, or (2) be incorporated in any plans for enlargement. Studies are presently underway to determine the engineering feasibility of making temporary repairs to the dam so that full reservoir storage can be realized.

Since the existing dam cannot be permanently rehabilitated, plans should be formulated as quickly as possible for the required replacement of the dam. In the interim, or until temporary repairs can be made if proven to be engineeringly feasible, reservoir storage must be carefully regulated to avoid exceeding the normal water surface elevation of 4354.5 and, during the winter months, must be regulated to prevent the buildup of ice pressure against the 8-foot-thick upper portion of the dam. This filling restriction caused a loss of approximately 150,000 acre-feet of yield from the upper Snake River storage system in 1966, and will mean that storage of some upper Snake River water must be foregone until the dam is replaced. With these facts, Reclamation's studies were accelerated on replacement of the existing dam and given the highest priority.

This report is made up of two parts. The first part discusses the results of the investigation on the required replacement of American Falls Dam. The second part discusses the opportunities for building a larger dam and reservoir at the American Falls site, and includes a summary of the advantages and disadvantages which would result from enlargement.

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PHYSICAL AND FINANCIAL COMPARISON

ITEM	REPLACEMENT	6-FOOT ENLARGEMENT	13-FOOT ENLARGEMENT
DAM			
Type--concrete and earthfill			
Spillway capacity	78,600 c.f.s.	78,600 c.f.s.	78,600 c.f.s.
Outlet capacity	27,800 c.f.s.	27,800 c.f.s.	27,800 c.f.s.
RESERVOIR			
Total and active capacity	1,700,000 acre-feet	2,034,000 acre-feet	2,490,000 acre-feet
Space assignments			
Irrigation	1,700,000 acre-feet	1,952,800 acre-feet	2,298,000 acre-feet
Water quality control	-	81,200 acre-feet	192,000 acre-feet
Area at total capacity	56,000 acres	62,500 acres	67,500 acres
Right-of-way required (In addition to existing ROW)	2,800 acres	7,170 acres	16,760 acres
CONSTRUCTION COSTS			
Total - January 1965 prices	$15,179,000	$22,671,000	$32,507,000
ANNUAL EQUIVALENT COSTS 1/			
Construction	$ 445,500	$ 703,700	$ 1,045,800
Operating	97,300	141,000	172,100
Total	$ 542,800	$ 844,700	$ 1,217,900
ANNUAL BENEFITS			
Total 2/	$10,560,600	$11,527,700	$12,686,700
BENEFIT-COST RATIO	19.5 to 1	13.6 to 1	10.4 to 1

	Construction ($1,000)	Interest ($1,000)	Operating ($1,000)	Construction ($1,000)	Interest ($1,000)	Operating ($1,000)	Construction ($1,000)	Interest ($1,000)	Operating ($1,000)
COST ALLOCATION									
Irrigation	$ 5,958	$370	$20.4	$ 9,824	$612	$42.4	$14,517	$907	$55.9
Fish and wildlife	705	46	16.6	513	31	16.2	434	27	18.4
Recreation	1,570	64	42.7	1,589	64	43.8	1,595	64	43.4
Flood control	5,101	318	17.6	6,014	376	26.5	7,214	449	28.5
Water quality control	-	-	-	2,916	181	12.1	6,942	434	25.9
Future power production	1,035	65	-	1,035	65	-	1,035	65	-
Highway improvement	810	-	-	780	-	-	770	-	-
Total	$15,179	$863	$97.3	$22,671	$1,329	$141.0	$32,507	$1,946	$172.1
REPAYMENT									
Irrigation 3/									
Total (by water users)	$ 5,958	-	$20.4	$ 9,824	-	$42.4	$14,517	-	$55.9
Recreation									
Initial facilities	$ 138	5/	$21	$ 138	5/	$21	$ 138	5/	$21
Optimum facilities 4/	142	5/	24	142	5/	24	142	5/	24
Total (by non-Federal public body)	$ 280	-	$45	$ 280	-	$45	$ 280	-	$45
Fish and wildlife									
Total (by non-Federal public body)	$37.5	$2.5	$14.6	$32.5	$2	$14.3	2.8	$2	$17

1/ Costs of optimum recreation facilities discounted because they would not be built until 25th year.
2/ Adjusted for adverse effects. Also reflects discounted benefits from optimum recreation facilities 25 years hence.
3/ The annual cost per acre-foot of storage space would be 8 cents for all replacement space, 39 cents and 35 cents for enlargement space in the 6-foot and 13-foot enlargement, respectively.
4/ Would not be constructed until 25th year; no repayment required until after facilities built.
5/ No interest during construction involved since facilities would be built within one year.

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PART I

REPLACEMENT

Need for Replacement

The Chief Engineer of the Bureau of Reclamation has concluded that American Falls Dam no longer meets Reclamation's safety standard and that it must be replaced. Investigations have revealed that the existing dam cannot be permanently rehabilitated to permit continuing storage at the present reservoir capacity.

Studies show that concrete in portions of the dam is in relatively advanced stages of deterioration. Laboratory analyses reveal that in the 40 years since the dam was completed the concrete has gradually deteriorated due to a chemical reaction between (1) alkalis in the cement, and (2) the aggregate, or sand and gravel used in the dam's concrete. This type of deterioration, known as "alkali-aggregate reaction," was unknown at the time American Falls Dam was built. Because of cracks formed during the extensive alkali-aggregate reaction, deterioration from other causes such as freezing and thawing and wetting and drying, has been accelerated.

The continued expansion of the concrete in the dam because of this alkali-aggregate reaction is indicated by the binding of the radial gates on the dam's spillway.

However, the principal point of concern that led to the conclusion that the dam no longer meets the Bureau of Reclamation's standards of safety is the present lack of cohesion, or bond, at the construction lift lines. This poor bond is evidenced by leakage at the horizontal

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American Falls Dam Replacement

construction joints. With a weakness at the joints there is the possibility that portions of the dam might not be able to resist shearing or sliding downstream under the thrust of the reservoir.

There is no question of the value of the existing American Falls Dam and Reservoir. Storage in this reservoir provides one-fourth of the Snake River water supply for the irrigators along the main stem. A large proportion of the August and September water supply for many irrigators is American Falls water; for many of the upper Snake irrigators, American Falls Reservoir storage represents the difference between success and failure.

Urgency is added to this situation because of operating limitations which have been placed on the dam and reservoir for safety reasons. By limiting the amount of storage permitted at American Falls, serious water shortages could result to lands dependent on the reservoir for an irrigation water supply in extremely dry years.

It is for these reasons that the replacement of American Falls Dam has been given the highest priority by the Bureau of Reclamation.

Plan Formulation

The plan for the replacement of American Falls Dam has been formulated to conform with the latest Federal statutes and policies on multipurpose water resource planning. Consideration was given to all water and land resource development opportunities and all functions found to be economically justified were included. These functions are irrigation, recreation, fish and wildlife enhancement, flood control and highway improvement.

Power?

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Studies show that a Federal powerplant has no effect on the current dam and reservoir sizing studies. When the feasibility report is being finalized, detailed studies will be made to determine if a Federal powerplant is a justified addition to the project. Costs for power features similar to those in the existing dam are included in the cost estimates presented in this report.

Irrigation

The use of the 1,655,000 acre-feet of space held by irrigators, under existing contracts, would be left unchanged. Because of large benefits from the use of storage for irrigation, an effort should be made to convert to irrigation use the 45,000 acre-feet of space now used for private power production. These two components account for the 1,700,000 acre-feet of space in the existing reservoir.

Recreation

Substantial recreation values can be obtained by acquiring additional lands and providing facilities for recreational enjoyment of the lake. Information on the facilities and land acquisition required to maximize recreational benefits was furnished by the National Park Service after consulting with the State Department of Parks. Since recreational benefits exceed associated costs, the recreation function is a justified addition to the plan.

Fish and Wildlife

The U. S. Fish and Wildlife Service and the State Fish and Game Commission furnished information on measures needed for fish and wildlife. Measures were included in the replacement plan to mitigate

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project-caused damages to fish and wildlife. In addition, all enhancement measures recommended by the Fish and Wildlife Service are included in the plan except for a potential subimpoundment on the perimeter of American Falls Reservoir and multilevel outlets in the dam. These two features could be considered further as planning continues on the replacement dam.

Flood Control

Though exclusive or joint-use space was not provided for flood control, benefits were credited to the replacement for incidental flood control.

Highway Improvement

Replacing the existing American Falls Dam will require a new river crossing for State Highway No. 39. A modern highway crossing is needed to meet the current traffic load. The Idaho Department of Highways furnished estimates and information for use in our studies. The difference in cost between replacement-in-kind and replacement to current traffic standards is assigned to the highway improvement function.

Plan for Replacement

The replacement plan would include acquisition of additional lands, a new dam, facilities for recreation and for fish and wildlife enhacement, and highway improvement.

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American Falls Dam Replacement

American Falls Dam

The replacement dam would be located on the Snake River at the west edge of the town of American Falls about 200 feet downstream from the existing dam. The location of the new dam is shown on the following page. The dam would be a concrete gravity structure about 1,350 feet long, with rolled earth dikes on both abutments. The basic arrangement of the new dam would be similar to the existing structure. Physical data on the dam are:

	Replacement
Height above streambed (feet)	81.5
Crest length (feet)	4,200
Spillway capacity (c.f.s.)	78,600
Outlet capacity (c.f.s.)	27,800

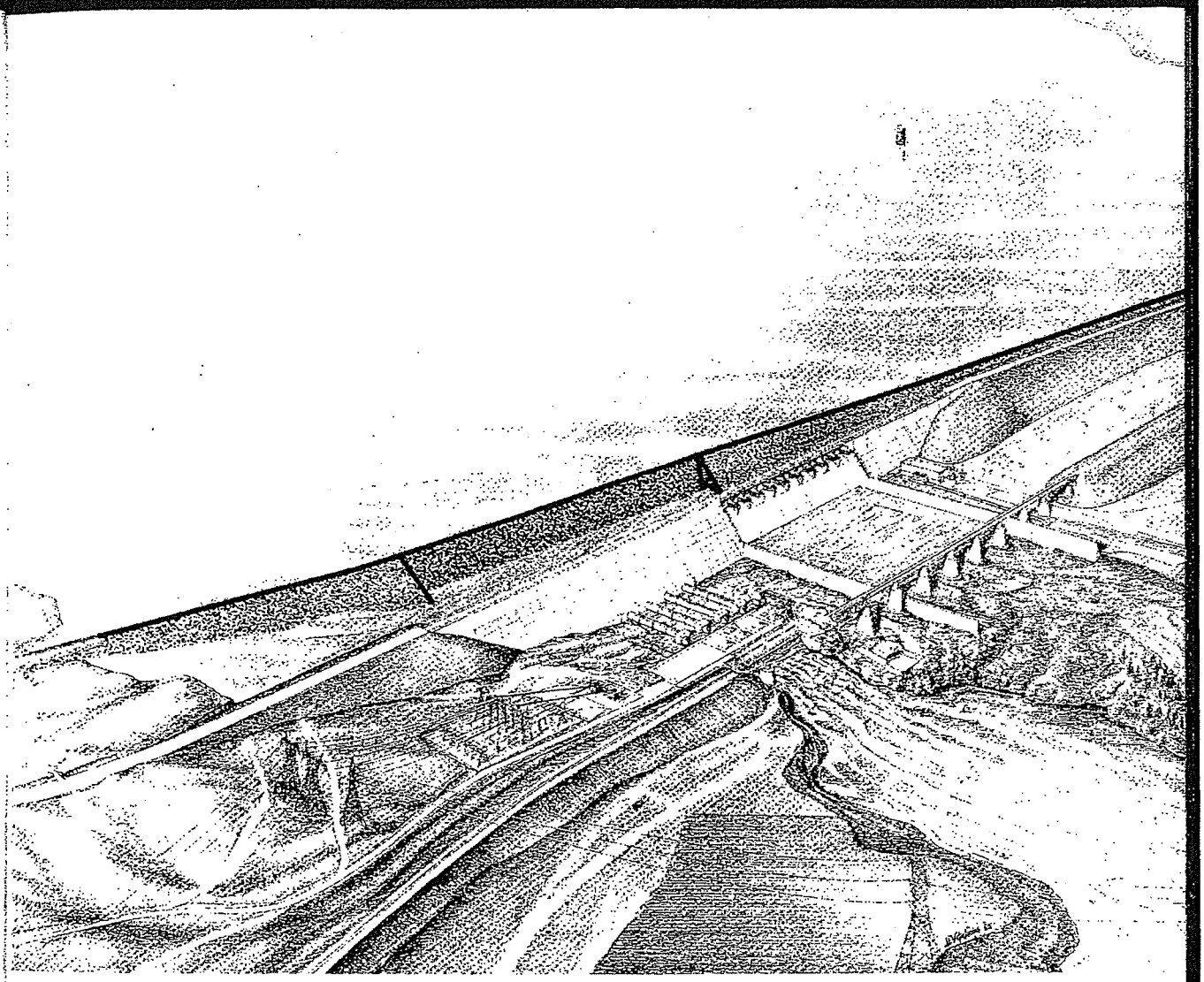
The crest would be approximately 41 feet wide on the embankment sections and about 36 feet wide on the concrete section. A modern 2-lane highway, to standards recommended by the Idaho Department of Highways, would be provided on the top of the new dam. The spillway would be located in the left side of the concrete section of the dam. It would be controlled by six radial gates. The outlet works, consisting of nine 7-foot by 7-foot outlets, would be located in the spillway section.

American Falls Reservoir

Physical data on the reservoir are:

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This is an artist's conception of the new American Falls Dam on the Snake River. The new dam would be located about 200 feet downstream from the existing dam. The existing dam would remain fully operational during the construction period and, when the new dam is completed, would be breached in the river section. (USBR illustration No. P-1023-D-50555A)

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American Falls Dam Replacement

	Replacement
Total capacity (acre-feet)	1,700,000
Active capacity (acre-feet)	1,700,000
Water surface elevation at total capacity (feet)	4354.5
Area at total capacity (acres)	56,000
Length at total capacity (miles)	23

Most of the reservoir is bounded by silty, clayey, and sandy lakebed sediments. At the upper end of the reservoir sandy and gravelly material forms the shoreline; and in some places along the western shoreline a basalt formation as much as 50 feet thick is interbedded in the lakebed sediments.

Additional lands must be acquired to accommodate estimated future bank erosion around the reservoir and for other purposes. The rights-of-way required, over and above the right-of-way which has already been acquired in connection with the existing reservoir, would be as follows:

	Replacement (acres)
Fort Hall Indian Reservation lands	870
Private lands	1,930
Total	2,800

The banks around American Falls Reservoir have eroded continually in the 40 years since the dam was built. A reconnaissance study was made of the bank erosion which can be expected to occur in a 100-year

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period after replacement. This study shows that an additional 1,500 acres of land would erode.

Other Facilities

The dam and reservoir cost estimate includes costs for (1) a modern, 2-lane highway crossing on the new dam, (2) power features in the dam for future power development similar to the features in the existing dam, (3) facilities for fish and wildlife mitigation and enhancement, (4) recreational facilities, and (5) facilities necessary for project operation.

Construction Costs

The total estimated dam and reservoir construction cost, at January 1965 price levels, is $15,179,000. This cost is estimated as follows:

	Replacement
Dam and reservoir 1/	$13,324,000
Power features in dam	1,100,000
Recreational facilities 2/	560,000
Fish and wildlife enhancement facilities	75,000
Permanent operating facilities	120,000
Total construction cost	$15,179,000

1/ Includes mitigation costs of $104,000.
2/ Includes $18,000 for lands.

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American Falls Dam Replacement

Operating Plans and Costs

Operation and maintenance of the project facilities would continue under the administration of the Bureau of Reclamation's Minidoka Project Office at Burley, Idaho. Annual operation, maintenance and replacement costs, including those associated with recreation and fish and wildlife facilities and with flood forecasting are estimated to be about $110,800.

Annual costs associated with recreation and fish and wildlife facilities were furnished by the National Park Service and the Fish and Wildlife Service.

Operation, maintenance, and replacement costs are shown in the following summary:

	Operation and Maintenance	Replacement	Total
Dam and reservoir	$37,000	$1,040	$ 38,040
Fish and wildlife	18,250	-	18,250
Flood control	1,500	-	1,500
Recreation 1/	36,200	16,800	53,000
Total	$92,950	$17,840	$110,840
Rounded			$110,800

1/ Includes $8,000 on existing recreation facilities ($5,900 operation and maintenance and $2,100 replacements) for economic analysis only.

Construction Period

Approximately 4 years would be required for construction of the new dam after it is authorized by Congress and funds are appropriated.

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American Falls Dam Replacement

The existing dam would continue in operation during the construction period, and traffic would be maintained on the present roadway across the dam. When construction is essentially completed on the new dam and it is fully operational, the old dam would be breached in the river section.

Functions of Replacement Reservoir

In addition to irrigation, a replacement reservoir would also benefit the functions of fish and wildlife, recreation, and flood control; and the highway crossing over the existing dam would be replaced to current standards.

The benefits which would be derived from each of these functions in a replacement reservoir are described in the following sections.

Irrigation Benefits

The annual irrigation benefits from 1,700,000 acre-feet of irrigation space in a direct replacement of American Falls Reservoir amount to $10,020,000.

The irrigation benefits associated with the replacement of American Falls Reservoir are created by lands located along a 200-mile reach of the Snake River in southern Idaho. Some 34 irrigation districts and canal companies, serving nearly 900,000 irrigable acres, now subscribe to the irrigation space in the reservoir. The amount of water supplied to these subscribers by American Falls Reservoir ranges from less than 1 percent of their total diversion requirements to nearly 90 percent.

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Fish and Wildlife Benefits

Annual fish and wildlife benefits, amounting to $68,900, would be created by the construction of specific enhancement facilities. The enhancement facilities recommended by the Fish and Wildlife Service include accelerated fish planting in the reservoir, access facilities to the reservoir, and goose-nesting islands. In addition to these proposed facilities, the Fish and Wildlife Service is considering the inclusion of multilevel outlets in the new dam and a small dam across the mouth of West Bay to create an impoundment. Before a feasibility report is finalized these two enhancement items and associated benefits can be studied.

Recreation-Benefits

Including all recommended recreation facilities such as campgrounds, picnic sites, boat ramps, access and interior roads, and sanitary facilities in the plans for replacement of American Falls Dam would create a total annual benefit from the function of recreation of $135,700.

Flood Control Benefits

Flood control benefits in a replacement reservoir would total $419,000 annually. This benefit is the sum of a $344,000 annual benefit for the control of floods on the lower Columbia River and a $75,000 annual benefit for local flood control in the reach of the Snake River from American Falls to Brownlee. These flood control benefits would be provided incidental to the operation of the reservoir

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for irrigation; no exclusive space would be provided for the flood control function. The only cost involved in creating these benefits is the $1,500 annual cost of flood forecasting.

Benefit Summary

The following tabulation summarizes the annual benefits creditable to a replacement dam:

Irrigation	$10,020,000
Fish and wildlife	68,900
Recreation 1/	135,700
Flood control	419,000
Subtotal	$10,643,600
Shoreline erosion 2/	-83,000
Total	$10,560,600

1/ Includes benefits from the existing reservoir and a discounted portion of benefits from optimum facilities built in the 25th year.

2/ To reflect the economic loss to the area from a loss of agricultural production on lands that will be subject to continued shoreline erosion, $83,000 was subtracted from the total benefits.

Benefit-Cost Analysis

The economic justification for the replacement of American Falls Reservoir is demonstrated by a comparison of benefits to associated costs, using a 100-year period of analysis and a 3-1/8 percent interest rate. The annual equivalent cost associated with the total annual benefits includes construction costs, interest during construction, and operation, maintenance, and replacement costs. The total annual benefits

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are then compared to the total annual equivalent costs to obtain the ratio of benefits to costs

	Replacement
Annual benefits 1/	$10,560,600
Annual equivalent costs	
Investment costs 1/	$445,500
Operating costs 1/	97,300
Total	$542,800
Benefit-cost ratio - total project	19.5 to 1

1/ Discounted to reflect deferred construction of optimum recreation facilities.

This extremely high ratio of benefits to costs shows the high value of American Falls Reservoir storage.

Cost Allocations and Repayment

Though it has always been recognized through the years that other functions such as flood control and recreation benefited from American Falls Reservoir, virtually all the costs of the original development were allocated to irrigation. Legislative authority was not available at the time the dam was built to formally recognize the benefits of other functions and to allocate costs to them in proportion to the degree they benefited from storage. When the dam is replaced the benefits from these functions can be recognized and a proper allocation of costs can be made to each function.

The estimated costs of building and operating the new dam and reservoir were distributed among the functions served by the project,

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using the separable costs-remaining benefits method of cost allocation; this allocation procedure assumes a project life of 100 years and an interest rate of 3-1/8 percent.

Costs were allocated to six functions as shown in the following tabulation:

Function	Construction Costs	Interest During Construction	Annual Operation Maintenance and Replacement Costs
Irrigation	$ 5,958,000	$370,000	$20,400
Fish and wildlife	705,000	46,000	16,600
Recreation	1,570,000	64,000	42,700 1/
Flood control	5,101,000	318,000	17,600
Future power production	1,035,000	65,000	-
Highway improvement	810,000	-	-
Total	$15,179,000	$863,000	$97,300 1/

1/ Discounted to reflect deferred construction of optimum recreation facilities.

The costs allocated to two of these functions (flood control and highway improvement) are considered nonreimbursable--that is, they need not be repaid to the Federal Government. Flood control is considered nonreimbursable because the benefits from these functions are widespread and in the public interest; the additional cost of replacing the highway crossing on American Falls Dam to existing standards is considered nonreimbursable under the terms of Public Law 87-874.

All or part of the costs allocated to the remaining four functions (irrigation, recreation, fish and wildlife, and future power production) are reimbursable--they must be repaid to the Federal Government. Cost allocated to future power production would be repaid from future power revenues.

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Irrigation

In accordance with Reclamation law and policy, all the construction costs allocated to irrigation must be repaid to the Federal Government without interest in a 50-year repayment period. In addition, all annual operation, maintenance and replacement costs allocated to irrigation are reimbursable. The repayment analysis assumes 100 percent payout by the irrigators of all costs allocated to irrigation. In order to repay the total allocated irrigation storage costs (including both construction and operation, maintenance and replacement costs) the annual cost per acre-foot of storage space would be $0.08.

Recreation and Fish and Wildlife Enhancement

The repayment for recreation and fish and wildlife enhancement is based on the cost-sharing provisions of the Federal Water Project Recreation Act of 1965 (Public Law 89-72). This law provides that a non-Federal public body must agree to repay to the Federal Government (1) one-half of the separable construction costs and (2) associated interest during construction of the enhancement developments; these costs must be repaid with interest within a 50-year period. In addition, the public body must agree to assume all the separable annual costs of operating and maintaining the fish and wildlife and/or recreation developments.

The State of Idaho has been suggested as the administering body for both the recreation and fish and wildlife developments. Whether or not it wishes to assume these obligations is the option of the

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state. Any non-Federal public body can serve as the administering body providing that it agrees in writing to assume the financial obligations. The Federal Water Project Recreation Act states that if a non-Federal public body does not present in writing its intention to assume the administration and the repayment obligation for the developments in question, the recreation or fish and wildlife enhancement facilities will not be included in the proposed plan; and the project plan will provide only (1) the minimum facilities required for public health and safety, or (2) facilities justified solely for other project purposes.

If a non-Federal public body states its intention to administer and repay the appropriate portion of the costs of the entire recreation and fish and wildlife enhancement developments as outlined in this report, the reimbursable obligation would be as follows:

Recreation

Construction costs	
Initial facilities	$138,000
Optimum facilities 1/	142,000
Total	$280,000
Interest during construction 2/	-
Total investment cost	$280,000
Annual operation, maintenance, and replacement costs for new facilities	
Initial facilities	$ 21,000
Optimum facilities 1/	24,000
Total OM&R	$ 45,000

1/ Would not be built until 25th year; no repayment would be involved until after facilities are built.

2/ No interest during construction involved since initial and optimum facilities would each be built within a 1-year period.

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Fish and Wildlife

Construction costs	$ 37,500
Interest during construction	2,500
Total investment cost	$ 40,000
Annual operation and maintenance costs	$ 14,600

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PART II

ALTERNATIVE PLANS

Enlargement

There is more good land in the upper Snake River basin than water to develop it and opportunities for new upper Snake basin storage are limited. It would be far more economical to develop new storage space at the American Falls site than at other sites in the upper Snake basin. Furthermore, it would be more economical to enlarge the dam at the time of replacement if the decision is to develop more storage at this site. No other storage site can control all the flows which can be stored at the American Falls site. The adverse effects that would occur with enlargement of the dam and reservoir would have to be carefully compared with any benefits gained from the enlargement. Because of the immediate need for replacement of the existing dam, the problems involved with enlargement would have to be resolved in a short period of time.

The comprehensive 1961 Joint Report of the Bureau of Reclamation and the Corps of Engineers on the upper Snake River basin evaluated the basin's remaining resource development potential. That report listed the enlargement of American Falls Reservoir as one of the 33 most promising projects of the 500 projects evaluated in the entire basin above the Hells Canyon reach.

Because American Falls Reservoir covers such a large area, even one foot of increase in the height of the dam would add over 50,000

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acre-feet of new storage. A 13-foot increase in the water surface elevation of American Falls Reservoir would provide over half as much new capacity as is provided either by Palisades Reservoir or by the potential Lynn Crandall Reservoir, or nearly half as much new storage capacity as in the existing American Falls Reservoir.

The illustration on the following page pictures (1) the existing American Falls Reservoir, and (2) the reservoirs for the 6-foot and 13-foot enlargements.

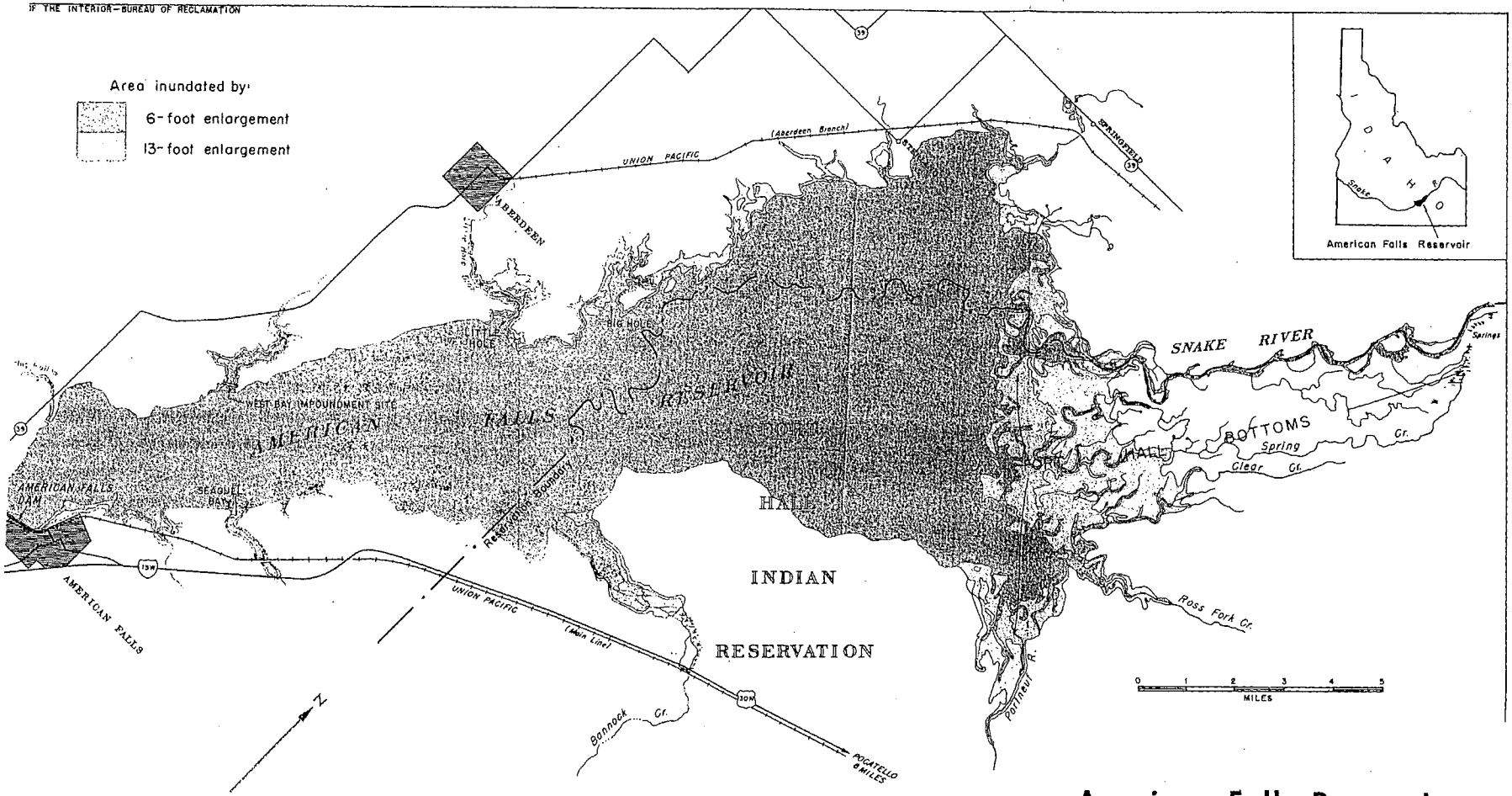
Plan Formulation

The core project--replacement of the existing dam--was left unchanged in the two plans for enlargement presented in this report.

Comprehensive resource planning dictates that in the replacement of American Falls Dam, consideration should be given to full multi-purpose use of the site. Federal planning agencies in the resource development field must formulate project plans in accordance with the policy stated in Senate Document 97 of the 87th Congress. Senate Document 97 states that building an enlarged structure should be considered (1) when additional storage will be needed in the future, (2) where alternative means of developing the storage are not available, and (3) when the inclusion of additional capacity initially can be accomplished at a significant savings over subsequent enlargement. All three of these conditions exist in the case of the replacement of American Falls Dam.

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American Falls Reservoir

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The current planning has fully recognized all other Snake basin project studies now in progress, and the plans for enlargement presented in this section of the report do not conflict with any other potential developments in the basin.

Selection of Maximum Size

American Falls damsite could physically permit an enlargement of over 20 feet, which would create approximately 1,300,000 acre-feet of new storage. However, through analysis of the costs, benefits, and adverse effects of various sizes of enlargement up to 20 feet, it has been determined that an enlargement in the range of 13 feet is the largest that should be considered. Physical data on the enlargement sizes are shown in the tabulation at the front of this report.

Space Assignments

Assignments were made to irrigation and water quality control in the new space provided by a 13-foot enlargement for the reasons discussed in the following sections. The assignment of space to these functions is justified by benefits in excess of costs.

A 6-foot enlargement was selected for analysis in order to show the effect of an enlargement about midway between direct replacement and the 13-foot enlargement. The total space available in the 6-foot enlargement was divided in proportion to the 13-foot assignments in order to give an undistorted picture of the relative merits of the two sizes of enlargement.

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Irrigation.--The 13-foot enlargement includes holdover irrigation space and new annual-use irrigation space. The holdover space represents the portion of the 300,000 acre-foot Palisades Reservoir oversubscription which is serviceable below American Falls Reservoir.

The large amount of space assigned to new annual-use irrigation reflects the large demand for new upper Snake River irrigation storage. All three large areas considered for this use - the Salmon Falls, Oakley Fan, and Raft River Divisions - have a pressing need for supplemental water on lands that are now inadequately irrigated as well as a need for water on adjacent dry lands.

Water Quality Control.--The Federal Water Pollution Control Administration in conjunction with the State Department of Health, recommended flows to help solve the pollution problem in Milner Lake. The 192,000 acre-feet of space assigned to water quality control in the 13-foot enlargement would provide these recommended flows.

Disadvantages of Enlargement

There are adverse effects which would offset some of the benefits gained from an enlargement of American Falls Reservoir. Some individuals and organizations have stated that adverse effects outweigh any advantages derived from enlarging the reservoir. The following paragraphs present some of the major objections to enlargement and define the extent to which the possible adverse effects have been accounted for in the current study.

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Interference with Ground Water Inflows

Studies made in connection with the current investigation have shown that the 6- to 13-foot enlargements discussed in this report would have little effect on ground water flow into the American Falls Reservoir reach of the Snake River.

The ground water reservoir beneath the Snake River plain discharges water to the Snake River in its American Falls reach. For an increase in the maximum-pool level of American Falls Reservoir to decrease ground water inflow to the reservoir, two things must happen:

(1) The reservoir level would have to be raised above the outlet of the springs that discharge a significant part of the inflow to the reservoir, and

(2) The shape of the water table would have to be changed so that the ground water would be diverted away from the area.

In regard to the first point, studies have shown that nearly all of the major springs through which the Snake Plain aquifer discharges into the reservoir are at elevations over 15 feet above the water surface of the existing reservoir when it is full and that most of the springs are over 20 feet above it. Most of the springs whose outlets are less than 20 feet above the full pool are along the Snake River at the upper end of the reservoir. Temporary submergence of these outlets by an enlarged reservoir would delay ground water discharges slightly, but then as the reservoir is drawn down, the discharge would show an increase roughly equivalent to the decrease which occurred while the reservoir was full.

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In regard to the second point, studies have shown that the area's water table drops steeply as it nears American Falls Reservoir; therefore raising the reservoir level would affect the water table only a short distance from the reservoir.

Inundation of Lands

A 6-foot enlargement would inundate approximately 6,000 acres of land; of this, 5,000 acres are within the right-of-way that has already been acquired in connection with the existing reservoir. Of the 1,000 acres not in the existing project right-of-way, three-fourths are within the Fort Hall Indian Reservation and one-fourth are private lands.

A 13-foot enlargement would inundate 11,600 acres of land; of this, 7,000 acres are within the right-of-way that has already been acquired in connection with the existing reservoir. Of the 4,600 acres not in the existing right-of-way, just over three-fourths are within the Fort Hall Indian Reservation, and the remainder are private lands.

Private allotments?

Effect on the Fort Hall Bottoms.--Enlargement would adversely affect Fort Hall Indian Reservation lands in the Fort Hall Bottoms, a river-bottom area lying between the Snake and the Portneuf Rivers at the head end of American Falls Reservoir. The Fort Hall Bottoms contain approximately 16,000 acres above the flowline of the existing American Falls Reservoir. A 6-foot enlargement would inundate up to 22 percent (3,550 acres) of the Fort Hall Bottoms during part of the

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ar; a 13-foot enlargement would inundate up to 43 percent (6,850 res) of the bottoms during part of the year.

Over 80 percent of the 3,550 acres in the Fort Hall Bottoms at would be inundated by a 6-foot enlargement has already been quired as right-of-way in connection with the existing reservoir, d over half of the 6,850 acres that would be inundated by a 13-foot nlargement has already been acquired as right-of-way in connection ith the existing reservoir. The Indians have the right to use these ands for grazing, hunting, fishing and gathering of wood as long as hese uses do not interfere with the safe operation of the reservoir. It is anticipated that the Indians would continue to have the right to perform these activities on lands that would be acquired if the reservoir is enlarged.

If American Falls Reservoir were enlarged, the Shoshone-Bannock Tribes would be compensated as fully as possible for any values lost by inundation in the Fort Hall Bottoms and elsewhere in the Fort Hall Indian Reservation. It is recognized, however, that compensation for some adverse effects is impossible since there is no practical means of identifying their monetary value. Part of the Indians' culture has developed around the use of the Fort Hall Bottoms and eliminating a part of this use would require psychological adjustments and cause hardships that cannot be evaluated or fully compensated for. Unusual birds, animals and fish inhabit this land and water area; inundation will cause a decrease in numbers among those species that cannot adjust to another habitat. Certain knowledgeable interests acquainted

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with the area surrounding the reservoir have expressed the view that historical, biological, zoological and archeological values would be lost if the reservoir is enlarged. No rational method for fixing a monetary value for these losses has been found.

Only in years of above-average runoff would an enlarged reservoir be held full for more than a month or 6 weeks; and in a repetition of the drought which occurred in the 1930's, there could be several consecutive years in which stored water would not encroach on lands above the existing high water line. In the years of highest runoff, encroachment could begin in the enlargement space in mid-February; and the space above the existing full pool would be evacuated by late June.

Waterlogging of Lands in the Aberdeen-Springfield Area.--Based on studies to date, it has been determined that a 6-foot enlargement of American Falls Reservoir would cause negligible waterlogging of lands west of the reservoir; therefore, no costs have been included for right-of-way in this area with the 6-foot enlargement estimate.

It has been concluded that a higher reservoir level would affect ground water levels only when full and that an enlargement of up to 10 feet would cause only slight aggravation of the problem in areas already waterlogged.

In the estimates for the 13-foot enlargement, right-of-way acquisition costs were included for 4,000 acres of low-lying lands in the area from Aberdeen to Springfield.

How will it affect the irrigation level in the Aberdeen Reservoir will not be actually waterlogged?

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It was determined that for enlargements substantially in excess of 13 feet, the waterlogging problem would become much more acute; this was one important reason for the conclusion that a 13-foot enlargement is the largest size that should be considered.

Bank Erosion

The banks around American Falls Reservoir have eroded continually in the 40 years since the dam was built. Fears have been expressed that enlargement would greatly accelerate the bank erosion around the reservoir.

While it is true that raising the reservoir water surface would aggravate this bank erosion problem, an enlargement of 6 or 13-feet would not bring the stored water in contact with any different shoreline formation than at present. It is the lakebed sediments in the banks around the reservoir that are subject to erosion.

A reconnaissance study showed that with a 6-foot enlargement, 2,500 acres of land would erode in a 100-year period and that bank erosion within the Fort Hall Indian Reservation would be minor. This study also showed that if the existing reservoir were to continue in operation over the next 100 years, 1,500 acres of land would be eroded. It can therefore be concluded that with a 6-foot enlargement, 1,000 acres of land would be eroded in addition to the land which would erode with the existing reservoir.

This study also showed that with a 13-foot enlargement, 3,600 acres of land would erode in a 100-year period. As stated above,

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1,500 acres would erode with the existing reservoir in operation over a 100-year period; thus, 2,100 acres of land would be eroded in addition to the land which would erode with the existing reservoir.

These are substantial acreages, and at this time there is no known method for economically controlling this erosion. The estimates for enlargement in this report include costs for acquiring all the lands expected to erode in a 100-year period. In addition, the economic analysis includes an estimate of the loss to the area from agricultural production foregone on lands that would be taken out of production. These losses are subtracted from total project benefits to give a truer picture of the net benefits which would accrue during future years.

Relocations

Enlargement of 6 and 13 feet would encroach on the Union Pacific Mainline Railroad fills and inundate recreation facilities at Sportsman Park and Seagull Bay. Protective measures would be provided over a period of 5 years on the railroad roadbed to prevent settlement. Communication and powerline poles adjacent to the railroad and road rights-of-way and recreation facilities which would be inundated would be relocated above the contemplated flowline. Estimated costs of relocating existing facilities would range from about $170,000 for replacement to $2,000,000 for the 13-foot enlargement.

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Clearing

Clearing of the reservoir basin would consist primarily of removing cottonwood trees, willows, and brush in the bottom lands. Buildings, fences, and trees would be removed from other lands which would be inundated.

Archeological Survey and Salvage

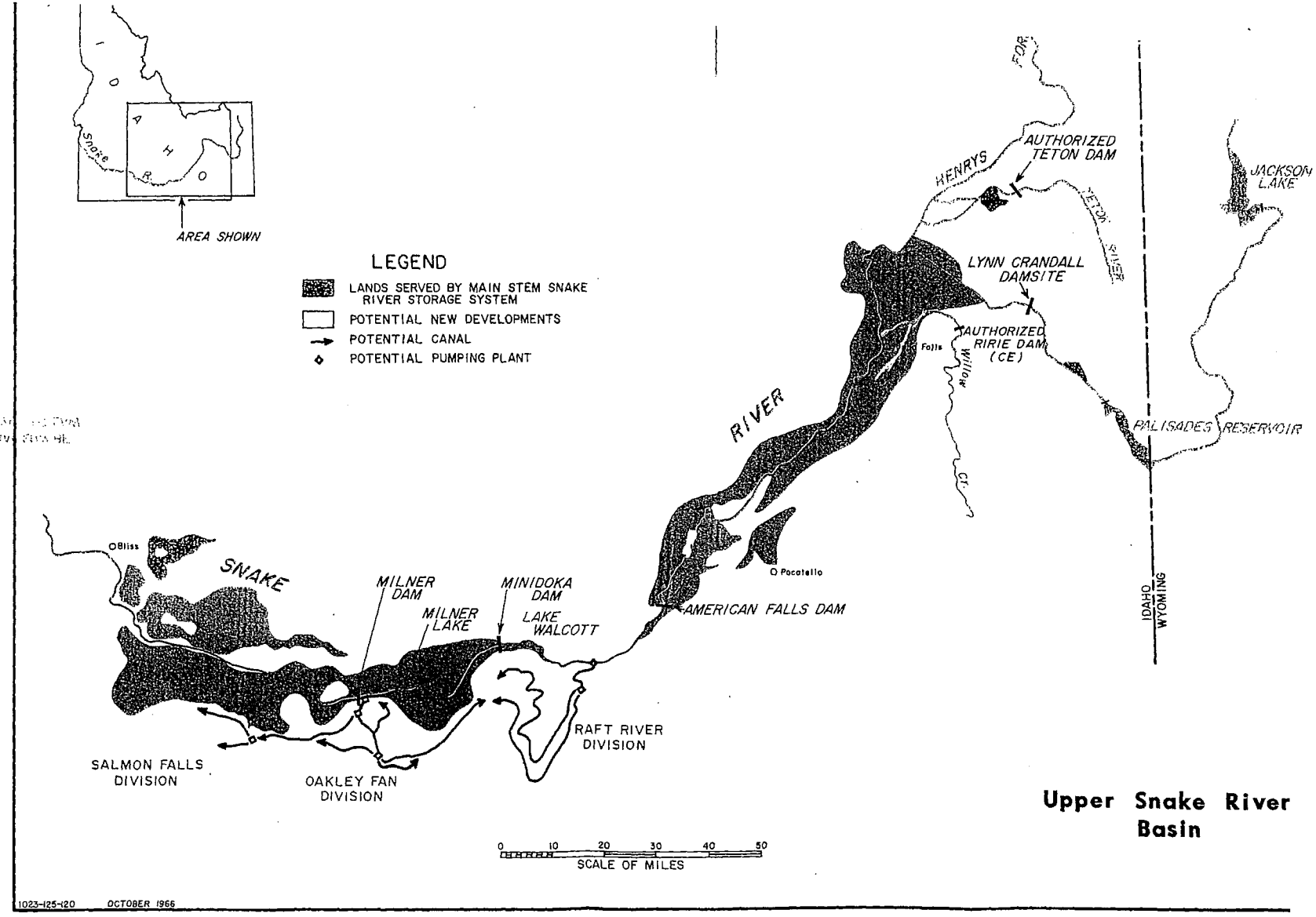
Idaho State University made a survey of the archeological and paleontological values which would be affected by an enlargement of American Falls Reservoir; this survey was done under a contract with the National Park Service. After reviewing the recommendations of the Idaho State University study, the National Park Service recommended the inclusion of a total of $50,000 in the costs of enlargement. These costs have been included in the estimates for both sizes of enlargement.

Advantages of Enlargement

An enlargement of American Falls Reservoir would serve the functions of irrigation, flood control, recreation, fish and wildlife, future power production, highway improvement, and water quality control. The illustration on the following page shows (1) the position of American Falls Reservoir in relationship to other reservoirs in the basin and (2) the location of three major potential irrigation projects - the Salmon Falls, Oakley Fan, and Raft River Divisions, which could be served by enlargement.

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Upper Snake River Basin

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Replacement Space

The first 1,700,000 acre-feet of an enlargement would be handled exactly as proposed for the replacement reservoir; therefore the benefits for this portion of the irrigation space of an enlarged reservoir would be just the same as for replacement.

Enlargement Space

The space assignments in the enlargement of American Falls Reservoir are merely tentative, made for the purposes of the analysis shown in this section of the report. The space assignments assumed in the two sizes of enlargement considered are:

	6-foot Enlargement (acre-feet)	13-foot Enlargement (acre-feet)
Irrigation use	252,800	598,000
Water quality control	81,200	192,000
Total enlargement space	334,000	790,000

Thus, the 6-foot higher dam would create a reservoir having a total capacity of 2,034,000 acre-feet; and a 13-foot higher dam, a reservoir of 2,490,000 acre-feet.

Irrigation

The total annual irrigation benefits from the American Falls enlargement plans are $10,775,600 for the 6-foot enlargement and $11,632,100 for the 13-foot enlargement, derived as follows:

	6-foot Enlargement	13-foot Enlargement
Replacement space	$10,020,000	$10,020,000
Holdover space	24,700	49,600
Annual use space	730,900	1,562,500
Total	$10,775,600	$11,632,100

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Water Quality Control

Annual water quality control benefits would total $235,500 in the 6-foot enlargement and $556,800 in the 13-foot enlargement.

The Federal Water Pollution Control Administration, with the cooperation of the Idaho Department of Public Health, has analyzed the situation at Milner Lake and has recommended, first, treatment to curb the pollution hazard and, second, flows for dilution and water quality control.

To provide the recommended flows, new storage is required. With the existing American Falls Reservoir, water that is now wasted past American Falls and is uncontrollable at any other site cannot be used for water quality control.

New storage space is required to hold the spring flows over for release the following winter. The 192,000 acre-feet of space assigned to water quality control in the 13-foot enlargement would provide the required winter flows through Milner Lake during periods of critical pollution hazard. Average annual yields from water quality control space would be similar to the yields described above for annual-use irrigation space. If something less than this 192,000 acre-feet were provided at American Falls, such as the 81,200 acre-feet assumed in the 6-foot enlargement, the remainder would have to be provided at another site such as Lynn Crandall in order to assure the recommended water quality flows through Milner Lake.

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Fish and Wildlife

Enhancement facilities recommended by the Fish and Wildlife Service include accelerated fish planting in the reservoir, access facilities to the reservoir, and goose-nesting islands. Benefits associated with these items would total $52,900 annually for the 6-foot enlargement and $49,100 for the 13-foot enlargement. The Fish and Wildlife Service is also considering the inclusion of multilevel outlets in the dam and a small dam across the mouth of West Bay. These enhancement items and associated benefits can be further studied before a feasibility report is finalized.

If American Falls Reservoir were enlarged, the inundation of areas of the Fort Hall Bottoms would preclude portions of the enhancement opportunities possible with direct replacement of the dam and reservoir. For this reason, both the costs and benefits from fish and wildlife enhancement are slightly smaller with enlargement than with replacement.

Recreation

The National Park Service has concluded that because it is so large, the existing American Falls Reservoir is capable of supporting all the public use that can be expected to develop in the area. For this reason, the total annual benefits from the provision of new recreational facilities would be the same with either size of enlargement as with replacement: $135,700 annually. Recommended facilities include campgrounds, picnic sites, boat ramps, access and interior roads and sanitary facilities.

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The only difference in the recreation function with enlargement is that some of the recreational facilities around the reservoir would have to be replaced. The cost of replacing these facilities would be treated as a project cost and thus be allocated to all the functions of the project.

Flood Control

Enlargement of American Falls Reservoir would create increased flood control benefits, even though the flood control function would still be incidental to other purposes and there would be no space assigned to this use.

Flood control benefits would total $487,000 annually with the 6-foot enlargement and $580,000 with the 13-foot enlargement.

Summary of Benefits

The annual benefits from each function described in the preceding sections are summarized below:

	6-foot Enlargement	13-foot Enlargement
Irrigation	$10,775,600	$11,632,100
Fish and wildlife	52,900	49,100
Recreation 1/	135,700	135,700
Flood control	487,000	580,000
Water quality control	235,500	556,800
Subtotal	$11,686,700	$12,953,700
Shoreline Erosion 2/	-159,000	-267,000
Total	$11,527,700	$12,686,700

1/ Includes benefits from the existing reservoir and a discounted portion of benefits from optimum facilities built in the 25th year.

2/ To reflect the economic loss to the area from agricultural production lost on lands that would be subject to shoreline erosion, inundation, or otherwise taken out of production, $159,000 and $267,000 were subtracted from the total benefits for a 6-foot enlargement and 13-foot enlargement respectively.

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Costs

Construction Costs

The total estimated construction costs, at January 1965 price levels, are $22,671,000 for the 6-foot enlargement and $32,507,000 for the 13-foot enlargement. These costs are composed of the following:

	6-foot Enlargement	13-foot Enlargement
Dam and reservoir 1/	$20,776,000	$30,621,000
Power features in dam	1,100,000	1,100,000
Recreation facilities 2/	560,000	560,000
Fish and wildlife enhancement facilities	65,000	56,000
Archeological survey & salvage	50,000	50,000
Permanent operating facilities	120,000	120,000
Total Construction Cost	$22,671,000	$32,507,000

1/ Includes fish and wildlife mitigation costs of $246,000 and $271,000 for the 6- and 13-foot enlargements, respectively.

2/ Includes $18,000 for lands.

Operating Plans and Costs

Annual operating costs including those associated with recreation and fish and wildlife facilities and with flood forecasting are estimated to be about $154,500 and $185,600 for the 6- and 13-foot enlargements, respectively.

The following tabulation summarizes the operation, maintenance, and replacement costs:

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	6-foot Enlargement	13-foot Enlargement
Dam and reservoir	$ 45,000	$ 54,500
Recreation (existing facilities)	8,000	8,000
Fish and wildlife mitigation	40,700	59,600
Flood forecasting	1,500	1,500
Recreation enhancement 1/	45,000	45,000
Fish and wildlife enhancement	14,300	17,000
Total	$154,500	$185,600

1/ Not discounted to reflect deferred construction of optimum recreation facilities; such discounting reduces recreation enhancement operation and maintenance by $13,500.

Benefit-Cost Analysis

A comparison of annual benefits to annual equivalent costs using a 100-year period of analysis and a 3-1/8 percent interest rate yields the following:

	6-foot Enlargement	13-foot Enlargement
Annual benefits 1/	$11,527,700	$12,686,700
Annual equivalent costs		
Investment costs 1/	703,700	1,045,800
Operating costs 1/	141,000	172,100
Total	$ 844,700	$ 1,217,900
Benefit-cost ratios		
Total Project	13.6 to 1	10.4 to 1

1/ Discounted to reflect deferred construction of optimum recreation facilities.

The high ratio of benefits to costs points up the economic justification for enlarging the reservoir. The enlargement space alone for the 6-foot enlargement has a benefit-cost ratio of 3.2 to 1; the enlargement space for the 13-foot enlargement has a ratio of 3.1 to 1.

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Cost Allocation

The estimated costs of building and operating the two alternative dams were allocated among the functions served by the project by the separable costs-remaining benefits method. This allocation procedure assumes a project life of 100 years and an interest rate of 3-1/8 percent.

Functions that would benefit from either enlargement include irrigation, fish and wildlife, recreation, flood control, and water quality control. The costs of facilities for fish and wildlife mitigation are considered project costs and are allocated to all the above functions.

The functions of future power production and highway improvement are considered as project purposes to the extent that they bear only the added costs associated with their inclusion; therefore, the separable costs of these purposes are allocated to them. However, these functions do not share in the allocation of the remaining joint costs of the project. Future power production consists of the cost of installing power facilities in the new dam similar to those in the existing dam, and highway improvement is limited to the additional cost of building a highway crossing on the new dam to current standards over the cost of a dam with a crossing similar to the existing one. By allocating to these functions, their costs would not be borne by other project purposes.

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The cost allocation is summarized in the following tabulation:

Cost Allocation	6-foot Enlargement	13-foot Enlargement
Construction Costs		
Irrigation	$ 9,824,000	$14,517,000
Fish and wildlife	513,000	434,000
Recreation	1,589,000	1,595,000
Flood control	6,014,000	7,214,000
Water quality control	2,916,000	6,942,000
Future power production	1,035,000	1,035,000
Highway improvement	780,000	770,000
Total	$22,671,000	$32,507,000
Interest During Construction		
Irrigation	$ 612,000	$ 907,000
Fish and wildlife	31,000	27,000
Recreation	64,000	64,000
Flood control	376,000	449,000
Water quality control	181,000	434,000
Future power production	65,000	65,000
Highway improvement	-	-
Total	$ 1,329,000	$ 1,946,000
Annual Operation, Maintenance, and Replacement Costs		
Irrigation	$ 42,400	$ 55,900
Fish and wildlife	16,200	18,400
Recreation	43,800 1/	43,400 1/
Flood control	26,500	28,500
Water quality control	12,100	25,900
Future power production	-	-
Highway improvement	-	-
Total	$ 141,000 1/	$ 172,100 1/

1/ Discounted to reflect deferred construction of optimum recreation facilities.

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Repayment

The costs allocated to three of the project functions (flood control, water quality control, and highway improvement) are considered nonreimbursable.

All or part of the costs allocated to the remaining four functions (irrigation, recreation, fish and wildlife, and future power production) are reimbursable. Cost allocated to future power production would be repaid from future power revenues. The details of the repayment required on the other three functions are discussed in the following sections.

Irrigation

In accordance with Reclamation law and policy, all the construction costs allocated to irrigation must be repaid to the Federal Government without interest in a 50-year repayment period. In addition, all annual operation, maintenance, and replacement costs allocated to irrigation are reimbursable. The repayment analysis assumes 100 percent payout by the irrigators of all costs allocated to irrigation in order to make a clear comparison between alternate sizes. Thus, assuming a 100 percent payout, the total required annual payment of irrigation costs would be 1/50th of the allocated construction costs plus the allocated annual operating costs.

The cost of an acre-foot of replacement space, the first 1,700,000 acre-feet of space, is much less than the cost of an acre-foot of enlargement space. Therefore, the unit value derived for replacement

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has been held constant for all sizes of reservoirs, and repayment levels for new holdover and new annual use are based on the additional costs of the enlarged reservoirs. The result is that the size of reservoir ultimately built would make no difference in the repayment obligation of present spaceholders.

In order to repay the total allocated irrigation storage costs (including both construction and operation, maintenance, and replacement costs), the annual cost per acre-foot of storage space would be:

Replacement space (all reservoir sizes)	$0.08
New storage space (either holdover or annual use)	
6-foot enlargement	$0.39
13-foot enlargement	$0.35

The total annual cost of an acre-foot of irrigation space decreases as the size of enlargement increases because of the complementary effect of the other functions served by enlargement.

Recreation and Fish and Wildlife Enhancement

The Federal Water Project Recreation Act states that a non-Federal public body must agree to repay to the Federal Government (1) one-half of the separable construction costs, and (2) associated interest during construction of the enhancement development; these costs must be repaid with interest within a 50-year period. The non-Federal public body must also agree to assume all the separable annual costs of operating and maintaining the fish and wildlife and/or recreation developments.

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The State of Idaho has been suggested as the administering body for both the recreation and the fish and wildlife developments. Whether or not, however, it wishes to assume these obligations is the option of the state. Any non-Federal public body can serve as the administering body as long as it agrees in writing to assume the financial obligations. The Federal Water Project Recreation Act provides that no facilities or project modifications which will furnish enhancement benefits to these two functions shall be provided if a non-Federal public body does not state in writing its intention to assume the administration and the repayment obligation for the developments in question.

The project plan will provide only (1) the minimum facilities required for public health and safety, or (2) facilities justified solely for other project purposes.

If a non-Federal public body states its intention to administer and repay the appropriate portion of the costs of the entire recreation and fish and wildlife enhancement developments as outlined in this report, the reimbursable obligation would be as follows:

RECREATION	All Sizes
Construction costs	
Initial facilities	$138,000
Optimum facilities 1/	142,000
Total	$280,000
Interest during construction 2/	-
Total investment cost	$280,000

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Recreation (continued)	All Sizes
Annual operation, maintenance, and replacement costs for new facilities	
Initial facilities	$21,000
Optimum facilities 1/	24,000
Total OM&R	$45,000

1/ Would not be built until 25th year; no repayment would be involved until after facilities were built.

2/ No interest during construction involved since initial and optimum facilities would each be built within a 1-year period.

FISH AND WILDLIFE	Replacement	6-foot Enlargement	13-foot Enlargement
Construction costs	$37,500	$32,500	$28,000
Interest during construction	2,500	2,000	2,000
Total investment cost	$40,000	$34,500	$30,000
Annual operation and maintenance costs	$14,600	$14,300	$17,000

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Exhibit 7

Letter from J.G. Watt, Ass't Sec'y of the Interior, to Chairman, FPC (Dec. 16, 1969)

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

FEDERAL POWER COMMISSION
DOCKETED
Dec. 16, 1969
DOCKET SECTION

DEC 16 1969

Dear Mr. Chairman:

This responds to your April 21, 1969, letter to the Commissioner of our Bureau of Reclamation, granting our request to submit supplemental recommendations on the Idaho Power Company application for constructed Project No. 2258 - Idaho.

In previous correspondence dated August 30, September 28, November 1962, and our letters dated March 25, 1964, and March 24, 1965, recommendations and rebuttal comments were quite extensive and somewhat involved, particularly with respect to the company's plant at American Falls.

In addition to the complicated situation at American Falls which existed at the time the 1965 recommendations were made, we are now faced with the fact that American Falls Dam will have to be replaced or modified within the relatively near future. The studies and recommendations with respect to the replacement have been discussed at some length with the water users involved, and our Bureau of Reclamation-Regional Director's feasibility report will be submitted to this office in the near future. The implications of the complete replacement of American Falls, as you can readily appreciate, cast an entirely new light on the rights and obligations of the company at American Falls, the possible development of the full power resource, and the operation of company and Federal government facilities at the site.

The proposed replacement will involve the construction of a new dam downstream from the present structure and parts of the replacement structure will need to be located in the company's present project area. The question of providing penstocks in the dam for possible use by the Government for power production, the matter of modifying the company's existing forebay dam which the new structure will encroach upon, numerous right-of-way matters, problems regarding effects on rights which the company considers it has under the 1923 contract, and interference with the company's operations during construction of the replacement dam, all remain for study and resolution. None of these matters have been discussed with the company as of the present time.

In view of the above, we recommend that the Commission be asked to hold in abeyance the issuing of a license to the company for its American Falls Powerplant. We believe the license should not be issued until the problems arising out of the contemplated replacement of American Falls Dam have been resolved.

If the Commission should decide to issue a license for the Upper Salmon and Shoshone Falls plants at this time, we believe that attention should be directed once again to our comments in the Department's letter to the Commission of March 24, 1965, with one change. In view of the company's resistance to a license provision subordinating its rights to subsequent depletions for irrigation or other beneficial uses, we would accept the provision that the company offered in its letter of January 24, 1963, provided there is included with it the provision that the Commission has itself prescribed in Utah Power and Light Company's Cutler Project (No. 2420) on the Bear River, Utah. We recommend that both of these stipulations be included in the license which may be issued to read as follows:

> The project shall be operated in such a 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.
>
> 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 damage 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.

Thank you for the extension of time to allow our study of the impacts of the proposed license on existing and potential Bureau of Reclamation projects.

Sincerely yours,

Deputy Assistant Secretary of the Interior

Honorable John N. Nassikas
Chairman
Federal Power Commission
Washington, D. C. 20426

FEDERAL POWER COMMISSION
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Exhibit 8

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 (IDWR Oct. 1, 1970)

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

IN THE MATTER OF PERMITS)
)
NO. 15201/01-2041 and)
)
R-273/01-2065 in the name) ORDER TO SHOW CAUSE
)
of IDAHO POWER COMPANY)
)

On March 17, 1921 Idaho Power Company submitted applications to the Department of Reclamation requesting permits to divert 1200 cubic feet per second of water and to store 300,000 acre feet of water on the Snake River and tributaries at a loction in the SE¼SE¼ of Section 30, T. 7 S., R. 31 E., B.M., Power County. The water was to be used for power purposes at the proposed reservoir site and several other sites downstream on the Snake River.

On June 20, 1931 the applicant submitted Affidavits of Completion of Works for both Permits 15201/01-2041 and R-273/01-2065.

On September 29, 1932 the Department of Reclamation informed the permit holder that it intended to reject their Proof of Completion of Works since a Certification of Completion of Works had previously been issued to the United States of America, Bureau of Reclamation for the full capacity of the American Falls Reservoir, which was constructed at the proposed power site, and it appeared the applicant's rights to divert and store water at that location had been waived and compensated for by contractual agreement between the applicant and United States.

NOW, THEREFORE, permit holder, Idaho Power Company, is hereby ordered to show cause, if any there be, on or before December 1, 1970 before the Director of the Department of Water Administration, Statehouse, Annex 2, Boise, Idaho as to why Proof of Completion of Works should not be rejected and Permits 15201/01-2041 and R-273/01-2 5 cancelled and held for naught.

Dated this 15th day of October, 1970.

R. KEITH HIGGINSON
Director

15201/01-2041

Exhibit 9

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 (IDWR Dec. 1, 1970)

STATE OF IDAHO

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

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.

[illegible] for [illegible] 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

version 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

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)

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 10

Memorandum Decision, In the Matter of Permit Nos. 01-2041 and 01-2065 in the Name of Idaho Power Company (IDWR Apr. 21, 1971)

BEFORE THE DIRECTOR

OF THE

IDAHO DEPARTMENT OF WATER ADMINISTRATION

In the Matter of Permit Nos. 01-2041 and 01-2065 in the name of IDAHO POWER COMPANY	)	MEMORANDUM DECISION

On March 17, 1921, Idaho Power Company submitted Applications to the Idaho Department of Reclamation (renamed Idaho Department of Water Administration) requesting authority to divert 1200 cubic feet per second of water and to store 300,000 acre-feet of water to be used for power purposes. The water was to be diverted and stored in the $S\frac{1}{2}S\frac{1}{2}$ Section 30, Township 7 South, Range 51 East, B.M., in Power County for use at the proposed reservoir site and at several sites downstream. Pursuant to these Applications, Permit Nos. R-273/01-2065 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, 1932, the Department of Reclamation informed the permit holder that it intended to reject the Proofs of Completion of Works and refuse to issue a Certificate, since a Certificate of Completion of Works had previously been issued to the United States of America, Bureau of Reclamation, for the full capacity of the reservoir constructed at the proposed site. The Department further informed the Idaho Power Company that it appeared that the Company's rights to divert and store water at that location had been waived and compensated for by contractual agreement between the Company and the United States.

In July of 1967, the Department requested that the Company review the matter and give comments prior to action being taken to cancel the permits. Correspondence was received from the Company, on November 9, 1967, asking the Department to issue the required Certificate to complete the permits and contending that Licenses should be issued.

On October 1, 1970, an Order to Show Cause why the permits should not be cancelled was issued to Idaho Power Company by the Department. On December 1, 1970, a brief was timely submitted by the Idaho Power Company setting forth, among other things, the terms and conditions of agreements between the Company and the United States.

After reviewing the files of the Department and the answer of the Idaho Power Company, the Director finds that the rights established by the Idaho Power Company, by reason of Permit Nos. 01-2041 and 01-2065, have been merged with rights granted the United States of America and that by reason of contracts and agreements entered into between the Company and the United States of America, Bureau of Reclamation, those rights are held in trust for use by the Company under the water rights of the United States at American Falls Reservoir.

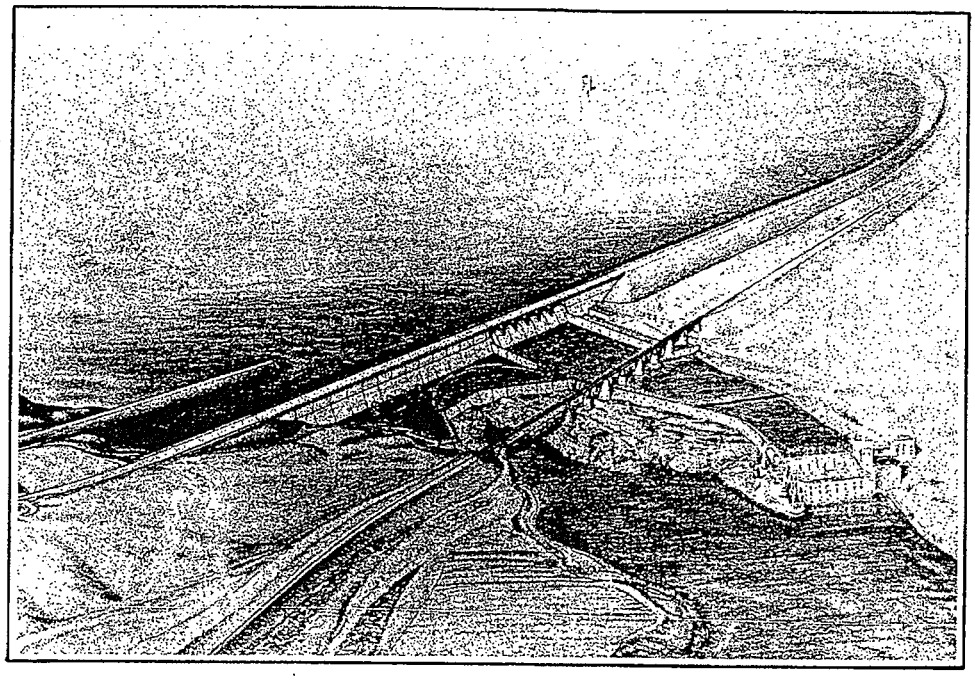
The Director further finds that since the Company's rights to water at American Falls Dam and Reservoir are already covered by reason of Licenses issued to the United States of America, under Permit Nos. R-269 and 4168 and contracts between the Company and the United States of America, that Permit Nos. 01-2041 and 01-2065 are duplicate and should be cancelled. The Company has failed to submit proof that it has constructed the necessary works to divert the water and apply it to beneficial use.

Dated this 21 ST day of April, 1971.

R. KEITH HIGGINSON
Director

Exhibit 11

American Falls Dam Replacement: Executive Summary Report (USBOR Dec. 1972)



Executive
Summary
Report

AMERICAN FALLS DAM REPLACEMENT

UPPER SNAKE RIVER BASIN
IDAHO - WYOMING

UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGION

DECEMBER 1972

AMERICAN FALLS DAM REPLACEMENT
UPPER SNAKE RIVER BASIN
IDAHO

Executive Summary Report

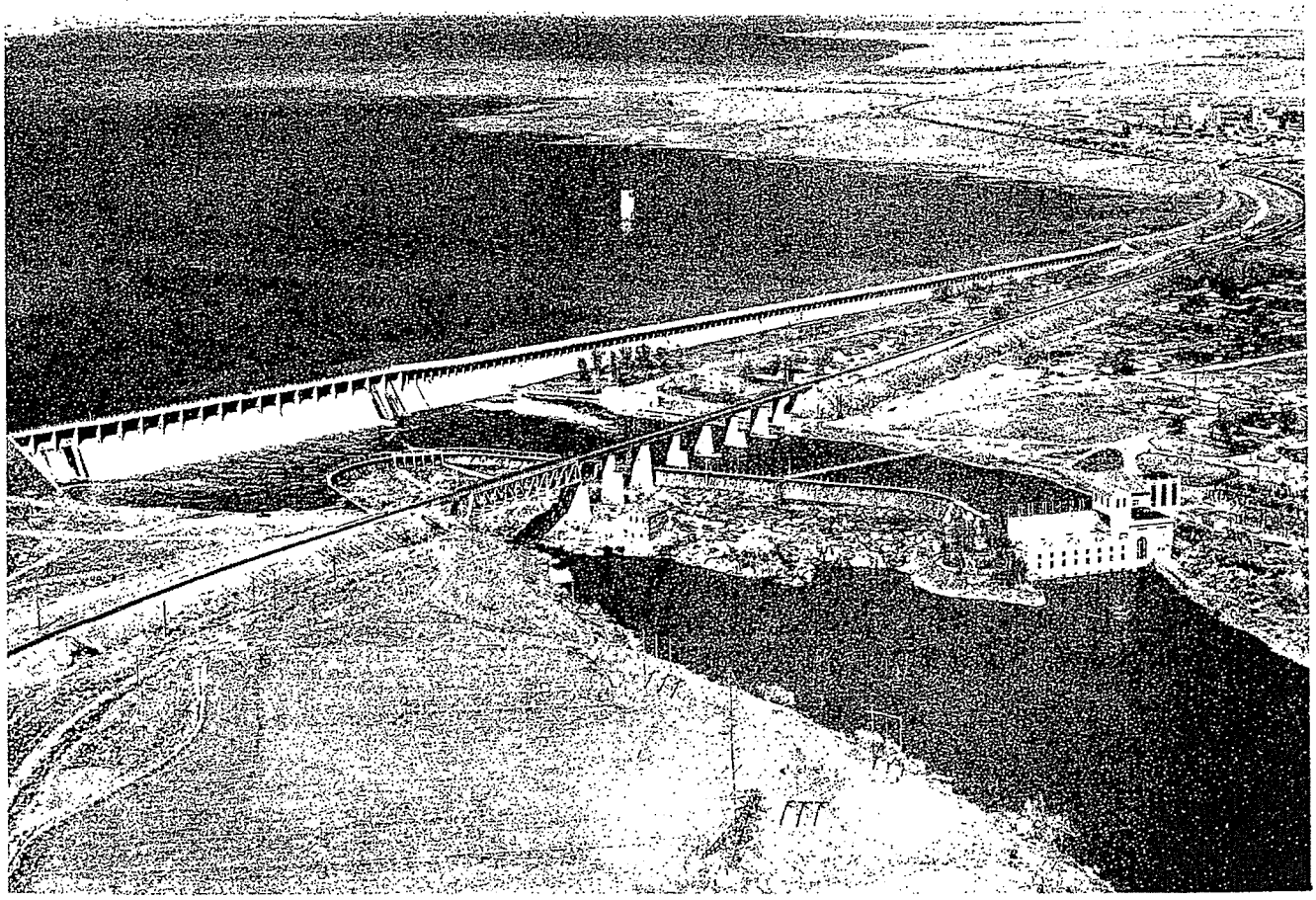
December 1972

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.

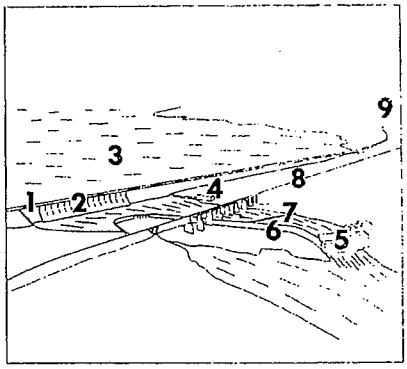
United States
Department of the Interior
Bureau of Reclamation
Pacific Northwest Region

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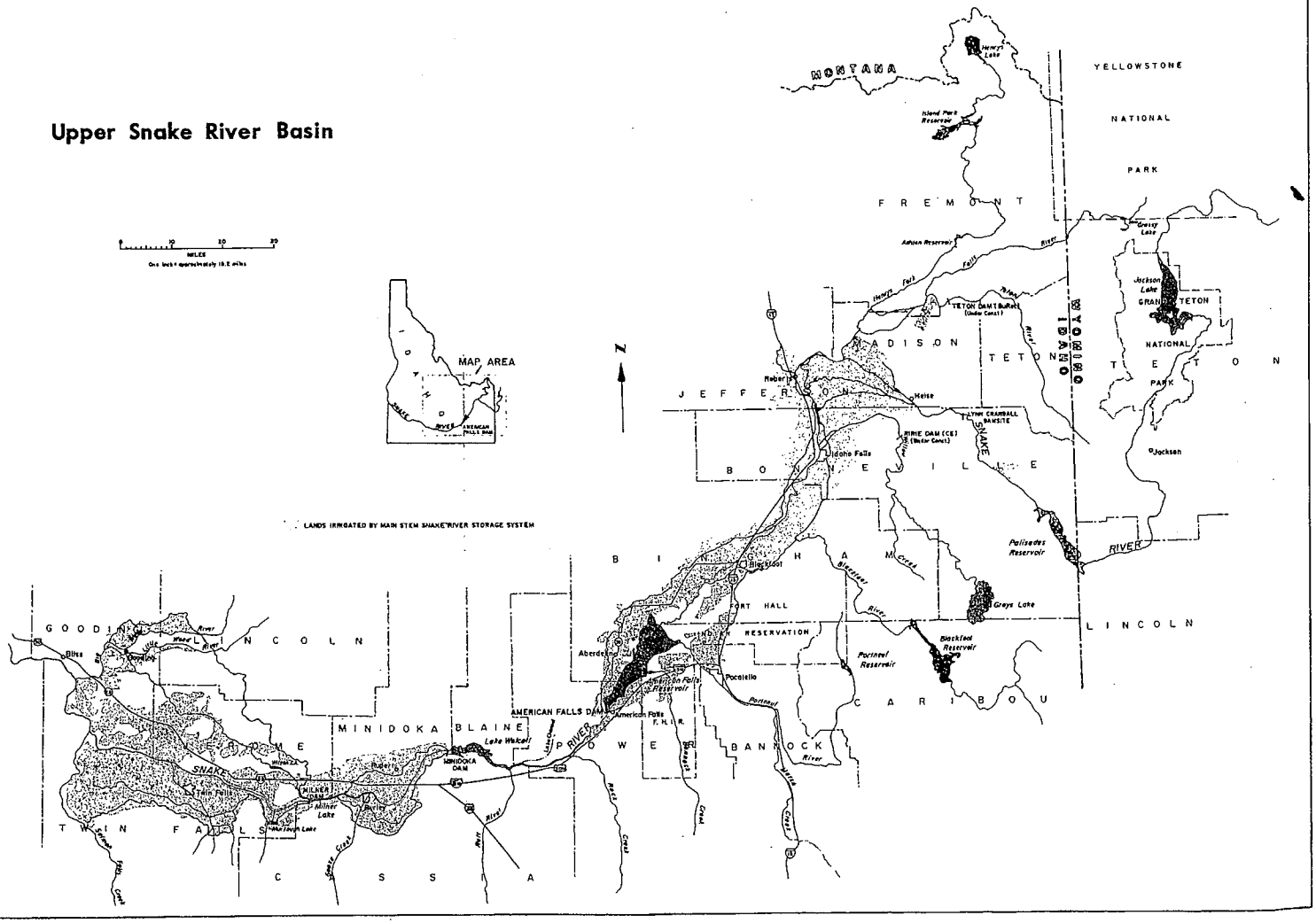
Built over 40 years ago, American Falls Dam must now be replaced.



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



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.

December 18, 1972

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

extensively rehabilitated. On 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 storage 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 storage 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. The Idaho Department of Highways and the Bureau of Reclamation have concluded it is necessary to restrict use of the highway crossing to alternating one-way traffic as an interim step toward reducing the dangerous conditions.

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 other one-third would be nonreimbursable in accordance with existing Federal policy.

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 5 years after the first construction funds become available.

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 refill 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.

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

Future Power Production

Under the plan, the replacement dam would not interfere with the operation of the Idaho Power Company powerplant just downstream. However, the new dam would include four capped penstocks to permit future construction of a powerplant, if determined feasible at a later date. 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 about 8 acres in addition to the area already inundated by the existing reservoir. 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.

The existing dam would remain in operation during the construction period, and irrigation service would continue as limited by reservoir storage 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 would be 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 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 public use of the area. 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 of the reservoir, and at the Idaho Fish and Game Department's American Falls Hatchery. Trout habitat downstream 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 $1,625,200.

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.

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. The allocation was 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.

Basic Health and Safety

The cost of basic public health and safety facilities would be nonreimbursable. 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 operation and maintenance 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.

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 would 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 was virtually unanimous, many interests opposed 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.

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 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.

(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 Federal 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) The irrigators repay all reimbursable construction costs allocated to irrigation.

(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 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 and confirmed by letter of August 8, 1972, 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. The two-lane highway now included in the plan be redesigned to a four-lane highway crossing, provided the Idaho Department of Highways funds the additional cost.

(8) The justification for including provisions for future power development at the new American Falls Dam be reevaluated during preconstruction planning on the dam.

C F Sullivan

DATA SHEETS

PROJECT FEATURES

American Falls Dam Replacement
Type: Concrete and earthfill
Height above streambed: 90 feet
Crest length: 4,210 feet (plus 1,000 feet of existing embankment)
Spillway: Concrete overflow weir; controlled by six 48' x 17' radial gates
Capacity at elevation 4354.5--75,200 c.f.s.
Outlet works: Nine conduits through base of dam; each controlled by 7' x 7' slide gates
Capacity at elevation 4354.5--22,000 c.f.s.
Penstocks: Four 11.5'-diameter penstocks for future powerplant

American Falls Reservoir
Total capacity: 1,700,000 acre-feet
Active capacity: 1,700,000 acre-feet
Water-surface elevation at total capacity: 4354.5 feet
Area at total capacity: 87.5 square miles (56,000 acres)
Length at total capacity: 22 miles

Permanent Operating Facilities and General Service Equipment
Warehouse-workshop building and radio equipment

Basic Public Health and Safety Facilities
Parking areas and related facilities near new dam

Fishery Mitigation Facilities
Relocation of part of Idaho Power Company forebay dam
Control valve in penstock of new American Falls Dam

Fish and Wildlife Enhancement Facilities
Hatchery ponds and trout incubation channel
Fishing bridge across Snake River downstream from dam
Eight fisherman accessways with parking and other facilities
Fifty goose nesting islands

Flood Forecasting Facilities
Weather stations and related facilities

Data Sheets

COSTS
(July 1972 prices)

	Construction costs	Annual OM&R 2/
American Falls Dam and Reservoir		
Replacement	$28,321,000	$48,400
Dam and reservoir	(22,906,000)	-
Penstocks for future powerplant	(1,454,000)	-
Highway improvement	(1,861,000)	-
Removal of existing dam	(2,100,000)	-
Permanent operating facilities	143,000	2,400
General service equipment	43,000	
Basic public health and safety facilities	88,000	12,600
Fishery mitigation	546,000	600
Fish and wildlife enhancement	196,000	20,000
Flood forecasting facilities	131,000	10,000
Total costs	$29,468,000 1/	$94,000

1/ Includes the cost of constructing a two-lane highway, but does not include the $1,500,000 in added costs to be funded by the Idaho Department of Highways to provide a four-lane highway across the dam.
2/ Annual operation, maintenance, and replacement costs.

BENEFIT-COST ANALYSIS
(100 years--5-1/2 percent interest)

Benefits (annual)	Direct	Total
Irrigation	$4,425,400	$6,605,100
Flood control	476,000	476,000
Fish and wildlife enhancement	175,400	175,400
Recreation	133,300	133,300
Subtotals	$5,210,100	$7,389,800
Less adverse effects	-	43,000 1/
Net annual benefits	$5,210,100	$7,346,800

1/ Annual amount of benefits from agricultural production lost because of continuing shoreline erosion over the 100-year analysis period.

Costs (annual)	
Annual equivalent of net Federal investment	$1,531,200
Annual operation, maintenance, and replacement	94,000
Total	$1,625,200

Benefit-cost ratios	Direct benefits	Total benefits
	3.21 to 1	4.52 to 1

COST ALLOCATION

(100 years--5-1/2 percent interest)

Function	Construction costs	Interest during construction	Annual OM&R
Irrigation	$18,971,000	$1,477,000	$33,700
Flood control	4,348,000	338,000	21,000
Fish and 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 allocated costs	$29,468,000	$2,293,000	$94,000

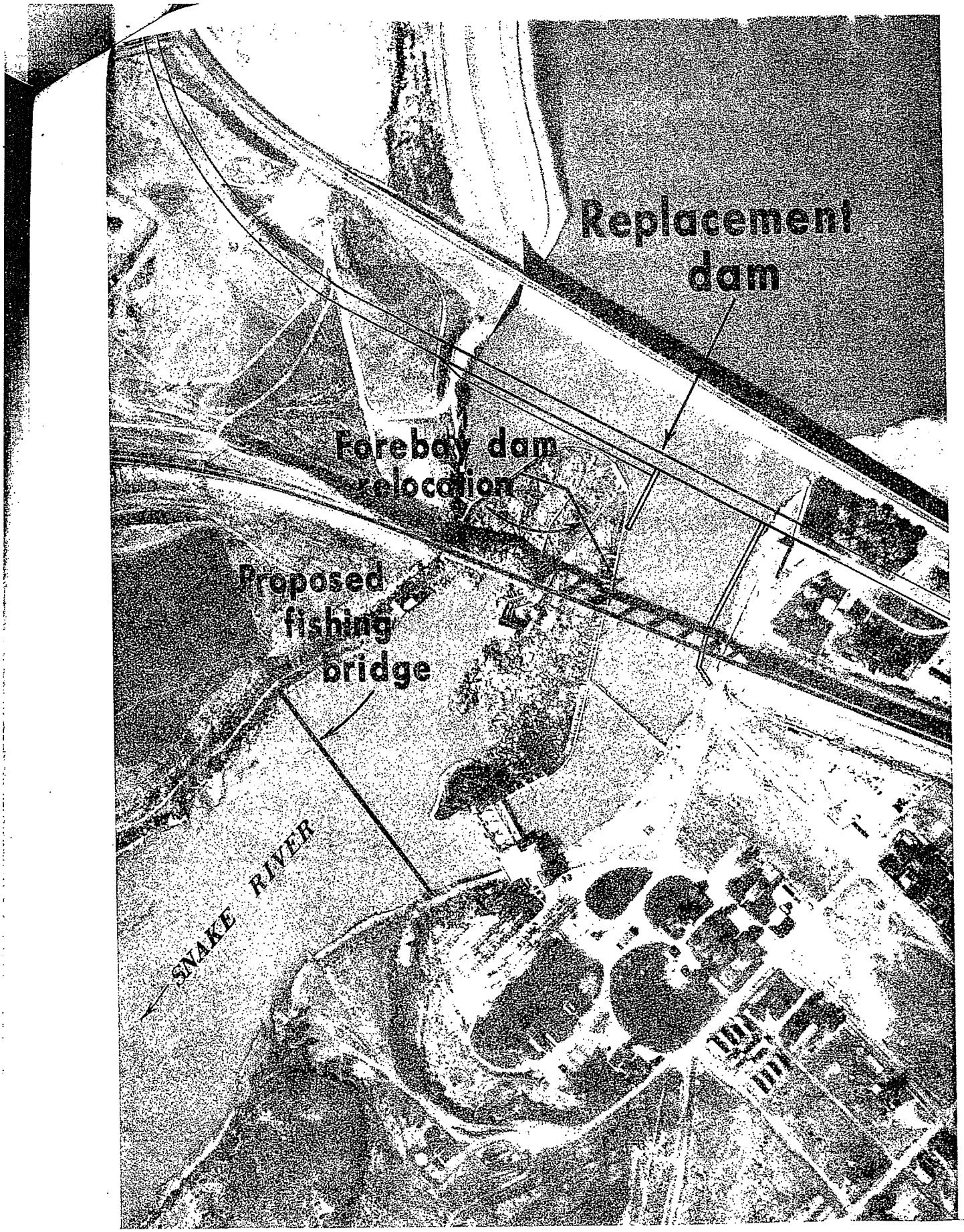
COST AND REPAYMENT SUMMARY

Total Federal Project Costs	$29,468,000
Nonreimbursable Costs	
Recreation	1,226,000
Fish and Wildlife Enhancement	1,422,000
Flood Control	4,348,000
Highway Improvement	1,861,000
Health and Safety	88,000
Investigation Costs	
Reimbursable functions	337,500 1/
Nonreimbursable functions	(142,500) 2/
Subtotal	(480,000)
Total Nonreimbursable	$ 9,282,500
Reimbursable Costs	
Irrigation	$18,659,000
Fish and Wildlife Enhancement	96,500
Power (deferred)	1,430,000
Total Reimbursable	$20,185,500
Reimbursable Interest During Construction	
Fish and Wildlife Enhancement (3.649%)	$ 5,000
Power (deferred - 5.5%)	113,000
Total	$ 118,000
Repayment	
Reimbursable irrigation	$18,659,000
Repaid by waterusers	18,659,000
Percent payout	(100)
Reimbursable fish and wildlife enhancement	$ 101,500 3/
Repaid by non-Federal public body	101,500
Reimbursable power (deferred)	$ 1,543,000 3/
Total Reimbursable	$20,303,500

1/ Includes cost of investigation for irrigation, $312,000; fish and wildlife enhancement, $1,500; and power, $24,000.

2/ Investigation costs amounting to $142,500 are included in the nonreimbursable costs, apportioned to each function.

3/ Includes interest during construction at 3.649 percent.


Replacement dam
Forebay dam relocation
Proposed fishing bridge
SNAKE RIVER

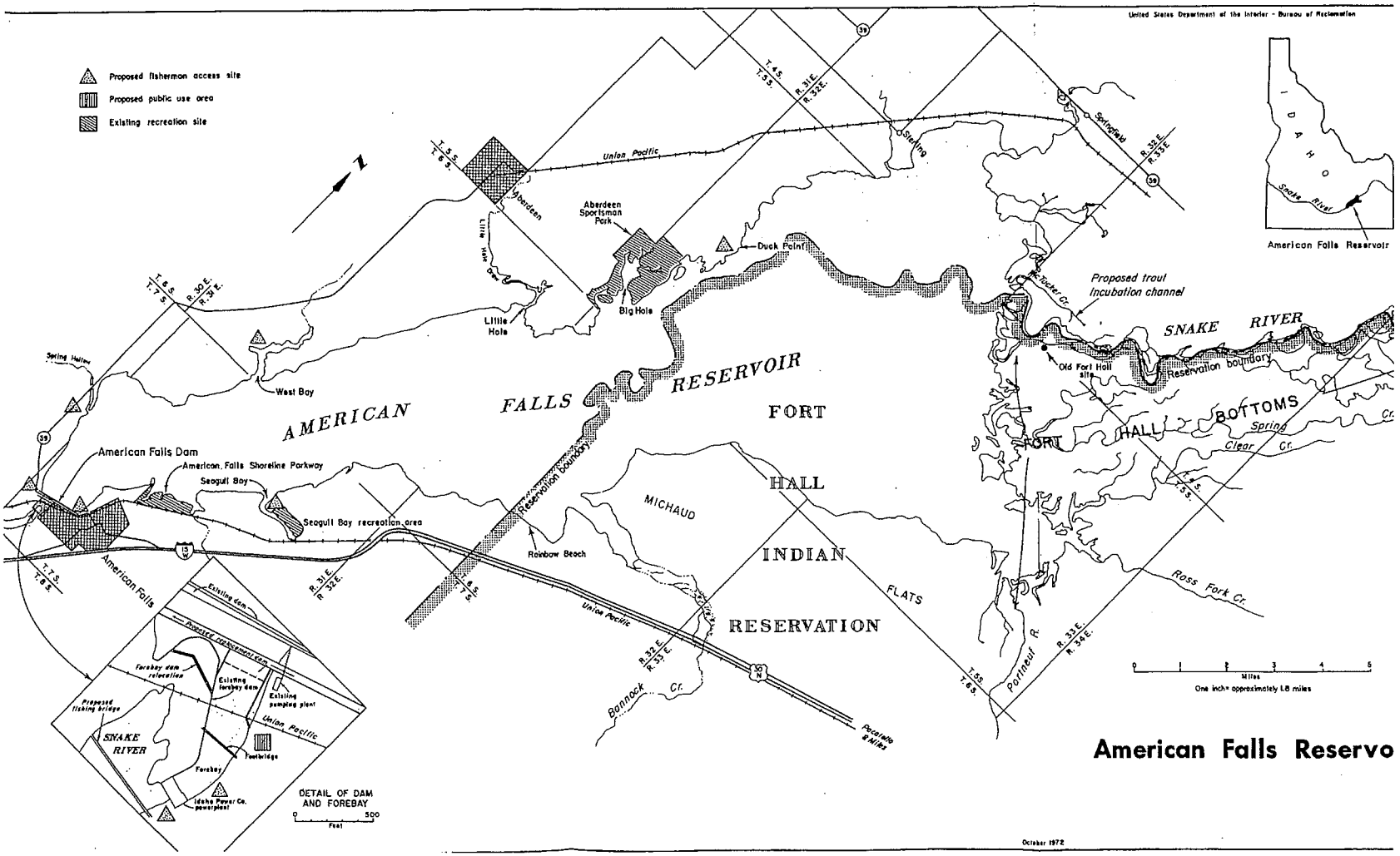

United States Department of the Interior - Bureau of Reclamation
Proposed fisherman access site
Proposed public use area
Existing recreation site
N
Union Pacific
Aberdeen
Sterling
Springfield
Aberdeen Sportsman Park
Little Hole Creek
Little Hole
Big Hole
Duck Point
Rocky Ford Cr.
Proposed trout incubation channel
SNAKE RIVER
Reservation boundary
Old Fort Hall site
FORT HALL BOTTOMS
Spring Cr.
Clear Cr.
Spring Hollow
West Bay
AMERICAN FALLS RESERVOIR
FORT HALL INDIAN RESERVATION
MICHAUD FLATS
American Falls Dam
American Falls Shoreline Parkway
Seagull Bay
Seagull Bay recreation area
Rainbow Beach
Ross Fork Cr.
Portneuf R.
Bannock Cr.
Pocatello 8 Miles
American Falls
Existing dam
Proposed replacement dam
Forebay dam relocation
Existing forebay dam
Existing pumping plant
Proposed fishing bridge
Union Pacific
SNAKE RIVER
Footbridge
Forebay
Idaho Power Co. powerplant
DETAIL OF DAM AND FOREBAY
0 500
Feet
IDAHO
Snake River
American Falls Reservoir
0 1 2 3 4 5
Miles
One inch= approximately 1.6 miles
American Falls Reservo
October 1972

Exhibit 12

Idaho Power Company Proposal Presented to Executive Committee of Spaceholders (Feb. 27, 1973)

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 13

Letter from L.E. Lanham, Director of Public Affairs, Idaho Power Company to Senator Frank Church (Feb. 28, 1973)

Reproduced from the Frank Church collection
Boise State University

SNAKE RIVER



HYDRO POWER

IDAHO POWER COMPANY

BOX 70 • BOISE, IDAHO 83707

February 28, 1973

RECEIVED
MAR 2 1973
SENATOR FRANK CHURCH

The Honorable Frank Church
United States Senate
204 Old Senate Office Building
Washington, D C 20510

Dear Senator Church:

Enclosed is the proposal presented to the Executive Committee of eight, on February 27, 1973. I would appreciate your confidence concerning the information prior to the Spaceholders Meeting of March 2.

Respectfully yours,

Logan E. Lanham

Director - Public Affairs

kn
Enclosure

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Series 1.1 108 9

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leg/water/res/amer falls dam

March 14, 1973

Logan E. Lanham
Director, Public Affairs
Idaho Power Company
Box 70
Boise, Idaho 83707

Dear Logan:

Thank you for your recent letter and the enclosed proposal which you have made to the Executive Committee of eight on Idaho Power's plant for a replacement of the American Falls Dam.

I certainly appreciate your keeping me apprised of your actions in this regard, Logan.

With best wishes,

Sincerely,

Frank Church

mw;lo

MSS 56 FRANK CHURCH
Series L-1 108 9

Exhibit 14

American Falls Spaceholders' Minutes (Mar. 2, 1973)

Attachment No.6

AMERICAN FALLS SPACEHOLDERS' MINUTES

AMERICAN FALLS SPACEHOLDERS MINUTES

March 2, 1973

The Spaceholders meeting of March 2, 1973, was called to order at 10:05 A.M. by Chairman Ted Diehl. Of the thirty-six companies involved, there were 26 present.

The minutes of December 13, 1972, were read by Secretary Temple and approved as read.

Mr. Bob A Hogg of Idaho Power Company was introduced. Mr. Hogg presented a proposal prepared by Idaho Power Company dated February 27, 1973, on the replacement of American Falls Dam. (Proposal attached to minutes.)

Mr. Jim Patrick of the Bechtel Corporation was introduced. On January 7, 1973, Idaho Power Company contracted Bechtel Corporation to survey and prepare studies concerning the replacement and rehabilitation of American Falls Dam. Mr. Patrick gave the report on their findings and showed slides of the work and costs for rehabilitation or replacement of the Dam. During the construction if rehabilitated, the lake elevation will be reduced to the 4,320 foot level to remove old concrete. This construction, if all preparations are complete, could begin January 1, 1974.

To rehabilitate the Dam, the costs are as follows: $15,485,000.00 with highway; $13,904,000.00 without highway for a difference of $1,581,000.00. If a power plant is to be built, that cost would be $43,233,000.00 with highway; $41,652,000.00 without highway for a difference of $1,581,000.00.

Dam Replacement: If a decision of replacement is determined, the lake elevation will have to be reduced to 4,310 foot level with studies beginning April 1973, construction will be January 1, 1974 and estimated completion will be April, 1975. Total cost will be: With highway - $19,306,000.00; without highway - $17,971,000.00; a difference of $1,335,000.00. Dam replacement with power plant costs were: With highway - $47,014,000.00; without highway - $45,479,000.00 for a difference of $1,535,000.00.

Question: 1. Is it possible to construct a highway below the Dam?

Answer: Yes, but at this time there has been no attempt to lay out plans.

Question: 2. Does a road on the Dam, due to vibration, cause any deterioration of the structure?

Answer: The road has no effect on a Dam. The American Falls Dam problems were caused by a chemical reaction in the concrete. If good material is used, a road will have no effect on a Dam.

The Chairman introduced Mr. John Howe, Governor Andrus' Assistant; Mr. Keith Higginson, Department of Water Administration; Mr. Burpee, Attorney for the U. S. Bureau of Reclamation and Mr. Carlos Randolph, U. S. Bureau of Reclamation.

At this time, Mr. Charles Marshall, Chairman of the Executive Committee, gave a report on the Committee's last meeting. Mr. Marshall informed the group of a news article that the Idaho Wildlife Federation is in support of rebuilding American Falls Dam. The Executive Committee made the following recommendation to the Spaceholders:

1. Voting by the Spaceholders should be on the basis of one vote per acre foot of storage water and that it should take a two-thirds majority for Spaceholders decisions.

2. The Executive Committee recommended that the Idaho Power proposal of February 27, 1973, be presented to the Spaceholders for their consideration.

A question from the floor was directed to the Idaho Power Company concerning their position on Irrigation Water rights. Mr. Bob Hogg assured the group that Irrigation rights shall always have priority in the operation.

Following a brief discussion, Don McDonald made a motion, seconded by Dale Depew, to approve and accept the above two items.

Cecil D. Hobney moved in behalf of American Falls Reservoir District No. 2 that the Executive Committee be authorized and directed to take such action, enter into such negotiations and obtain such legislation as may be required to pursue the proposal of Idaho Power Company to replace the Dam. The motion was seconded by Tom Olmstead and approved by more than a two-thirds majority of the Spaceholders.

Charles Roseberry moved that the meeting be adjourned. This motion was seconded by Leo Hobdey. The meeting was adjourned at 12:16 P.M.

Virgil D. Temple, Secretary

APPROVED:

Ted Diehl, Chairman

Exhibit 15

Memorandum from Dan Dreyfus, Staff Member of Committee on Interior and Insular Affairs, to Senator Church (Mar. 11, 1973)

March 11, 1973

MEMORANDUM

TO: Senator Church

FROM: Dan Dreyfus

RE: American Falls Dam Replacement

General

As a Federal project, the American Falls replacement would be a good project:

-- The investment is relatively small.

-- The total benefit-cost ratio is 4.52 to 1.00 at 5½% discount rate.

-- Full repayment of irrigation cost is possible.

-- There is no new irrigation development.

-- There is urgency of need.

The outlook for authorization and appropriations should be good. Considering the generally negative attitude of the Administration toward all reclamation work, however, and the considerable backlog of authorized construction facing the Bureau, it would be hazardous to expect rapid Federal construction.

The proposal being advanced by the American Falls Reservoir District and the Idaho Power Company is unconventional. Despite the financial

AFF006738

advantages to the Federal government, it might actually make authorization more difficult. It will, of course, eliminate the delays of appropriation and it is predicated upon an accelerated construction schedule designed by Bechtel Corporation.

Either plan would have to comply with the requirements of the National Environmental Policy Act for preparation of an environmental impact statement. (Unless there are court challenges by opponents, this should present no major problem.) The non-Federal plan would have to be licensed by the Federal Power Commission unless a legislative waiver is given in the enabling measure.

On balance, if the non-Federal plan can be authorized with a waiver of FPC licensing, it appears to offer the best prospects for rapid completion of construction. The following major points should be considered:

Federal Power Commission

Thus far, I have been unable to discover a similar situation in which FPC licensing has been legislatively waived for a non-Federal dam. On a few occasions, the Congress has directed the FPC to grant a license without the usual process, but this was done prior to the advent of NEPA and extensive environmental involvement in FPC licenses.

In general, there would seem to be very little environmental opposition to the replacement of the dam, and the present physical situation will not be greatly changed. In my opinion, however, there is a strong possibility that if an FPC license is required for the dam replacement, intervenors may complicate the process. Some reasons for my concern are:

-- The operation of the Snake River is complex and the American Falls Reservoir is linked to operations of other reservoirs up and downstream. The license application might become an opportunity for environmental interests to attempt to impose operating requirements not only on American Falls Dam but elsewhere along the stream.

-- Water rights holders along the river have traditionally been concerned about <u>any</u> new development and will probably insist upon detailed guarantees, thus complicating the hearing process (the Appaloosa Dam negotiations were a case in point).

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-- There have been controversies over Idaho Power Company operation of other dams which may raise questions regardless of the continued Federal operation set forth in the bill.

The FPC estimates that 14 months is the shortest possible time for processing a license. Any of the above factors could greatly extend that time.

It seems that waiver of a FPC license for the dam, as proposed in the bill, is essential to expedited construction. The powerplant will still require a license. (If the powerplant license should be stalemated, the irrigators will be without a source of financial assistance to repay their bonds, but they recognize that risk.)

Federal Operation of New Dam

It appears essential that the operation of the replacement dam be vested in the Secretary of the Interior. There no doubt are members in both the Senate and House who would oppose a waiver of FPC licensing. Federal operation is almost certainly necessary to justify the waiver, and Federal title to the dam would be helpful if other security for the bonds can be arranged.

If the Secretary is to operate and maintain the dam, it seems essential to provide him with the power of technical review and approval of the designs and specifications. Furthermore, because of the interrelationship of the dam with the Minidoka project and other Federal obligations on the River, it would appear to be necessary for the Secretary to be a party to all of the water contracts and perhaps to the contract with the Idaho Power Company. This might also prove to be an asset to the Reservoir Company in its bonding negotiations, and in dealing with other reservoir space-holders.

Agency Attitudes

It is probable that the Administration, and particularly OMB, will favor the non-Federal initiative on this project. The Bureau of Reclamation may raise questions about the technical aspects of the design, because the estimate is significantly below the Bureau's. In my opinion, however, there is a good probability that the Department of the Interior will support a bill which has adequate contractual and technical safeguards.

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Proposed Measure

I have the following observations on the drafting of the proposed bill.

Sec. 1 -- It might be preferable to authorize the Secretary to enter into the appropriate agreements as a part of the Minidoka project (originally authorized by the Secretary on April 23, 1904). This would incorporate the whole body of policy relating to the project without specific references and insure the integrity of operation of the river under the new contracts.

Sec. 3 -- The Secretary should be a party to these contracts to provide a basis for Federal enforcement and compatibility with existing obligations.

Sec. 4 -- I have requested data on the status of repayment. This may be an unnecessary extension in some cases.

Sec. 5 -- This section waives both the preference clause for power rights (which is necessary if Idaho Power Company is to be the contractor for the falling water) and the provision that the irrigation purpose is superior to power uses. As I understand the proposal, the irrigation preference is intended to be preserved except for Idaho Power Company's spaceholder rights. It might be preferable to specifically provide only that the falling water contract is to be with Idaho Power Company. The Secretary should be a party to the contract.

General -- The Secretary should be given the right of technical review and approval of designs and specifications of the dam.

Consideration might be given to provisions to authorize grants for nonreimbursible aspects of the project such as flood control, fish and wildlife enhancement, recreation, highway improvement, and health and safety. These total $9,282,500 under the Federal plan and would be less under the Bechtel plan. Arrangements for such grants are made in the small reclamation loan program. In any event, some provision should be included to insure that appropriate operation and maintenance costs are made nonreimbursible.

Recommendation

There are a great many unknown factors in this proposal. If the delegation chooses to support it, a bill should be introduced as soon as possible and comments requested from the Executive agencies. These will reduce some of the uncertainty and raise some issues concerning details of the legislation.

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Hearings should be scheduled as soon as the proponents of the plan feel confident that coordination among local interests has been adequate.

It does not appear possible that sufficient progress can be made on legislation, powerplant licensing, financing, and contracts to permit a construction start in January of 1974. It does appear possible that a January 1975 start could be achieved with good cooperation and if no serious local, Congressional, or agency opposition materializes.

AFF006742

Am. Falls

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United States Senate

COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
WASHINGTON, D.C. 20510

March 15, 1973

MEMORANDUM

TO: Senator McClure

FROM: Dan Dreyfus

RE: American Falls Reservoir Replacement

Senator Church asked me to give you the attached memorandum.

I believe he will be in touch with you about it.

AFF006737

Exhibit 16

S. 1528 (1973)

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

out in the report of the Bureau of Reclamation dated December 1972 entitled "American Falls Dam Replacement", with such modification of, omissions from, or additions to the works as the Secretary may find proper and necessary for the purposes of irrigation, flood control, generation of electric power, fish and wildlife and recreation: *Provided*, That facilities for the generation of electric power other than those necessary to accommodate the future addition of hydroelectric power as a project function shall not be installed unless specifically authorized by the Congress.

SEC. 2. Replacement of the existing dam and reservoir as authorized in section 1 hereof 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 rights under the contracts between the Secretary and the spaceholders except as otherwise provided in this Act.

SEC. 3. That portion of the construction costs of the replacement dam allocated to the irrigation purpose shall be repaid in accordance with the irrigators' ability to pay but within a period not to exceed forty years in accordance with the provisions of reclamation law: *Provided*, That the Secretary is authorized to execute repayment contracts in excess of forty years with those spaceholders who have not yet completed repaying their obligations on the existing

American Falls Dam if he determines that repayment within forty years of their obligations under both existing and new repayment contracts would exceed their repayment capacity.

SEC. 4. The development of public recreation and fish and wildlife conservation undertaken in connection with the replacement dam and the repayment of costs associated with those purposes shall be in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213).

SEC. 5. The costs associated with improving the relocated highway to meet current standards shall be nonreimbursable under the provisions of section 208 of the Flood Control Act of 1962 (76 Stat. 1196).

SEC. 6. Repayment of the costs associated with the provision of features to accommodate future hydroelectric power production shall be deferred and shall be reimbursable with interest upon the addition of said hydroelectric power production as a project purpose.

SEC. 7. The interest rate used for computing interest during construction and interest on the unpaid balance of the capital costs allocated to interest-bearing features of the project shall be determined by the Secretary of the Treasury as of the beginning of the fiscal year in which construction on replacement of the dam commences on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither

4

due nor callable for redemption for fifteen years from date of issue.

SEC. 8. There is hereby authorized to be appropriated for the construction of the American Falls Dam replacement the sum of $29,000,000 (based upon July 1972 levels) plus or minus such amounts as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved. There are also authorized to be appropriated such additional sums as are required for operation and maintenance of the project.

Exhibit 17

S. 1529 (1973)

93D CONGRESS
1ST SESSION

S. 1529

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 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.

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 (hereinafter called the Secretary) is authorized to negotiate and enter into agreements with the American Falls Reservoir District or other appropriate agency representing the district (hereinafter called the constructing agency), which agreements shall authorize the constructing agency to finance and provide for the construction of a dam to replace the existing American

Falls Dam of the Upper Snake River project, Idaho-Wyoming. The United States shall take title to the dam upon a determination by the Secretary that construction of the dam is substantially completed, and the dam shall be a feature of the Upper Snake River reclamation project and shall be considered to be a "Government dam" as defined by the Federal Power Act (Act of June 10, 1920, 41 Stat. 1063, as amended). The Secretary shall operate and maintain the replacement dam as a feature of the Upper Snake River project.

SEC. 2. Replacement of the existing dam as authorized in section 1 hereof 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.

SEC. 3. The constructing agency may enter into repayment contracts with the spaceholders in the existing American Falls Reservoir providing for the repayment by the spaceholders of proportionate shares of the total project costs incurred by the constructing agency for engineering, financing, designing, and constructing the replacement dam, and the Secretary shall be a party to said contracts and shall require delivery of water to the spaceholders to be contingent upon fulfillment of the contract obligations: *Provided*, That

said contracts shall be consistent with the terms of existing contracts between the Secretary and the spaceholders for repayment of the costs of the existing American Falls Dam: *And provided further*, That the Secretary is authorized to amend said existing contracts to extend the repayment periods as necessary to bring the combined repayment obligations within the spaceholders' repayment capacity.

SEC. 4. The constructing agency may contract with an appropriate non-Federal entity for the use of the falling water leaving the dam for power generation, which contract shall provide for a monetary return to the constructing agency to defer the costs of construction of the replacement dam. The constructing agency may enter into agreements with an appropriate non-Federal entity to coordinate the construction of hydroelectric power facilities with the construction of the replacement dam. The contract and agreements for use of the falling water shall not be subject to the limitations of section 9(c) of the Reclamation Project Act of 1939 (53 Stat. 1194), or any similar limitations in any other applicable Acts of Congress: *Provided*, That said contract for falling water shall not impair the efficiency of the project to serve the other purposes of the Upper Snake River project.

SEC. 5. Construction of the replacement dam shall not be initiated until the Secretary has approved the designs and specifications.

SEC. 6. The Secretary is authorized to provide specific facilities for public recreation and fish and wildlife conservation in connection with the replacement dam, and the costs of such facilities shall be repaid in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213).

SEC. 7. There are authorized to be appropriated such sums as may be necessary for the construction of specific facilities for public recreation and fish and wildlife conservation and for the operation and maintenance of the American Falls replacement dam.

Exhibit 18

Hearing before the Senate Subcommittee on Water and Power Resources on S. 1528 and S. 1529, 93rd Cong. (1973)

AMERICAN FALLS DAM, UPPER SNAKE RIVER PROJECT, IDAHO

HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER RESOURCES

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

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

out in the report of the Bureau of Reclamation dated December 1972 entitled "American Falls Dam Replacement", with such modification of, omissions from, or additions to the works as the Secretary may find proper and necessary for the purposes of irrigation, flood control, generation of electric power, fish and wildlife and recreation: *Provided*, That facilities for the generation of electric power other than those necessary to accommodate the future addition of hydroelectric power as a project function shall not be installed unless specifically authorized by the Congress.

SEC. 2. Replacement of the existing dam and reservoir as authorized in section 1 hereof 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 rights under the contracts between the Secretary and the spaceholders except as otherwise provided in this Act.

SEC. 3. That portion of the construction costs of the replacement dam allocated to the irrigation purpose shall be repaid in accordance with the irrigators' ability to pay but within a period not to exceed forty years in accordance with the provisions of reclamation law: *Provided*, That the Secretary is authorized to execute repayment contracts in excess of forty years with those spaceholders who have not yet completed repaying their obligations on the existing

American Falls Dam if he determines that repayment within forty years of their obligations under both existing and new repayment contracts would exceed their repayment capacity.

SEC. 4. The development of public recreation and fish and wildlife conservation undertaken in connection with the replacement dam and the repayment of costs associated with those purposes shall be in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213).

SEC. 5. The costs associated with improving the relocated highway to meet current standards shall be nonreimbursable under the provisions of section 208 of the Flood Control Act of 1962 (76 Stat. 1196).

SEC. 6. Repayment of the costs associated with the provision of features to accommodate future hydroelectric power production shall be deferred and shall be reimbursable with interest upon the addition of said hydroelectric power production as a project purpose.

SEC. 7. The interest rate used for computing interest during construction and interest on the unpaid balance of the capital costs allocated to interest-bearing features of the project shall be determined by the Secretary of the Treasury as of the beginning of the fiscal year in which construction on replacement of the dam commences on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither

due nor callable for redemption for fifteen years from date of issue.

SEC. 8. There is hereby authorized to be appropriated for the construction of the American Falls Dam replacement the sum of $29,000,000 (based upon July 1972 levels) plus or minus such amounts as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved. There are also authorized to be appropriated such additional sums as are required for operation and maintenance of the project.

93D CONGRESS
1ST SESSION

S. 1529

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 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.

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 (hereinafter called the Secretary) is authorized to negotiate and enter into agreements with the American Falls Reservoir District or other appropriate agency representing the district (hereinafter called the constructing agency), which agreements shall authorize the constructing agency to finance and provide for the construction of a dam to replace the existing American

Falls Dam of the Upper Snake River project, Idaho-Wyoming. The United States shall take title to the dam upon a determination by the Secretary that construction of the dam is substantially completed, and the dam shall be a feature of the Upper Snake River reclamation project and shall be considered to be a "Government dam" as defined by the Federal Power Act (Act of June 10, 1920, 41 Stat. 1063, as amended). The Secretary shall operate and maintain the replacement dam as a feature of the Upper Snake River project.

SEC. 2. Replacement of the existing dam as authorized in section 1 hereof 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.

SEC. 3. The constructing agency may enter into repayment contracts with the spaceholders in the existing American Falls Reservoir providing for the repayment by the spaceholders of proportionate shares of the total project costs incurred by the constructing agency for engineering, financing, designing, and constructing the replacement dam, and the Secretary shall be a party to said contracts and shall require delivery of water to the spaceholders to be contingent upon fulfillment of the contract obligations: *Provided*, That

said contracts shall be consistent with the terms of existing contracts between the Secretary and the spaceholders for repayment of the costs of the existing American Falls Dam: *And provided further*, That the Secretary is authorized to amend said existing contracts to extend the repayment periods as necessary to bring the combined repayment obligations within the spaceholders' repayment capacity.

SEC. 4. The constructing agency may contract with an appropriate non-Federal entity for the use of the falling water leaving the dam for power generation, which contract shall provide for a monetary return to the constructing agency to defer the costs of construction of the replacement dam. The constructing agency may enter into agreements with an appropriate non-Federal entity to coordinate the construction of hydroelectric power facilities with the construction of the replacement dam. The contract and agreements for use of the falling water shall not be subject to the limitations of section 9(c) of the Reclamation Project Act of 1939 (53 Stat. 1194), or any similar limitations in any other applicable Acts of Congress: *Provided*, That said contract for falling water shall not impair the efficiency of the project to serve the other purposes of the Upper Snake River project.

SEC. 5. Construction of the replacement dam shall not be initiated until the Secretary has approved the designs and specifications.

SEC. 6. The Secretary is authorized to provide specific facilities for public recreation and fish and wildlife conservation in connection with the replacement dam, and the costs of such facilities shall be repaid in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213).

SEC. 7. There are authorized to be appropriated such sums as may be necessary for the construction of specific facilities for public recreation and fish and wildlife conservation and for the operation and maintenance of the American Falls replacement dam.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAY [illegible] 1973

Dear Mr. Chairman:

This responds to your request for the views of this Department concerning S. 1528 and S. 1529, similar bills to authorize replacement of the American Falls Dam in Idaho.

We recommend that S. 1529 be enacted with the amendments set forth below. Since we support enactment of S. 1529 and have not completed our review of the plan of replacing American Falls Dam specified in S. 1528, we cannot support its enactment at this time.

The Bills. S. 1529 would authorize the Secretary of the Interior to negotiate and enter into agreements with the American Falls Reservoir District or an appropriate agency representing the district which would authorize the agency to finance the major costs and provide for construction of a replacement dam for the existing American Falls Dam. Upon completion, the United States would take title to the dam and it would be a feature of the Upper Snake River reclamation project, operated and maintained by the Secretary. The dam would be considered a "government dam" as defined in the Federal Power Act. Holders of storage rights in the existing reservoir would not be affected by replacement of the dam and the existing contract rights of such spaceholders with the Secretary would be reaffirmed except as modified by the bill. The bill would authorize the constructing agency to enter into contracts with current spaceholders providing for repayment of the replacement dam's cost. The Secretary would be a party to such contracts and he would be authorized to amend existing contracts to extend the repayment periods as necessary to bring the combined repayment obligations within the spaceholders' repayment capacity. The constructing agency would be authorized to contract with a non-Federal entity for the use of falling water for power generation. The Secretary would be authorized to provide facilities for public recreation and fish and wildlife conservation in connection with the replacement dam and costs would be repaid in accordance with the Federal Water Project Recreation Act. Construction of the replacement dam could not begin until the Secretary had approved the designs and specifications.

S. 1528 differs from S. 1529 in that it authorizes the Secretary of the Interior directly to construct, operate and maintain the replacement dam as part of the Upper Snake River project under the Federal Reclamation laws in accordance with the plan set forth in the Bureau of Reclamation's report dated December 1972 entitled "American Falls Dam Replacement". The dam would serve irrigation, flood control, electric power generation, fish and wildlife and recreation purposes, except that power generation facilities other than those necessary to accomodate 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 non-reimbursable to the Federal Government under the provisions of section 208 of the Flood Control Act of 1962. Public recreation and fish and wildlife conservation costs would be repaid in accordance with the Federal Water Project Recreation Act. Costs associated with the provisional features to accommodate future hydroelectric power would be deferred until power production is authorized. The interest rate applicable to the project for repayment purposes would be based on the long-term U.S. Governmental debt interest rate.

Background. The Minidoka Project was authorized by the Secretary of the Interior on April 23, 1904, under the Reclamation Act of 1902.

American Falls Dam, a major feature of the Minidoka Project, was built by the Bureau of Reclamation in 1927. The dam is located on the Snake River in southeastern Idaho west of the town of Pocatello. American Falls Reservoir, with a capacity of 1.7 million acre-feet, is the largest storage reservoir in the Upper Snake River basin and contributes almost half the usable storage on the main stem of the Upper Snake River. Nearly 900,000 acres of land receive irrigation water from the reservoir and as of September 30, 1972, only $578,516.52 of irrigation costs remained unrepaid to the United States of the total Federal irrigation investment amounting to $7,511,087.11. There is an additional unpaid power obligation of $404,365. Abnormal cracking throughout the concrete dam was reported as early as 1929 and has become progressively more severe. The condition of the dam has been closely monitored through regular biennial inspections. As the result of a core-drilling program in the early 1960's it was discovered that the concrete in portions of the dam was in a relatively advanced stage of deterioration due to a chemical reaction between alkalis in the cement and the aggregate. This type of reaction was unknown at the time the dam was built and has resulted in a significant loss in its strength and durability. Incident to the deterioration of the dam is the deteriorating condition of the existing two-lane State Highway 39 on the dam. This hazardous condition has resulted in the application of stringent traffic control procedures by the Idaho Department of Highways.

Studies in 1968 by a private board of consultants, consisting of three nationally known civil engineers, confirmed the Bureau of Reclamation's findings concerning the safety of the dam. The board stated that replacement or rehabilitation of the dam is desirable and that the choice between replacement and rehabilitation should be based on a comparison of detailed designs, cost estimates and useful life of the dam after such work had been completed.

The condition of the dam has necessitated careful regulation of reservoir storage to avoid harmful pressures on the thin upper portion of the structure. For a number of years, winter storage has been restricted to 8 feet below the maximum reservoir water surface elevation in order to prevent ice pressures on top of the dam. Maximum storage is now limited to 11.3 feet below full pool which reduces the reservoir storage capacity to 1,125,000 acre-feet or approximately 66 percent of maximum design capacity.

In December 1972, the Bureau of Reclamation's Regional Director completed a preliminary special report which identifies a plan for replacing the dam and developing related multipurpose features. The report has not been fully reviewed by this Department or other appropriate agencies and does not necessarily reflect the views of the Secretary of the Interior. A copy of the report entitled "American Falls Dam Replacement" is enclosed.

More recently the reservoir spaceholders and the Idaho Power Company have proposed a plan to replace the existing American Falls Dam through non-Federal financing. A formal report has not been prepared on their plan, but we understand its general approach is that the spaceholders would obtain the right to replace the dam and to enter into a 50 year falling water contract for power with a right of renewal. The spaceholders would obtain financing for the new dam by the sale of tax exempt bonds and would assist Idaho Power Company in obtaining a Federal Power Commission license for construction of a powerplant at the dam. The Idaho Power Company would pay to the spaceholders an amount of money equal to the annual requirements for interest and amortization of the spaceholders bonds over a 40 year period, up to the actual cost of the dam but not more than $19 million plus interest. The spaceholders would pay any additional cost over the $19 million plus interest and the costs of replacing the existing highway river crossing and facilities for recreation, fish and wildlife and public health and safety.

Discussion. In order to retain the full benefits of the American Falls Reservoir, it is apparent that the present dam must be replaced. The regional economy is dependent to a significant degree on the dam and reservoir and would benefit from the proposed replacement, both in terms of additional direct utility from the project and elimination of future uncertainty. We note that non-Federal hydroelectric power would be included as part of the project, helping to meet regional energy requirements without adverse thermal power production impacts. Because plans for the replacement dam will be subject to approval by and execution of an agreement with the Secretary, we see no need for licensing the dam under the Federal Power Act. The bill obviates the licensing requirement by making the dam a "government dam" within the meaning of the Federal Power Act. The proposed powerplant would, however, require a license.

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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 (lines 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 ageeements 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

Honorable Henry M. Jackson
Chairman, Committee on
Interior and Insular Affairs
United States Senate
Washington, D.C. 20510

Enclosures

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAY 9 1973

Honorable Henry M. Jackson
Chairman, Committee on Interior
and Insular Affairs
United States Senate
3106 New Senate Office Building
Washington, D. C. 20510

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

FEDERAL POWER COMMISSION
WASHINGTON, D.C. 20426

MAY 24 1973

S. 1529 - 93d Congress
Replacement of American Falls Dam, Idaho

Honorable Henry M. Jackson
Chairman
Committee on Interior and Insular Affairs
United States Senate
Washington, D.C. 20510

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 Falls 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 power plant (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

Senator CHURCH. I would like to recognize Senator McClure for any preliminary statement he may have at this time.

STATEMENT OF HON. JAMES A. McCLURE, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator MCCLURE. Thank you very much, Mr. Chairman. I am not going to make a very extensive statement because we are already somewhat behind schedule due to previous business of the Interior Committee and also because we have such a large group of very capable witnesses from Idaho who can express all of the ramifications on both bills for the benefit of the committee.

Let me state that we are here today with these two bills before us because the entire Idaho congressional delegation recognizes the extreme urgency of getting something done. Not something done 5 or 10 years from now, but something done as quickly as possible.

It is a critical matter and a matter of emergency dimensions that just cannot be overstated. The fact that we have 100 percent of the Idaho congressional delegation here, the fact that we have the Governor of the State of Idaho here, the fact that we have a number of people from all up and down the Snake River Valley affected by the possibility of a water shortage which would be absolutely devastating to them and to the State of Idaho -all these things illustrate the emergency nature of the matter.

There are all kinds of problems involved and we will get into those with respect to the relationships between different water groups and the relationship of this dam to the transportation necessities of the American Falls area.

Because these are all critical matters, I hope we can get this hearing on the record. It will expose the need, and we can then move to a very rapid legislative action which I hope will result in the quickest possible action.

Thank you, Mr. Chairman.

Senator CHURCH. Thank you, Senator McClure.

Senator Hansen.

Senator HANSEN. Thank you, Mr. Chairman.

As a resident in that portion of Wyoming lying in the Columbia River basin, and as a Compact Commissioner on the Snake River when the compact between Idaho and Wyoming was negotiated, I am fully aware of the importance of irrigation water in the State of Idaho. I am pleased to be privileged to sit in on this hearing.

I have nothing further to say.

Senator CHURCH. Senator Hatfield.

STATEMENT OF HON. MARK O. HATFIELD, A U.S. SENATOR FROM THE STATE OF OREGON

Senator HATFIELD. Mr. Chairman, as the ranking member of this subcommittee, I want to indicate my full support for this project.

The distinguished Senators from Idaho, Senator Church and Senator McClure, have certainly provided leadership in bringing this hearing about and I am most anxious to give any support I can to the cause of Idaho in this particular project. I do ask the chairman's in-

dulgence in excusing me to attend a meeting of the Subcommittee on Appropriations because we have some money matters there of importance to our region. I am fully committed to a replacement for the American Falls Dam.

Senator CHURCH. We have our two Congressmen here and both have statements that we want to hear.

I would ask that they might defer reading their statements until we have first heard from the Governor. Then I will invite both Congressmen, if they would care, to sit with the committee if they have time for such time as they would like.

But we have the first citizen of Idaho here, Governor Andrus, and I would ask him to lead off the testimony this morning.

Governor, it is a pleasure to welcome you again before the committee and I want to acknowledge the leadership that you have given to the effort to get the problem at American Falls resolved and thank you for your efforts in bringing back a fine delegation of Idaho citizens to testify.

STATEMENT OF HON. CECIL D. ANDRUS, GOVERNOR OF THE STATE OF IDAHO

Governor ANDRUS. Thank you.

First of all, I would like to express our appreciation to you for taking the time from your schedule this morning to be with us and granting us this hearing to testify on this very important issue. The replacement of the American Falls Dam and river crossing is more than one state's regional or sectional priority—it is an Idaho necessity.

Its impact is statewide because the structure is an integral part of vital irrigation and transportation systems which are closely tied to the stability of Idaho's overall economy.

As the Governor of a State where agriculture is the No. 1 industry, I am here today to strongly support the earliest possible replacement of the weakened facility at American Falls.

I am particularly pleased to have led a delegation of farmers, ranchers, businessmen, and representatives for the American Falls area to this hearing. I ask that you listen carefully to their testimony and question them about the direct impact of the dam and crossing on their everyday lives.

Some are here to testify about the need for a reservoir filled to capacity with irrigation water. Others will direct their comments to the specifics of vehicle and passenger traffic across the dam or on a new bridge immediately downstream from the dam.

Regardless of their particular emphasis, all will speak to the issue with a dual desire for a new dam and a new crossing. For each is critically important to those whose livelihoods are tied to the soil or to processing the harvest from the soil.

I can support the proposal contained in S. 1529 because it appears to offer the speediest and most reasonable method for replacement of the structure and river crossing.

S. 1529 has widespread support in Idaho. Even traditional adversaries have joined in favor of the undertaking. Attached to my

testimony are statements from the Idaho Water Resource Board and the Idaho Department of Water Administration which are user-oriented agencies; and the testimony of the Idaho Environmental Council and Trout Unlimited which are outspoken, yet respected conservation organizations.

All seek your approval for a proposal to rebuild a major dam on the mighty Snake River. It is a unique priority which transcends the special interests for a common cause.

In summary, Idaho has major necessity for an adequate storage facility at American Falls along with the need for a modern river crossing on the dam or in the immediate area.

We do not come here with a request for millions of Federal tax dollars to do for us what we can and will do for ourselves. Instead, we ask for congressional approval of a plan which will allow private money to rebuild a failing structure and for deserved assistance to build a crossing which is partly the responsibility of the Bureau of Reclamation.

Finally, the safety of the stucture itself must be assessed in your deliberations. Weakened by an unfortunate chemical reaction in the concrete, the Bureau of Reclamation has determined that the facility can hold only a portion of the water originally intended.

Subsequently, farmers and ranchers face probable shortages this year and near-certain shortages in the ensuing years. A dry or short-water year could mean financial disaster for thousands of small farmers and family businesses throughout Idaho.

I respectfully request your attentive and positive reaction to our proposal for the earliest possible replacement of the American Falls Dam and River Crossing.

Thank you.

I think I would like to add, Mr. Chairman, that you see before you today a group of concerned people who are here with a solution to a problem. We can handle this ourselves. Time is the most important ingredient in this entire situation.

We have heard over the years a great deal of political rhetoric. We discuss the necessity of maintaining and sustaining the family-farm unit. This one structure could do more to destroy the family-farm unit in a major portion of our state than anything else should it fail or should we not be able to store the necessary water behind the structure.

So we are here not for the Federal bucks, we are asking for your cooperation in giving us the opportunity to solve the situation ourselves.

Thank you, Mr. Chairman.

I would be happy to respond to any questions.

Senator CHURCH. Thank you for your statement. I think most of us believe this is the best design to resolve this particular problem. Nevertheless, the law requires us to surmount some hurdles. We have to get a bill passed through Congress and we have to secure, if not a license from the Federal Power Commission for the construction of the dam, at least a subsequent license for the construction of the power facility.

So there are hurdles that have to be surmounted in order to clear the way, as you know, and this is the first step in the process of surmounting those hurdles.

There is one question that I have, Governor. You know the time we went to inspect the dam, last December, we were made aware of the acute difficulty that the traffic was having, particularly the farm trucks carrying potatoes, in getting back and forth across the existing dam because of the narrow roadway.

That road was also deteriorating. What can you tell us about the solution of the road problem in connection with the pending bill?

Governor ANDRUS. First of all, Mr. Chairman, I think I am in a position to guarantee you and the members of the committee as much as any Governor can make the guarantee within his statement. This is a project that involves both a structure for storage of water, a dam to be specific, and also a major crossing. There is a definite likelihood that the crossing will not be on top of the new structure, although it could be.

Instead of that there will be a bridge slightly downstream from the structure. We have a committee of residents from the area, water users and the people involved in the storage within the reservoir. We recognize, both the State of Idaho and those who have storage, the water users, that the crossing and the dam is one project. Exactly how this will be worked out I think will come in the project.

But I can assure you that it will involve the State of Idaho, the space holders of the structure will be involved and, hopefully, as I point to in my testimony, some deserved support from the Federal level because of the responsibility of the Bureau of Reclamation has within the present crossing.

This we do not feel is the major thing. Certainly there will be a crossing and we want to guarantee it, but we are capable of handling that with the people involved.

Senator CHURCH. Fine, Governor, I think that pretty much covers two aspects of this matter that we have got to work out.

Senator Hatfield, do you have any questions?

Senator HATFIELD. No questions.

Senator CHURCH. Senator Hansen.

Senator HANSEN. No questions.

Senator CHURCH. Senator McClure.

Senator MCCLURE. I have no questions, just a couple of comments. One to bring out for the record that the dam has deteriorated to the point where the Bureau of Reclamation required that it be held at a level which effectively destroys over one-third of its storage capacity.

The second, to bring out the fact that even if the dam had not deteriorated to the point of requiring replacement, the bridge crossing is totally inadequate and the replacement of the crossing was a matter that would have required attention, even in the absence of the required replacement of the dam; is that not correct?

Governor ANDRUS. Senator, this is correct. The deterioration of the structure had impact on both the crossing and the storage facility. I would like to reaffirm what you have said, that the storage has been decreased by the Bureau of Reclamation for safety reasons from approximately 1,700,000 acre-feet down to 1,100,000 acre-feet.

I know, Senator Hansen, from your statement, you are very familiar with what this means when you lose 35 percent of our storage, particularly to the space holders who need that water in a given year. That is why time is our worst enemy now. We need the green light so we can proceed in this regard.

But what you say, Senator, is absolutely correct.

Senator McCLURE. And because of the inadequacy of its structure, both in terms of its width and more importantly, perhaps, the failing strength of the structure, traffic limitations were placed on that crossing which have rather severe implications for people who have to maintain an adequate flow of traffic at peak periods of the year?

Governor ANDRUS. This is true, Senator, and the State highway department is working presently to resolve what we can of some of the limitations so we can proceed with this.

The determination of this committee will have a direct bearing on that as to how much money we invest as a State into the failing structure to maintain the crossing during the construction period or whether we go into a bridge construction right away.

So again, to urge you, time is the enemy to the people of Idaho here.

Senator McCLURE. Not only an early decision about what we are going to do but also an early replacement of the structure.

Governor ANDRUS. Yes; we need your decision before we can proceed with the replacement.

Senator McCLURE. I just want to join with my colleagues in welcoming you here, since you and I started in service to our State at the same time. That was 12 years ago now. It is a particular pleasure for me to say hi to you, good to see you again and thank you for the services you are giving on this as well as the other things you have done.

Governor ANDRUS. Thank you. I would like to express my appreciation, Senator Church, once again to you, to Senator Hansen, Senator Hatfield, and Senator McClure and also my two friends from the House of Representatives for extending me the courtesy of allowing me to testify first.

Thank you very much.

Senator McCLURE. Mr. Chairman, the Governor had attached to his statement several communications, I would like to make sure they are part of the record.

[The prepared statement and letters submitted by Governor Andrus follow:]



STATE OF IDAHO
OFFICE OF THE GOVERNOR
BOISE

CECIL D. ANDRUS
GOVERNOR

May 10, 1973

TESTIMONY OF GOVERNOR CECIL D. ANDRUS

BEFORE THE SUBCOMMITTEE

ON WATER AND POWER RESOURCES

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

TESTIMONY OF GOVERNOR CECIL D. ANDRUS BEFORE THE SUBCOMMITTEE ON WATER AND POWER RESOURCES, COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, UNITED STATES SENATE.

The replacement of the American Falls Dam and River Crossing is more than one state's regional or sectional priority--it is an Idaho necessity.

Its impact is statewide because the structure is an integral part of vital irrigation and transportation systems which are closely tied to the stability of Idaho's overall economy.

As the Governor of a state where agriculture is the number one industry, I am here today to strongly support the earliest possible replacement of the weakened facility at American Falls. I am particularly pleased to have led a delegation of farmers, ranchers, businessmen and representatives for the American Falls area to this hearing. I ask that you listen carefully to their testimony and question them about the direct impact the dam and crossing have on their everyday lives.

Some are here to testify about the need for a reservoir filled to capacity with irrigation water. Others will direct their comments to the specifics of vehicle and passenger traffic across the dam or on a new bridge immediately downstream from the dam. Regardless of their particular emphasis, all will speak to the issue with a dual desire for a new dam and a new crossing.

96-375 O - 73 - 3

For, each is critically important to those whose livelihoods are tied to the soil or to processing the harvest from the soil.

I can support the proposal contained in S.1529 because it appears to offer the speediest and most reasonable method for replacement of the structure and river crossing.

S.1529 has widespread support in Idaho. Even traditional adversaries have joined in favor of the undertaking. Attached to my testimony are statements from the Idaho Water Resource Board and the Idaho Department of Water Administration which are user-oriented agencies; and the testimony of the Idaho Environmental Council and Trout Unlimited which are outspoken, yet respected conservation organizations.

All seek your approval for a proposal to rebuild a major dam on the mighty Snake River. It is a unique priority which transcends the special interests for a common cause.

In summary, Idaho has major necessity for an adequate storage facility at American Falls along with the need for a modern river crossing on the dam or in the immediate area. We do not come here with a request for millions of federal tax dollars to do for us what we can and will do for ourselves. Instead, we ask for Congressional approval of a plan which will allow private money to rebuild a failing structure and for deserved assistance to build a crossing which is partly the responsibility of the Bureau of Reclamation.

Finally, the safety of the structure itself must be assessed in your deliberations. Weakened by an unfortunate chemical reaction in the concrete, the Bureau of Reclamation has determined

that the facility can hold only a portion of the water originally intended.

Subsequently, farmers and ranchers face probable shortages this year and near-certain shortages in the ensuing years. A dry or short water year could mean financial disaster for thousands of small farmers and family businesses throughout Idaho.

I respectfully request your attentive and positive reaction to our proposal for the earliest possible replacement of the American Falls Dam and River Crossing.

Thank you.

CECIL D. ANDRUS
GOVERNOR OF IDAHO

Attachments:
Idaho Water Resource Board
Department of Water Administration
Idaho Environmental Council
Trout Unlimited
Department of Parks and Recreation
Idaho Power Company

CECIL D. ANDRUS, Governor

BOARD
JOHN F. STREIFF, Chairman, Lewiston
GEORGE L. YOST, Vice Chairman, Emmett
FERRIS M. KUHZ, Montpelier
JOSEPH H. NETTLETON, Murphy
SCOTT W. REED, Coeur d'Alene
EDWIN C. SCHLENKER, Malta
R. KEITH HIGGINSON, Boise
Ex-officio Member
(Director, Department of
Water Administration)

D. Kramer
F. Jones

STATE OF IDAHO

IDAHO WATER RESOURCE BOARD
STATEHOUSE
BOISE, IDAHO 83707

C. Stephen Allred, Director

May 4, 1973

RECEIVED
MAY 7 1973
OFFICE OF GOVERNOR

Governor Cecil D. Andrus
State of Idaho
Statehouse
Boise, Idaho 83720

Dear Governor Andrus:

Attached you will find a letter addressed to Senator Church for your use in the hearings regarding placement of American Falls Dam on May 10 and 11.

As you will note from the letter, the Idaho Water Resource Board has expressed its support for replacement at its meetings on November 29, 1972, and April 27, 1973. If we can assist you or your staff or give assistence to the American Falls people, please feel free to contact us.

Sincerely yours,

C. STEPHEN ALLRED
Director

CSA:kh
Attach.

CECIL D. ANDRUS, Governor

BOARD
JOHN F. STREIFF, Chairman, Lewiston
GEORGE L. YOST, Vice Chairman, Emmett
FERRIS M. KUHZ, Member
[illegible]
JOSEPH H. NETTLETON, Murphy
[illegible]
SCOTT W. REED, Coeur d'Alene
EDWIN C. SCHLENKER, Malta
R. KEITH HIGGINSON, Ex-officio Member (Director, Department of Water Administration)

D. Kramer
F. Jones

STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
STATEHOUSE
BOISE, IDAHO 83707

April 27, 1973

The Honorable Frank Church
United States Senator (Idaho)
Room 204, Senate Office Building
Washington, D. C. 20510

Dear Senator Church:

The Idaho Water Resource Board has a vital interest and concern in the American Falls Dam Replacement project and we support the actions of the space holders to have this dam replaced as early as possible. This was expressed in a motion passed by the Board at a Board meeting held on November 29, 1972. A copy of the motion is attached. We are aware of the great economic impact this dam has in Idaho. The reservoir created by this structure serves nearly one million acres of irrigated land which is over 25% of the irrigated land in the state of Idaho. In case of a dam failure, due to deterioration, the damage and economic loss to the state in one year could exceed the cost of the dam. Also the Board has no environmental objections to this project. Since the replacement dam will maintain the reservoir at its present level, the environmental impact remains a status-quo. For these reasons, we urge the Congress to assist and do all they can to expedite the space holders efforts to replace this dam as soon as possible.

We appreciate your efforts in this regard and would like our position recorded in your May 10, 1973, hearing record.

Sincerely yours,

John F. Streiff

JOHN F. STREIFF
Chairman
Idaho Water Resource Board

JFS:kh
Attach.
cc: Congressional Delegation
Governor's Office
Board Members
John Rosholt
Idaho Power Company

CECIL D. ANDRUS, Governor

BOARD
JOHN F. STREET, Chairman, Lewiston
GEORGE L. YOST, Vice Chairman, Emmett
FERRIS M. KUNZ, Montpelier
CHARLES J. MARSHALL, Jerome
JOSEPH H. NETTLETON, Dingley
THOMAS OLMSTEAD, Twin Falls
SCOTT W. REED, Coeur d'Alene
EDWIN C. SCHLENDER, Malta
R. KEITH HIGGINSON, Boise
Ex officio Member
(Director, Department of
Water Administration)

STATE OF IDAHO

IDAHO WATER RESOURCE BOARD
STATEHOUSE
BOISE, IDAHO 83707

DR. ROBERT R. LEE, Director

Meeting No. 7-72, Idaho Water Resource Board, Boise, Idaho November 28 & 29, 1972

It was moved by Mr. Olmstead, and seconded by Mr. Reed, that the Idaho Water Resource Board support the replacement of American Falls Dam at the present elevation as soon as possible.

Motion carried by voice vote, Mr. Marshall, and Mr. Schlender absent. (ATTACHMENT NO. 12).

ROBERT R. LEE
Director

ATTACHMENT NO. 12 TO MINUTES OF MEETING 7-72 OF
IDAHO WATER RESOURCE BOARD, BOISE, IDAHO
NOVEMBER 28 & 29, 1972.

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

Cecil D. Andrus
Governor

R. Keith Higginson
Director

Statehouse - Annex 2
Boise, Idaho 83707
(208) 384-2215

Water Rights Administration
Water Resource Investigations
Dam and Reservoir Safety
Water Well Drilling
Waste Disposal Wells
Stream Channel Protection

May 4, 1973

The Honorable Cecil D. Andrus
Governor, State of Idaho
State Capitol
Boise, ID 83707

Dear Governor:

Because of our responsibility for the safety of all dams and reservoirs in Idaho, we are greatly interested in the present condition and possible early replacement of American Falls Dam.

The technical information gathered by the U.S. Bureau of Reclamation in their study of this dam over the past several years has been furnished this office for our review and information. We concur in the conclusions of the Bureau and its consultants, that the dam is in advanced stages of alkali-aggregate reaction. This has greatly weakened the internal integrity of the structure and gives us cause to believe that a failure of the structure is possible, particularly at high storage levels or during periods when ice is present on the reservoir. We therefore favor any steps that can be taken to replace this structure at an early date.

As you well know, the water stored in this reservoir serves a large portion of Southern Idaho and loss of the storage capacity because of the restriction necessary due to the dam's condition would have a serious impact on the economy of Southern Idaho in a dry water year.

I would be pleased to have you convey my concern to Senator Frank Church and to urge his Committee to take the earliest possible favorable action on Senate Bill Nos. 1528 and 1529, so that the

water users have the alternative of replacing the structure with private funding or through the program of the U.S. Bureau of Reclamation.

Very truly yours,

R. KEITH HIGGINSON
Director

RKH/sc

Idaho Environmental Council

P. O. Box 3371 - University Station
Moscow, Idaho 83843

April 27, 1973

Governor Cecil D. Andrus
Statehouse
Boise, Idaho 83707

American Falls Dam
Replacement

Dear Governor Andrus;

Last December, directors of the Idaho Environmental Council went on record in support of replacing the deteriorating American Falls Dam, provided that:

1. the new dam not be built higher than the existing dam;

2. the dam be in essentially the same location as the existing dam; and

3. the project show a Benefit/Cost Ratio greater than 1.0 when evaluated at a 7% discount rate.

It appears that all of these conditions will be met. In its Executive Summary Report on the replacement proposal, it would have been better if the Bureau of Reclamation had used a discount figure of at least 7% (as recommended by the Water Resource Council), rather than the 5.5% figure they did use. The Bureau has been criticized in the past for using unrealistically low discount rates; it is unfortunate that they repeat the practice here. Although none of our members has done a detailed study of the proposal, it appears that the B/C Ratio would still be favorable at the higher discount rate.

We suggest that precautions be taken to insure that pollution is minimized during the period of construction.

We also support inclusion in the project of enhancement of fish and waterfowl habitat and recreation, as recommended by the Bureau of Sport Fisheries and Wildlife. This would include such measures as construction of goose nesting areas, preservation of the forebay fishery, and providing fisherman and boat access.

The American Falls Dam and Reservoir is an essential and major component of the irrigated agriculture of southern Idaho. Unlike proposals for building new dams on the Snake River, such as the environmentally destructive Lynn Crandall and Swan Falls-Guffey Dams, the replacement of American Falls Dam represents an effort to maintain the status quo, and to our knowledge, will produce little adverse environmental impact.

The American Falls Dam should be replaced as soon as possible. Hopefully the new dam will last longer than the old one.

Sincerely,

Gerald A. Jayne

Gerald A. Jayne
President, IEC
1568 Lola St.
Idaho Falls, Idaho
83401

April 25, 1973
Kenneth I. Cameron, Idaho President
Trout Unlimited
910 N. Curtis Rd.
Boise, Idaho

Honorable Cecil D. Andrus
State House
Boise, Idaho

Dear Governor Andrus,

Unfortunately, Trout Unlimited was not able to send a member to the Burley meeting concerning the replacement of the American Falls Dam. However, we wish to express our support for replacement of the dam at it's existing reservoir level as proposed by the Bureau of Reclamation and endorsed by yourself and the Idaho Congressional Delegation last fall.

We recognize the urgency for this project and hope that it can proceed to aid the economy of the area without having any adverse effects upon the hydrologic characteristics of the river or changes upon the fish and wildlife habitat.

Kind personal regards,

Kenneth I. Cameron, Idaho President
Trout Unlimited

KIC/mg

STATEMENT ON THE PROPOSED REPLACEMENT OF THE EXISTING AMERICAN FALLS DAM

Idaho Department of Parks & Recreation
April 25, 1973

We appreciate the opportunity of expressing our support for replacement, at the earliest possible date, of the existing American Falls Dam.

Our interest, of course, is in the recreational values provided by the reservoir. Considering the large size of the reservoir and its proximity to several Idaho population centers and Inter-State Highway 15, the potential for water-based recreation use is substantial. The potential has never been realized because funds have been lacking to develop the rather elaborate and expensive facilities required for full season utilization on a reservoir with a significant irrigation draw-down.

The recently imposed restriction on capacity of the reservoir has substantially decreased the aesthetic and recreational values of the area. Unsightly stretches of shoreline surround the reservoir the entire year, andaccess to the water for all water activities has been made more difficult. The two existing public boat ramps are in poor condition and will be rendered unusable earlier in the season than previously because of the reduction in capacity of the reservoir.

Our major concern at this time, however, centers on two proposals to, finally, develop outstanding and badly needed recreation facilities on the shores of the reservoir. The proposed projects have been approved for funding from the Land and Water Conservation Fund by the Idaho Park and Recreation Board. The total combined cost of the two projects, which are scheduled for completion by 1976, exceeds $600,000. The water-related portions of the projects are designed so as to permit use nearly

the entire summer season even during low water years when the reservoir is allowed to fill to capacity. The current reservoir capacity restriction will reduce the period of use of these two recreation areas. We are very much in favor of an early replacement of the American Falls Dam in order that maximum use of the existing and proposed recreation facilities can be realized.

We feel that the proposal for replacement of the dam by non-federal agencies has considerable merit, and since it appears to present an opportunity for construction of the dam at an earlier date than other alternatives, we strongly endorse it.



IDAHO POWER COMPANY

BOX 70 • BOISE, IDAHO 83707

April 30, 1973

Mr John Hough
Office of the Governor
Statehouse
Boise, ID 83707

Dear John:

Attached is a copy of Idaho Power Company's proposal to the Spaceholders' Committee of Eight to replace the American Falls dam.

You will notice the Company's proposal for the replacement dam arrangement is set forth on pages 7, 8 and 9. A reregulating dam is not a part or condition of the proposal.

I hope this clears up any misunderstanding.

Sincerely,

Robert A Hogg

RAH:d
Encl

[The Idaho Power Company's proposal mentioned previously will be found on page 104.]

Senator CHURCH. We have received a letter from the Idaho State AFL–CIO signed by Robert W. Macfarlane, the president, giving the full endorsement and support of the labor unions to replacement of the dam. We have also received other correspondence on this subject which will be inserted in the record at this point.

[The correspondence follows:]

IDAHO STATE AFL–CIO,
Boise, Idaho, May 1, 1978.

Senator FRANK CHURCH,
Chairman, Subcommittee on Water and Power Resources, Senate Interior Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR CHURCH: I am Robert Macfarlane, President of the Idaho State AFL–CIO. I represent thousands of members in the State of Idaho.

Organized labor in Idaho strongly supports the immediate replacement of the American Falls dam.

As you are aware, the United States Bureau of Reclamation has declared the dam to be unsafe and has reduced the level of the water in the reservoir. This action by the Bureau reduces the storage water available for irrigation by about 600,000 acre feet. The storage limitations will adversely affect 000,000 acres of irrigated lands in the American Falls-Magic Valley area of southern Idaho that depend upon this water for late season irrigation or for their final water to finish out their crops. This potential loss to the agriculture community alone has been estimated to be over $100,000,000 annually.

The economic impact of such a crop failure and the loss of $100 million of farm income in southern Idaho would have a major widespread effect upon the total economy not only for the year of the crop failure but for the several years to follow.

This loss compounded would also follow into the food processing industry where nearly 15,000 men and women are employed, many of whom are members of the AFL–CIO. It would also affect many workers in satellite industries—fertilizer, irrigation equipment, etc.

The water supply forecasts this year for the upper reaches of the Snake River are slightly more than 70% of normal; snow pack registers less than 70% of normal. While this may sound bleak, this is the situation we are facing.

The reconstruction of the dam and power plant is estimated to cost in the neighborhood of $50,000,000. This would be spent by the American Falls Reservoir District and its agents in a period of two years. It is an accepted rule of thumb that approximately 40% of costs of a project of this nature, or approximately $20 million, would be expended for labor.

This would mean immediate employment for our crafts. The economic impact on the areas and the state would be considerable.

This money would be derived from the sale of bonds and securities and these would be new dollars to the area and would not place a tax burden upon our members.

It is for these and many other reasons that I urge that Congress immediately approve legislation before the Committee giving permission for the American Falls Reservoir District to replace the American Falls dam with private monies and that construction be commenced at the earliest practical date.

Sincerely,

ROBERT W. MACFARLANE,
President.

SHOSHONE ROTARY CLUB,
Shoshone, Idaho, May 3, 1978.

HON. FRANK CHURCH,
Chairman, Subcommittee on Water and Power Resources, Senate Interior and Insular Affairs Committee, Washington, D.C.

HON. FRANK CHURCH: The Shoshone Rotary Club would like to lend our support to you in the presentation and passage of either Senate Bill No. 1528 or Senate Bill No. 1520.

Our club feels that the American Falls Dam is vital to the economy of Southern Idaho and therefore should be replaced at the earliest possible time.

We favor both, but would prefer that SB 1420 be considered most as it would be a less cost and probably be first to be built due to private money used to build.

We would ask that you make every effort to gain passage of these bills. Any other support that we can give you would be given at any time.

Sincerely,

FRANCIS M. BERGIN,
Secretary-Treasurer.

STATE OF IDAHO,
DEPARTMENT OF RECLAMATION,
Shoshone, Idaho, May 2, 1973.

Hon. FRANK CHURCH,
Chairman, Subcommittee on Water and Power Resources, Senate Interior and Insular Affairs Committee, New Senate Office Building, Washington, D.C.

DEAR SENATOR CHURCH: As Watermaster of the Big and Little Wood River for Gooding, Lincoln and Blaine Counties, Idaho, I am deeply concerned on the above Senate Bills regarding the American Falls Project.

As a Water District, and being involved with American Falls Water, and the delivery of such; anything you can do to get these bills passed in the shortest possible time would be to the advantage of all waterusers in this area.

Thanking you in advance for anything that you can do to expedite the proceedings and passing of these bills.

Very truly yours,

REID J. NEWBY, *Watermaster,*
Water District 37 and 37M,
Big and Little Wood Rivers.

ENTERPRISE IRRIGATION DISTRICT,
May 7, 1973.

Hon. FRANK CHURCH,
Chairman, Subcommittee on Water and Power Resources, Senate Interior and Insular Affairs Committee, New Senate Office Building, Washington, D.C.

DEAR SENATOR CHURCH: We thank you for the opportunity of submitting this statement in behalf of Enterprise Irrigation District of Fremont and Madison Counties, Idaho, and request that same be included as a part of the record of the hearing scheduled for May 10, 1973, on the above referenced bills.

There are approximately 8,000 acres of some of the richest agricultural land in the State of Idaho located within the Enterprise Irrigation District, in the Counties of Madison and Fremont. Winthout water these lands would be dry farms only. With the water over half of the acreage within the district is used for the production of potatoes, and some sugar beets, together with wheat, barley, oats and alfalfa, in rotation. Consequently, the district contributes substantially to the food and fiber of the state and nation, and provides substantial tax base to the said two counties, employment to many people, and a way of life to many farm families.

The district has 8,510 inches of natural flow rights and some high water rights; however, historically it has proven that these natural flow rights are vastly inadequate to furnish the necessary water to complete the crops on the lands in the district. For instance, in 1944, the natural flow rights were cut off on May 30, and the records indicate that in many years the natural flow rights were cut off at such an early date that had the district not had the storage rights the potatoes and sugar beets particularly and all of the crops to some extent would have failed to mature.

In addition to 5,833 acre feet of storage in Jackson Lake and 10,323 acre feet of storage in Fremont-Madison Irrigation District, the Enterprise Irrigation District has 10,188 acre feet of storage in the American Falls Reservoir. Historically it has proven an absolute necessity and beneficial to the district that they have the storage in the American Falls Reservoir, and by means of exchange, have used natural flow rights of downstream users in exchange for the district's storage rights in the American Falls Reservoir.

The economy of Southern Idaho is based largely upon agriculture and agriculture is absolutely dependent upon water. The American Falls Reservoir is probably the single most important storage facility for impounding water to mature crops after natural flow rights on the rivers have been used of any

facility in the State of Idaho. It is certainly essential that this reservoir be preserved and protected, and it is in the public interest that Congress do everything in its power to take all necessary steps to insure the continuation of this important reclamation project in the State of Idaho. The Enterprise Irrigation District stands ready to lend its assistance in every way possible, to furnish further evidence and testimony if desired.

Yours very truly,

DOUGLAS BEAN, *Chairman.*

CITIZENS ENVIRONMENTAL COUNCIL,
Pocatello, Idaho, May 2, 1973.

Senator FRANK CHURCH,
Chairman, Senate Interior Subcommittee on Water and Power, Senate Office Building, Washington, D.C.

DEAR SENATOR CHURCH: I noted with considerable interest an announcement in our local paper to the effect that you were going to hold hearings on the question of the replacement of the American Falls dam at American Falls, Idaho.

The Pocatello Citizens Environmental Council is very interested in this matter and we would like to have the following statement entered into the record of the hearings. We also hope that you will personally do everything possible to help further the principles embodied in this statement:

"The Pocatello Citizens Environmental Council does not opposed in principle the rebuilding of the American Falls Reservoir dam located on the Snake River near American Falls, Idaho provided that certain conditions are met. These are:

(a) The new dam should be no higher than the old dam so that additional land in the 'Fort Hall bottoms' will NOT be flooded.

(b) Provisions should be made for recreational use of the water in the reservoir.

The first point has already received considerable discussion and as there seems to be general acceptance of it, it needs for further comment here.

The second point may, however, be somewhat more novel and perhaps needs additional explanation. It is our opinion that it is ridiculous for a large reservoir, which is located less than 25 miles from the second largest city in the state of Idaho, to be drained so low that it is oftentimes difficult to use it effectively for recreational purposes after the last half of July. More specifically, on frequent occasions, the water level has dropped so low by the last half of July that it is impossible to launch motor and/or sail boats in Seagull Bay and in Aberdeen Bay, two of the most popular launching ramps on the American Falls Reservoir and the ONLY two launching ramps that are in protected locations (from the wind and waves). It is our opinion that provisions should be made to alleviate this situation.

We have no objection to Idaho Power Company rebuilding its power plant below the American Falls dam and operating this plant provided that it is constructed in a prudent manner with reasonable environmental safeguards and also provided that the operation of said power plant is compatible with principles (a) and (b) as stated above."

Very truly yours,

RUSS MAGER, *Chairman.*

WOOD RIVER RESOURCE AREA
COUNCIL OF GOVERNMENTS,
Gooding, Idaho, May 4, 1973.

Senator FRANK CHURCH,
Senate Office Building,
Washington D.C.

DEAR FRANK: The expression and statement issued to you concerning the earliest replacement of the American Falls Dam brings me to the following comments.

The Fish Creek Dam, #37-XX06, Carey Valley Reservoir Company, located in Blaine County, 9 miles north of Carey, Idaho, has emergency needs also.

The Idaho Department of Water Administration in the August, 1971 "Inventory of Dams in the State of Idaho", lists the Fish Creek Dam to be unsatisfactory.

The management and operations of the Fish Creek Dam by the Carey Valley Reservoir Company has not been to the best interests of everyone concerned. The blocking of the small inadequate spillway with flash boards, the allowing of the dam to overtop to undermine buttresses and the lack of protection for the west end of the dam to protect from erosion has been allowed to occur.

However, this management and operation point is not what I will discuss.

Under present conditions, as far as I am able to discern, there is no governmental program opportunity the Council may resort to secure an early repiacement of the Fish Creek Dam. The past federal opportunities requiring favorable cost-benefit ratios and ownership acreage totals are not realistic under the present farming economics.

The Corps of Engineers, under date of November 14, 1972 to Mr. Lee Eldridge, Carey, Idaho, made a preliminary analysis of the feasibility of raising Fish Creek Dam to a reservoir capacity of 30,000 acre-feet, and showed a benefit-to-cost ratio of .02 to 1.

The Corps also added in the Eldridge letter that construction of an additional reservoir downstream does not appear economically feasible because of the lack of additional water supply and because it would duplicate existing facilities.

A possibility may be available to the Council through use of the "National Program for Inspection of Dams", HR 15951, 92 Congress, 2nd session.

This act allows the Corps of Engineers to inspect the dams for the purpose of protecting human life and property. The Carey Valley Reservoir Company built the dam under the opportunities of the Carey Act.

Perhaps, if such an Act as HR 15951 could be funded to make such necessary and emergency repairs as reportable to the Governors, the Corps could make the repairs necessary for the protection of the Fish Creek Dam. The funding may even be designated to the states, as revenue funds, for constructing the safety purposes on the dams.

May I hear from you on the emergency situation of the Fish Creek Dam?

Sincerely,

DON G. FREDERICKSEN,
Chairman.

WOOD RIVER RESOURCE AREA
COUNCIL OF GOVERNMENTS,
Gooding, Idaho, May 4, 1973.

Senator FRANK CHURCH,
Senate Office Building,
Washington D.C.

DEAR FRANK: This letter is a statement concerning the replacement of the American Falls Dam from the Wood River Resource Area Council of Governments.

The Council agrees that there should be the earliest replacement of the American Falls Dam as is physically and politically possible. The economic base of all of Southern Idaho rests upon the continued and adequate supply of irrigation water.

Judging from past performances and an unfavorable climate for dam building appropriations of the Congress, SB 1529 would bring about quickest action to alleviate our emergency needs. Therefore, the Council supports the passage of SB 1529 to provide private financing for the replacement.

Sincerely,

DON G. FREDERICKSEN,
Chairman.

IDAHO BANK & TRUST CO.,
Burley, Idaho, April 30, 1973.

Hon. FRANK CHURCH,
Chairman, Subcommittee on Water and Power Resources, Senate Interior and Insular Affairs Committee, New Senate Office Building, Washington, D.C.

DEAR SENATOR CHURCH: The Idaho Bank and Trust Company, with its fourteen offices in Idaho, have become very interested in the American Falls Dam Project.

I would like to make a statement from the Burley Office of Idaho Bank and Trust Company. Any loss of storage capacity at the American Falls Dam following a dry water year would seriously affect the economy of Burley and Cassia County. There are 48,000 cropland acres in Cassia County alone that depend upon irrigation from the control of American Falls Dam. Without water the immediate loss would amount to many hundreds of dollars per acre alone to the grower. In addition to this, the effect upon the purchaser of farm products and the retailer dealing in these same agricultural commodities would more than triple the present dollar per acre loss. The economy loss would seriously affect our area.

It is of the utmost importance to our agricultural dependent state that the American Falls Dam Project be restored before any further immediate loss of capacity due to deterioration of the dam has to be considered.

This statement respectfully submitted by:

BOB HILLIARD,
Vice President and Manager, Burley Branch.

DIETRICH, IDAHO, *May 4, 1973.*

HON. FRANK CHURCH,
Chairman, Subcommittee on Water and Power Resources, Senate Interior and Insular Affairs Committee, New Senate Office Building, Washington, D.C.

DEAR SIR: Statement of Dietrich Grange No. 121 Dietrich, Idaho, submitted to the Sub Committee on Water and Power Resources of Senate Interior and Insular Affairs Committee on Senate Bills 1528 and 1529.

We are representative of a large percentage of land holders and water users who support Bills 1528 and 1529. The economy of this locality depends on water from American Falls Dam.

We urge you to support the replacement of American Falls Dam at the earliest possible date.

Yours truly,

MERVYN RIDINGER
Master, Dietrich Grange No. 121.

GOODING COUNTY BOARD OF COUNTY COMMISSIONERS,
Gooding, Idaho, May 7, 1973.

HON. FRANK CHURCH,
Chairman, Subcommittee on Water and Power Resources, Senate Interior and Insular Affairs Committee, New Senate Office Building, Washington, D.C.

DEAR SENATOR CHURCH: The Board of County Commissioners of Gooding County, wish to endorse Senate bill 1529 in favor of Idaho Power construction of the American Falls Dam.

Sincerely

BEN GLAUNER, *Chairman.*
JOHN LEMOYNE.
NELSON KING.

PANGUITCH, UTAH, *May 7, 1973.*

Senator FRANK CHURCH,
Senate Office Building,
Washington, D.C.

DEAR SENATOR CHURCH: In talking with Senator Frank Moss of Utah this past weekend I was informed that your subcommittee of the Senate Interior Committee will soon be holding hearings on the Rainbow Bridge controversy. I would like to request that your office inform me of the date, time, and place of these hearings, even if they will only be held in Washington. I have a viewpoint on this subject I feel that you and your fellow senators should hear, and I want very much to participate in these hearings.

Sincerely yours,

HANK HASSELL.

NORTH SIDE BOARD OF REALTORS,
Jerome, Idaho, May 5, 1973.

HON. FRANK CHURCH,
Chairman, Subcommittee on Water and Power Resources, Senate Interior and Insular Affairs Committee, New Senate Office Building, Washington, D.C.

HON. FRANK CHURCH: The North Side Board of Realtors consisting of 30 members would like to go on record as being in favor of getting the American Falls Dam replaced as soon as possible.

We feel as a whole, the private bill S. B. 1529 would be the better solution to the problem now facing the farmers on the North Side.

Sincerely,

CARL BUTLER, *President.*

SHOSHONE CHAMBER OF COMMERCE,
Shoshone, Idaho, May 7, 1973.

HON. FRANK CHURCH,
Chairman, Subcommittee on Water and Power Resources, Senate Interior and Insular Affairs Committee, New Senate Office Building, Washington, D.C.

DEAR SENATOR CHURCH: The members of the Shoshone Chamber of Commerce wish to go on record as being in favor of the above bills.

This whole area depend greatly upon American Falls Water for the economy of our entire county and the counties surrounding us. The one-third cut in the water is certainly going to curtail much of the agriculture production for the years that it might take to get the new dam built.

Please do everything possible to get these bills passed and expedited at the earliest date. Thank you.

Very truly yours,

REID J. NEWBY, *President.*

WOOD RIVER CENTER GRANGE No. 87,
Shoshone, Idaho, May 7, 1973.

HON. FRANK CHURCH,
Chairman, Subcommittee on Water and Power Resources, Senate Interior and Insular Affairs Committee, New Senate Office Building, Washington, D.C.

DEAR SENATOR CHURCH: The members of Wood River Center Grange all live within the confines of American Falls Reservoir District #2. All are dependent upon agriculture for their livelihood.

When the storage capacity of American Falls reservoir was reduced by one-third, it necessarily means a reduction in income to each one of these people.

Very recently storms have caused much damage in the mid-west, up to 50% loss. It has been suggested that these areas be classified as disaster areas and aid provided. The loss of one-third of our irrigation water for the next several years is no less a disaster to this area.

The President under his phase III recently asked agriculture to increase production. This is a rather difficult task for those faced with a one-third reduction in their water supply.

The lessened income, caused by this lack of water, will also mean a loss to the Department of Internal Revenue.

The members of this Grange urgently request that legislation be passed which will result is replacement of this dam at the earliest point and time, and at the least cost to the water user and the tax payer.

Respectfully submitted,

DONALD SANDY, *Master.*

LINCOLN BLAINE POMONA GRANGE No. 8,
May 5, 1973.

HON. FRANK CHURCH,
Chairman, Subcommittee on Water and Power Resources, Senate Interior and Insular Affairs Committee, New Senate Office Building, Washington, D.C.

DEAR SIR: The Lincoln Blaine Pomona Grange #8 with a membership of over two hundred members, land owners and water users, stand on record as supporting Senate Bills 1528 & 1529.

The economic structure of this area is basically agriculture. A loss or shortage of our vital water could mean disaster.

We strongly urge the replacement of the American Falls Dam at the earliest possible date.

Sincerely,

CLARINDA BARNEY, *Secretary.*

Senator CHURCH. Now, Congressman Hansen, in whose district this dam is located, we know how much attention you have given to this matter and we would be pleased at this time to hear your statement.

STATEMENT OF HON. ORVAL HANSEN, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mr. HANSEN. Thank you very much, Mr. Chairman.

Let me, first of all, express my sincere appreciation for the prompt action that you and Senator McClure have given by arranging for these hearings at a rather early date in the current legislative session.

I might say you have set a rather high standard for a prompt response that I hope Congressman Symms and I can match when this matter comes before the appropriate subcommittee in the House of Representatives.

As you are aware, Congressman Symms and I have cosponsored two bills which are identical bills to those in the Senate.

I will keep my statement short. You will want to devote as much time as possible to witnesses who have traveled from Idaho and representatives of the Department of the Interior who are well informed on all aspects of the legislation. They include citizens who are familiar with the impact on the local economy on the failure to take action on replacement of the dam and of course representatives of the Bureau of Reclamation ably led by Ed Sullivan.

The entire delegation is here at the leadership of the Governor whose effort and leadership in this area are well known and greatly appreciated.

The proposal to replace the dam, as you know, is presented in the alternative. One bill would authorize the construction of the new dam as a Federal reclamation project. The other, which is the product of the cooperative efforts of the water users, the Idaho Power Co., and others, would authorize the replacement dam to be built without Federal assistance.

Without discussing the merits of each of these proposals, I would also join in the endorsement for the Governor for the plan which would involve private construction, partly because it does not involve Federal funds and partly because it will help us get the job done a lot more quickly.

My main purpose today, however, is not to discuss the merits of the two bills as much as it is to emphasize the need for prompt action. The matter is urgent for many reasons which will be fully explained to you by the witnesses who will testify this morning. I will mention three of the most important considerations: First, the present dam is unsafe due to steady deterioration as a result of chemical action in the concrete since the dam was built in 1927.

In order to respond to the danger that results from the weakened condition of the dam, of course, it has been necessary to reduce the storage capacity of the dam.

This has a very severe potential impact on the agricultural economy of the State of Idaho. Some 900,000 acres are dependent on water that is stored in the reservoir behind the dam and we can predict, rather safely, I think, on the basis of past experience that if action is not taken fairly soon, maybe 1 or 2 water-short years could have a severe impact on agricultural production.

This suggests also, Mr. Chairman, that many more than those in the State of Idaho have a stake in the prompt replacement of this dam. We have seen in recent weeks a great deal of production lost this year because of flooding conditions.

We have seen crops delayed and in many cases we do not have a large surplus of many food commodities in any event. So we need all of the agricultural capacity that we have to provide for the food requirements of the Nation.

So the Nation also has a stake in maintaining the productivity of the agricultural area that this dam reservoir serves.

I might add, relevant to the subject matter of the hearing earlier this morning, we can use the additional energy that has been produced by the reconstructed dam. So the country in that respect has an interest in the subject matter of these hearings.

The third to which reference has been made is one of the traffic across the dam.

Now, we were there, as you recall, at the invitation of Governor Andrus some months ago and had the experience of crossing the dam in a bus. I am not sure where Joe Allen arranged for these trucks to come across the dam just at that time that our bus was crossing, but I will say that was an unforgetable experience and did illustrate very dramatically to me the inadequacy of this dam now and the roadway to meet the growing requirements for traffic. This is absolutely essential to the agricultural industry, to the processing industry in that area.

You have here some very articulate and well-informed members of the bridge committee who will make that case, I think, very convincingly.

Senator CHURCH. I think Congressman, you wouldn't have fit between the space, between the bus and the truck. I don't mean you particularly.

[Laughter.]

Mr. HANSEN. Let me just conclude with this statement as to how much I appreciate the prompt action taken by your subcommittee and I promise in pledging all that we can do as this bill moves to the House to get it enacted quickly so there will be no delay in beginning construction at the earliest possible date.

Thank you.

Senator CHURCH. Thank you Congressman.

I glanced at your prepared statement, your extemporaneous remarks are so superior to your prepared statement. Would you like to rest with those or do you want the written statement also?

[Laughter.]

[The prepared statement of Congressman Hansen follows:]

STATEMENT OF HON. ORVAL HANSEN, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mr. Chairman and Members of the Subcommittee. I appreciate this opportunity to appear this morning in support of legislation to authorize the replacement of the dam at American Falls.

As you know, my colleague from Idaho, Congressman Symms, and I have cosponsored in the House two bills, H.R. 6781 and H.R. 6782, which are identical to S. 1528 and S. 1529, the two bills introduced in the Senate by Senators Church and McClure.

I will keep my statement short. You will want to devote as much time as possible to witnesses who have traveled from Idaho and representatives of the Department of the Interior who are well informed on all aspects of the legislation.

The proposal to replace the dam, as you know, is presented in the alternative. One bill would authorize the construction of the new dam as a federal reclamation project. The other, which is the product of the cooperative efforts of the water users, the Idaho Power Company, and other, would authorize the replacement dam to be built without federal assistance.

I prefer the second alternative because it would not require the outlay of federal funds and would get the job done in a much shorter time.

My main purpose today, however, is not to discuss the merits of the two bills as much as it is to emphasize the need for prompt action. The matter is urgent for many reasons which will be fully explained to you by the witnesses who will testify this morning. I will mention three of the most important considerations:

First, the present dam is unsafe due to steady deterioration as a result of chemical action in the concrete since the dam was built in 1927.

Second, the weakened condition of the dam has resulted in a cut in storage to 65 percent of capacity. Irrigation water is the lifeblood of Idaho agriculture. The reduced storage in the reservoir during water-short years, which occur periodically in Idaho, could cause severe injury to the agricultural economy in Southern Idaho. About 900,000 acres of land are directly dependent on water stored in the American Falls reservoir.

The third problem involves the safety of the present highway crossing the dam. The dangerous condition of the present narrow roadway has resulted in one-way traffic being imposed. Modifications may permit future restoration of two-way traffic. But safety considerations as well as the needs of the traveling public, especially farmers and businessmen dependent on an adequate highway crossing, require early reconstruction of the dam with a good, safe roadway.

It is encouraging to see the prompt attention being given to this legislation by this Subcommittee. I am hopeful that these efforts will result in affirmative Senate action at an early date. I will do all I can to expedite favorable House action so that construction can begin at the earliest possible date.

Senator CHURCH. Congressman Symms is here and also joined in sponsorship of both of these bills.

If there are no questions for Congressman Hansen, we would ask now to hear from Congressman Symms.

Mr. SYMMS. Thank you, Mr. Chairman and I am privileged to be here with my colleague, Orval Hansen, this morning and I would like to join myself with his testimony this morning and associate myself with his remarks at this point in the record.

I would like to commend our Governor for the leadership he provided to bring this to a focal point before I go on with my remarks and I remember on a very cold December day, the day before I left with my family to come to Washington, that we visited the dam and walked underneath the dam and had the Chamber of Commerce from American Falls there and I think I appreciate the leadership that the Governor provided in this to bring attention to the problem that we have and out of this I think has come a great deal of progress

and I commend you for bringing this to the Interior Committee at such an early date also.

I think most of my testimony has been covered or will be covered, and we do have many people here from Idaho who have more expert knowledge in this particular subject than I, but I would like to pledge my support, with Congressman Hansen, to bring a speedy approval of this to the House if possible when the proper time comes and I would say it is a self-help project, as the Governor very well pointed out.

We can take care of the problem and I wholeheartedly endorse it and if there are no objections, I would like to submit my prepared testimony at this time.

Senator CHURCH. Very well, your prepared testimony will appear in the record as though read.

STATEMENT OF HON. STEVEN D. SYMMS, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mr. SYMMS. Mr. Chairman, members of the committee, colleagues, ladies and gentlemen:

I appreciate this opportunity to appear before your committee this morning. Although the American Falls Dam does not lie within my congressional district, it is a matter so important to the whole State that I feel the necessity of formally recording my support to your committee. As you are well aware, Congressman Hansen and I have introduced H.R. 6781 and H.R. 6782 in the House of Representatives, which bills are identical to those which your committee considers today.

The present restriction in the storage of water in the American Falls Reservoir might have serious economic effects in irrigated valleys of southern Idaho. If the condition of the dam continues to worsen, the eventual effect could well be an agriculture disaster. Discounting the direct effect on irrigated agriculture, there is still another factor to be considered—the safety factor. We anticipate that the Bureau of Reclamation will continue to do what is necessary for the protection of lives and property in this regard.

I would like to commend the American Falls Spaceholders for their prompt action to date in endorsing and proposing a workable solution to the immediate crisis. The Spaceholders are to be commended for proposing the alternative of S.B. 1529, wherein they employ "self-help" in replacing this key facility on the Snake River.

The proposal advanced by the Spaceholders is in my opinion refreshing. As I understand the proposal, the replacement dam would not increase the size of the reservoir. The dam, after completion, would be owned by the Government and in all respects treated as a "Government dam". The obligations of the Spaceholders in the reservoir would remain the same and the Bureau of Reclamation would continue to maintain and operate the dam in conjunction with the Upper-Snake River project. Each Spaceholder in the reservoir will pay his proportionate share of the final construction cost. Under either engineering plan for replacement of the dam, there appears to be minimal environmental effect. I endorse this proposal and encourage the early consideration of S.B. 1529 by this committee.

The standard Bureau of Reclamation replacement would be authorized by Senate bill 1528. If an event were to occur, whereby S.B. 1528 would be the only course of action to pursue, I would then consider its endorsement. It in all respects appears to be good legislation and in accord with traditional Bureau of Reclamation construction purpose.

In closing, I would like to again commend the Spaceholders on their efforts to date, and to encourage their continued pursuit of the earliest possible replacement at American Falls. I pledge my support in the House to expedite the legislation in every possible way.

Senator McCLURE. Mr. Chairman, I just want to welcome my colleagues from the House here. It is my pleasure to have served with Orval in the House and it is my pleasure to see Steve succeed me in that office.

Orval always refers to that fact that it made him the senior Congressman from Idaho and I am sure Steve recognizes it. I am sure, too, Steve, the fact that you run an irrigated farming operation in Idaho, although your water comes from the Boise River rather than the Snake, gives you an understanding of the absolnte necessity for the maintenance of water supply.

Even an orchard can't produce too much without water.

Mr. SYMMS. That is very true and the one-third loss from storage could be absolutely devastating in terms of dollars in losses because our country is such a barren desert. It would be absolutely devastating to get caught short on the short water here with that limited supply.

It could be millions of dollars lost in potatoes. I have grown quite a few potatoes myself and I know the requirement for water is very high and critical and you just can't run out 2 or 3 weeks prior to the finishing of the crops.

This is a large potato district we are talking about. It would be devastating to the economy of the Nation to allow this to slip away from us.

Senator McCLURE. I am sure both of you know if we are successful in getting legislation acted on quickly here as we both hope we can. Senator Church and I will be over pounding on your doors to stimulate you to even further action there.

Of course, we will give you all the support we can in any way we can and we appreciate your support here.

Mr. SYMMS. Thank you for the opportunity of testifying.

Senator CHURCH. Gentlemen, you are both cordially invited to sit with us if you like.

Now, we have some logistical facts to face up to. The Honorable Jack O. Horton, Assistant Secretary of the Interior, is the next witness. I think we have to have Mr. Horton testify at this time so we can place on the record at the outset the position of the administration.

Then I will call on those witnesses who are in the Governor's party first so we can accommodate them in meeting their plane this afternoon.

Hopefully we can do that. So our next witness is the Honorable Jack Horton, Assistant Secretary of the Interior.

Mr. Secretary, we appreciate your being here with us this morning.

STATEMENT OF JACK O. HORTON, ASSISTANT SECRETARY OF THE INTERIOR, LAND AND WATER RESOURCES; ACCOMPANIED BY ED SULLIVAN, REGIONAL DIRECTOR, BUREAU OF RECLAMATION

Mr. HORTON. Thank you. It is a privilege for me to appear for the first time before the subcommittee in the company of Mr. Ed Sullivan, regional director of the Pacific Northwest Region of the Bureau of Reclamation.

We, together, are pleased to appear today in support of legislation to authorize the Secretary of the Interior to enter into agreements with non-Federal agencies for the replacement of the existing American Falls Dam.

The Department's May 9, 1973, letter to the chairman of the committee presents our views, in which the Office of Management and Budget concurs, on the proposed legislation and recommends enactment of S. 1529 with certain amendments.

American Falls Dam on the Snake River in southeastern Idaho west of Pocatello was completed by the Bureau of Reclamation in 1927. The reservoir with a capacity of 1.7 million acre-feet contributes almost half of the useable storage on the main stem of the upper Snake River. Approximately 900,000 acres of land receive irrigation water from the reservoir.

American Falls Dam no longer meets Bureau of Reclamation safety standards. The dam has deteriorated structurally to the point where it must be replaced or extensively rehabilitated to assure continued operation and to permit storage to full reservoir capacity.

The deterioration is due to a chemical reaction between alkalis in the cement and the aggregate. This process, known as alkali-aggregate reaction, caused disintegration and cracking in the dam's concrete resulting in a significant loss of strength and durability. The cause of this type of reaction was unknown at the time the dam was built in 1927.

It has been necessary to carefully regulate storage in the reservoir 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 4,346.5 feet in order to prevent ice pressures on the upper portion of the dam.

Maximum storage is now restricted 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 capacity.

If the dam is not replaced in the near future, additional operating restrictions probably will be required.

In dry years, such restrictions would cause severe water shortages in much of the American Falls Reservoir service area. An estimated one-half million acres would be returned to a dry or very water-short status causing financial failure for many farm operators and severe economic hardship for others including those dependent upon a thriving agricultural economy.

Incidental to the deterioration of the dam is the deterioration of the existing two-lane State highway 39 on American Falls Dam. The roadway is far below current safety standards and is structurally inadequate to carry present-day loads.

Because of width restrictions numerous accidents have occurred on the bridge over the past several years. These conditions have resulted in the application of stringent traffic control procedures by the Idaho Department of Highways. The roadway should be replaced in connection with replacement of the dam.

Thirty-five water user organizations now subscribe to the 1,700,000 acre-feet of space in the reservoir under contracts with the United States. Thirty-four of these subscribers are irrigation water users who hold 1,655,000 acre-feet of space. The Idaho Power Co., under a contract executed in 1923, has been utilizing 45,000 acre-feet of space for use in its power plants located downstream from American Falls Dam.

On September 7, 1966, Congress passed Public Law 89-561 authorizing the Bureau to conduct a feasibility investigation on the replacement of the dam. The results of that study have been culminated in a special report entitled "American Falls Dam Replacement, Upper Snake River Project, Idaho-Wyoming," December 1972. That report discusses a plan for replacing the dam, developing related multipurpose features and restoring the reservoir to its original capacity.

Recently the reservoir spaceholders and the Idaho Power Co. proposed a plan to replace the existing American Falls Dam, largely through non-Federal financing. These groups have not prepared a formal report of their plan but we understand it includes the following general approach:

If S. 1529 is enacted, the spaceholders would obtain by legislation the right to replace the dam and to enter into a contract for the lease of falling water for power for a 50-year period, with the right for renewal.

The spaceholders would obtain financing for the new dam by the sale of bonds and would assist Idaho Power Co. in obtaining a Federal Power Commission license for construction of a powerplant at the dam.

The Idaho Power Co., would contribute not to exceed $19 million toward the cost of the dam. Except for the costs, approximately 2.8 percent allocated to reservoir storage to serve the Fort Hall Indian tribe, the remaining spaceholders would pay any additional cost over the $19 million. The dam and the powerplant would be constructed by the Idaho Power Co.

If the existing dam is replaced, the reservoir would continue to be operated in coordination with the other reservoirs of the upper Snake River system.

Before closing I would like to call to the committee's attention an apparent typographical error in S. 1529, on page 3. The first word in line 12 would be "defray," and "defer."

Also, I note, Mr. Chairman, that the last phrase of section 7 regarding authority for appropriations of operation and maintenance funds for American Falls replacement dam was inadvertently dropped in our proposed revision of that section.

In view of the foregoing discussion, I recommend that with the amendments suggested in the Department report, that the committee report S. 1529 favorably to the Senate.

That concludes our formal remarks, Mr. Chairman.

Mr. Sullivan and I will be happy to answer questions you might have.

Senator CHURCH. Thank you, Mr. Secretary.

The chairman would like to recognize that Mr. Ed Sullivan, the regional director of the Bureau of Reclamation is with you at the table and we want to welcome you this morning. I am sure your presence here will make it possible for answers to be supplied to any technical questions we may have.

Mr. Secretary, I take it from your testimony that the administration has concluded that this committee should recommend S. 1529 favorably to the Senate and that bill would have the support of the administration?

Mr. HORTON. With the amendments I mentioned, yes, Mr. Chairman.

Senator CHURCH. One of the questions that we faced when we first considered this alternative plan was the question of the difficulty and delay that might be entailed in securing a license from the Federal Power Commission.

I am sure your department examined that question and I would like for you to supply for the record at this point your conclusion concerning the requirement for obtaining a license from the Federal Power Commission.

Mr. HORTON. I am unable at this time to provide the exact estimate of the time required but we will provide all the assistance in the Department for obtaining the necessary permits from FPC.

Senator CHURCH. Is it the conclusion of the Interior Department that a license should be required for the constuction of the dam itself, apart from the power facility?

Mr. HORTON. No, sir, we believe that no FPC permit is required for the dam but one would be required for the powerplant.

Senator CHURCH. Then it would be possible for the constuction of the replacement dam itself to begin while the proceedings were still pending before the Commission on securing the license for the power facility; is that correct?

Mr. HORTON. It is our general opinion that would be a definite possibility.

Senator CHURCH. Now, do you support the Federal share of fish and wildlife and recreation costs that would be authorized by S. 1529, those being nonreimbursable costs?

Mr. HORTON. It is my understanding that half of the costs of the fish and wildlife facilities would be borne by local agencies. I will ask Mr. Sullivan to comment on that.

Mr. SULLIVAN. That is essentially correct under the proposed legislation because it calls for the funds to be made available under the Federal Water Project Recreation Act, which requires a non-Federal public body to repay not less than half the separable costs allocated to those purposes and all costs of the operation and maintenance.

Senator CHURCH. That arrangement has the support of the administration?

Mr. HORTON. Yes, sir. We support that arrangement.

Senator CHURCH. You also have recommended, in the way of a series of amendments that you are proposing to this bill, that the

language in the bill refers to the replacement dam as a feature of the Minidoka project rather than the upper Snake River project. You prefer the term Minidoka to the upper Snake River project.

I have no objection to that but I would like to know why that suggestion was made?

Mr. SULLIVAN. The suggestion was made because the present dam is part of the Minidoka project and it would simplify the relationship to continue it that way. I don't believe it is of real importance either way.

Senator HANSEN. Do I recall correctly that the Jackson Lake reservoir dam is referred to officially as part of the Minidoka project, too?

Mr. HORTON. That is correct, Senator Hansen.

Senator CHURCH. Well, there is no point in belaboring that. Apparently the Department has used both terminologies. For instance this is the American Falls Dam replacement study report issued by the Department itself. On the cover the term upper Snake River Basin project is used. But if you prefer Minidoka, that doesn't occasion any difficulty for us.

Mr. HORTON. I feel in attempting to be consistent we have been inconsistently so. If further elaboration is required we will provide that.

Senator CHURCH. The department has recommended maintaining the existing reservoir level which also is requested by the Indians. I don't think there is any disagreement on that score and I think the provision can be included by specific amendment.

I personally would find that wholly acceptable.

Mr. HORTON. We have an amendment to suggest to that effect, sir.

Senator CHURCH. You are also recommending that provisions for erosion control on the reservoir be included in the bill. I think we should have some testimony on that because erosion control is an existing problem. It won't be created as a result of the construction of the replacement dam and as far as I know it will not even be aggravated.

That is an existing problem that we have lived with since the original dam was constructed and we are simply replacing the original dam at the same elevation. I don't see how that problem would be affected one way or another. If you think the bill should be amended in this regard, I think we should have further explanation.

Mr. HORTON. We would be happy to provide that for the record.

Senator CHURCH. Can Mr. Sullivan give us an explanation now?

Mr. SULLIVAN. The suggestion was made in the departmental report on that was primarily to reinforce the need for consideration of this problem and to recognize that the Indian tribe has expressed special concern over erosion and this would reinforce the need for continuing the work. But as you stated, it is an existing problem and it is now being handled with normal activities. Sometimes the funds get a little limited for that, but the responsibility is with the Bureau of Reclamation and the spaceholders to compensate for erosion losses.

Senator CHURCH. What I am getting at is the possibility that inserting language of this kind in the bill might give rise to an

argument, at least, that this is a burden upon the new construction.

In other words, the alternative method of financing this new dam is to go into the private market for the money. I wouldn't want any change of language in the bill that might give rise to the fear that the erosion control obligation, especially a new obligation, would attach to this. This would assume a financing cost for continuing measures to protect against erosion; you see what I mean?

Mr. SULLIVAN. Yes; I see what you mean. The obligation to pay for the cost of erosion will go to the spaceholders in any event. I think you will find the language broad enough so it can be handled as either a construction item or an O. & E. item. It enlarges the freedom of action.

Senator CHURCH. You wouldn't see it as a possible impediment for securing the necessary capital for replacement of the dam?

Mr. SULLIVAN. I wouldn't see that.

Senator MCCLURE. Would you yield to that point?

Senator CHURCH. Yes.

Senator MCCLURE. I notice in the department report the suggested language is changed for purposes of erosion control. My recollection of the arrangement, the operating plan, and the policy of the Bureau up until now has been that it is more economically efficient to pay for the land which falls into the reservoir than it is to provide the erosion control which would prevent that.

The language you have suggested with respect to the Indian lands provides a different standard then the farmers on the shore in that it requires erosion control and payment for land only if erosion control cannot be effected, which I would understand to be a different standard than applied to the non-Indian owners around the reservoir; is that correct?

Mr. SULLIVAN. This language was not intended, although I realize you might read it that way, to apply only to the Indian lands. The language suggested in the departmental report does not refer specifically to the Indian lands, it is only the preceding paragraph that does.

If I may make a comment, I don't believe that is entirely correct to assume that acquisition of land is always the best way to take care of the erosion problem. We attempt a balance between erosion control and land acquisition and in places where erosion control can be accomplished, we do it. In other places it is necessary to acquire land.

Senator MCCLURE. If I might just further say, I think we have some statements on the record from the Bureau of Reclamation in the past which state that they found it more economically efficient and cheaper to pay for the land than it was to provide the necessary erosion control. Therefore, the policy was to allow the erosion to continue in those instances and pay for the land. I would understand this language here would change that policy and would require as a policy that erosion control be effected without regard to the cost if it were possible and there would be payment for the land only in the event erosion control is not possible. Is that not a change.

Mr. HORTON. I am not sure whether earlier appearances by the Bureau have indicated that as a statement of policy or whether they were referring to a specific reservoir or reclamation project.

It would seem it would be pertinent to ask what the land prices might be in any particular area. It could be, as Mr. Sullivan indicated, that we would be seeking a balance between erosion control funding and actual acquisition of land.

Senator McCLURE. The language on page 4 of the report doesn't say that. It says you will accomplish erosion control if you can; if you can't, you will pay for the land. That is not a balance, that is a mandate that the erosion be effected if possible. As I understand your statement, you don't intend it to be that way and I would assume, therefore, you would accept any clarification of the language which would show that it is your intention to strike it out.

Mr. HORTON. We would be happy to provide that clarification. Seeking a balance between erosion control funding and the cost of land acquisition is strictly a matter of economics. If it is determined that erosion control can be effectively accomplished by some means more economically than by the acquisition of land then this would be the appropriate course of action. If not then the purchase of land would be necessary.

Senator CHURCH. Yes; we have received letters from the Department in the past that raised some question.

Very well.

The Department has also recommended the deletion of the language granting authority to renegotiate existing repayment contracts as being unnecessary. I don't agree with that. Is it discretionary anyway? I don't see any reason to delete it. Is it a matter of major importance to the administration?

Mr. SULLIVAN. Are you referring particularly to the recommendation we made that there not be a provision in the bill calling for an extended repayment period?

Senator CHURCH. Yes; that language, as I recall, doesn't impose a requirement. It is discretionary with the Secretary anyway.

Mr. HORTON. I would agree that if it is discretionary we would not object to the language being in the bill.

Senator CHURCH. It reads as follows:

> *Provided further*, That the Secretary is authorized to amend said existing contracts to extend repayment periods as necessary to bring the combined repayment obligations within the spaceholder's repayment capacity."

I would read this as being discretionary. It is also conditioned as being necessary, and that would depend upon a finding made by the Secretary. I don't see any reason why that language should be deleted.

Mr. HORTON. We will examine that point and if it is discretionary we would provide amplification to the committee.

[Subsequent to the hearing Mr. Horton supplied the following:]

> Upon reexamination, we find the language of the last provision in section 3 of the bill to be superfluous, however, we would have no objection if the language were retained.
>
> We would agree that the language is discretionary and leaves the determination of whether a spaceholder has adequate repayment capacity to meet his repayment obligation to the Secretary.

Senator McCLURE. If this were constructed as a Federal project and if there were a repayment schedule beyond the State's capacity

to repay, in the judgment of the Secretary, then there would be a provision that that cost should be repaid out of power revenues or out of our share of the Bonneville power revenues.

In this instance, all we are seeking is the right to extend the repayment period without seeking that alternative source. So it would seem to me that this proviso, which is not mandatory, ought to be construed as being an offer on the part of the spaceholders to do more than might be required of them under a Federal project.

I shouldn't think the Government should object to that.

Mr. HORTON. I agree with you, Senator McClure.

Senator CHURCH. Good.

The Department recommended a clarifying amendment to section 3 making delivery of water contingent upon execution of a repayment contract. I don't think that is troublesome. It changes nothing and if it adds some clarification of the language, I have no objection to that.

Senator MCCLURE. Well, are you referring to the language in the report on page 5?

Senator CHURCH. Yes; it is on page 5. It has reference to section 3 of the bill, on page 2 of the bill.

Senator MCCLURE. As I understand the suggestion, it was that the Government does not understand the necessity for requiring signed contracts except as a condition to the delivery of the water; is that correct?

Mr. SULLIVAN. I think the language that we suggested was to clarify the point that for an existing spaceholder to participate in the storage of a new dam, they would have to execute a contract to carry out the provisions.

The problem here is that some spaceholder might say I am satisfied with the deteriorated dam and I won't enter into a contract with the new one. I have an existing contract and I will just stick with it. That way he can hold up the whole project.

Senator MCCLURE. I understand your position and I think from later testimony you will find that is not the case. I don't think anybody is really satisfied with the dam in its present condition.

Mr. SULLIVAN. The only reason I mention that, there are 34 water-using entities and that is a lot to get together.

Senator MCCLURE. And the fact that they did get together indicates the emergency nature of this whole proceeding.

Senator CHURCH. Well, the language suggested is certainly consistent with the intent of the original language and I think it may be helpful. It is more precise, I think, and it may be helpful to amend the bill that way.

Mr. SULLIVAN. It was intended to be clarifying primarily in that regard.

Senator CHURCH. Moving on, the Department recommends also that the Secretary approve the "falling water" contract. Do you propose to amend the bill to make that explicit?

Mr. SULLIVAN. Yes.

Senator CHURCH. I think that would follow in any case; would it not? He has to approve the contract under the bill as presently written.

Mr. HORTON. I think this is a point of clarification to insure that we want the approval authority by the Secretary recognized. That was the reason for the insertion.

Senator CHURCH. You make two other recommendations. One regarding the cost of the Secretary's review of the plans, to make those costs reimbursable by the water users. That is review of the designs and plans.

Mr. SULLIVAN. It was intended that these would be the costs that the Interior Department and the Bureau of Reclamation would incur in reviewing all the principles and participating in the contract negotiation because we have no other source of funds to do this and we would be impeded in our progress on going ahead with the project if we didn't have the source of money to go with.

Senator CHURCH. I wouldn't think that would be precise. Do you have any estimate to give us as to what you think the costs might be?

Mr. HORTON. We estimated something in the order of $200,000.

Senator CHURCH. In Idaho $200,000 is still a lot of money, maybe not to Washington.

Mr. HORTON. Compared with the overall costs between $19 and $30 million, it is quite small in ratio.

Senator CHURCH. Senator McClure, do you have any question on that particular aspect of the administration's recommendation?

Senator MCCLURE. I would say ordinarily under Federal projects, the reconnaissance survey, the ordinary operating overhead of the Bureau is not allocated but the specific overhead on the specific project is ordinarily allocated to the function.

I think that is all you are seeking to do, if I understand you correctly; is that correct?

Mr. HORTON. That is correct, also in agreement with the often spoken need for timeliness.

Senator MCCLURE. I have no further comments, Mr. Chairman.

Senator CHURCH. Congressman Hansen, do you have anything?

Mr. HANSEN. No.

Senator CHURCH. Finally the Department recommends a specific fish and wildlife appropriation and a deferred repayment appropriation for the Fort Hall Indian Reservation to share in the cost of the dam.

Could you give us a little more explanation of those two points, please?

Mr. SULLIVAN. The bill as drafted referred to providing facilities for recreation and fish and wildlife conservation. That term as it applies to projects like this didn't seem to us to be as clear as desirable.

The normal practice is that the cost for facilities for mitigation of losses incurred by the project to be taken care of by the beneficiaries of the project.

Then enhancement of the recreation and fish and wildlife can be handled under Public Law 98-72. The whole purpose of this change was to make that distinction clear.

Senator CHURCH. What about the Indians?

Mr. SULLIVAN. I did forget about the Indian part of your question. The Fort Hall Indian Reservation owns space in the reservoir now. Presumably there will be a need for Federal funds in order for the

Indian reservation to participate in the costs that have been incurred by the spaceholders in building the project.

The purpose of the amendment here is to make provision for a Federal appropriation so the Indian reservation can make that contribution.

Senator CHURCH. Your proposed amendment would authorize the appropriation for this money?

Mr. SULLIVAN. Correct.

Senator MCCLURE. On two points, the second one I agree with. The fact that the Indians will benefit should be recognized. On recreation benefits, there are two points to be raised.

I get some people who are concerned about the recreation benefits under the private plan as distinguished from the Federal replacement. You are making clear there will be a Federal involvement to the extent of wildlife and recreation enhancement.

There is another point to be made and I should have asked the question when the Governor was testifying, with respect to the plans under the State Recreation Plan for the expenditure of the State's portion of water conservation funds on recreation facilities at the reservoir.

I wonder if the Governor might make some comment to that.

Governor ANDRUS. If I may respond to that, Mr. Chairman.

Senator CHURCH. Yes, indeed.

Governor ANDRUS. I would like to point out, Mr. Chairman, as Senator McClure points out, this is true. The State does have a recreation plan but it is not predicated upon whether we do this with private interests or with public interests within the replacement of the structure.

The recreational plan is designed and will be carried out. The time element is not involved in there, Senator. But these plans do include recreational enhancement.

Also, the fish and game department has wildlife habitat and more particularly the goose nesting facilities involved at this site also. So, yes, there will be an enhancement, but really we plan to do this whichever way the decision for construction will go.

Senator MCCLURE. The point I sought to make by this is that the decision to go under one of these plans or the other will not adversely affect the recreation and wildlife enhancement plans which are under way. They will be done under either plan.

Governor ANDRUS. That is true. I hate to say on a given date, because as you say, should we face impoundment or problems beyond our control, we will run into a delaying situation, but the State's recreation plans do include some participation around there.

Also, there are other entities of Government such as county or city that have plans around this body of water.

Senator MCCLURE. Thank you very much.

Senator CHURCH. One final point I would like to make, Mr. Secretary. It is not in the nature of a question. You are fully aware of the urgency of getting on with the replacement of this dam and the calamity that could befall irrigated agriculture in southern Idaho, and therefore all of Idaho, if we ran short of water, I am pleased the administration has given this endorsement to the alternative proposal

because I think it gives us the best chance to get the dam replaced in the shortest possible time.

Also one full utilization of the falling water for the purpose of generating electricity never has been achieved at the existing dam site. I think that would be very much in the public interest.

What I would like to ask of you and the administration is your affirmative effort to move this bill along in the House of Representatives before the House Interior Committee after the Senate has acted upon it, because time is of the essence here.

The support of the administration in that regard will be most important.

Mr. HORTON. I can give you that assurance fully; yes.

Senator CHURCH. I have no further questions, Senator McClure, do you have anything?

Senator MCCLURE. I don't think I have any questions.

I would like to make a couple of comments to welcome the Secretary here in his first official appearance in support of legislation. I am happy it is one that affects us. We are glad to have you here and to welcome Ed Sullivan before this committee again. I want to take this opportunity to publicly state what I think needs to be stated, namely that we in Idaho have the Bureau of Reclamation as a good friend. We value the presence of the Bureau of Reclamation, and we are delighted that it is still in Boise. We hope to keep it there, I might say, Mr. Secretary.

We are now undergoing a crisis that confronts the world supply of food. But over the last few years some people have been telling us that we need not be concerned about food supplies; that we had an abundance that was beyond all necessity and that there was a surplus that was plaguing us. But then by virtue of a very small reduction in supply with relation to demand, which was actually an increased supply but a supply that increased less rapidly than demand, we saw prices that have immediately brought an outcry from all of our friends in urban areas of this country. I think this just underscores the importance of the activities of the Bureau of Reclamation in the Western United States and the importance of agriculture as a fundamental part of our economy in this country.

This project just happens to be one of the first to come before the Congress in the new awareness of the critical nature both of supply and of the agricultural sector of our economy.

Again, I am grateful that these things come to focus on a concern of Idaho because I think it indicates this importance and that we will be able to get this legislation moved out.

Thank you.

Senator CHURCH. That leaves the Federal Power Commission to be heard from and we expect to hear from them, too.

[The comments of the Federal Power Commission were included previously herein.]

Mr. Secretary, we appreciate your testimony and, Ed, we appreciate your being here.

Mr. HORTON. Thank you.

If I can add a concluding remark in thanking Senator McClure for his comments that there is a degree of personal pertinency here

since my home State of Wyoming is happy to provide some of the source waters to the great Snake River.

Senator McCLURE. I would like to say the last time Jackson Reservoir, and I will never refer to it as Jackson Lake because I want people to understand that it is a reservoir, the last time it got drawn down to the point of mudbanks being exposed before the tourist season expired, we heard a great deal about it.

I suspect with the current operating restrictions on the American Falls Dam that the likelihood of that occurring again is very greatly increased.

I think we had better brace ourselves for the outcry that will come when somebody from Chicago drives into Jackson Hole and sees mudbanks instead of water in late August of this year if that should occur. Because certainly the requirements of the people who built that dam for irrigation and the requirements of irrigation on that land in Idaho come first.

We are conscious of the difficulties of management and we appreciate the Federal agencies' efforts responsible for that management and I am confident that when we need water that water is going to be here, even though some of our friends will go into the fine State of Wyoming and find it dry.

Mr. HORTON. We share a common ground in desiring to avoid the outcries that will be heard around the world.

Senator CHURCH. Well, thank you very much, gentlemen.

Our next witness is Mr. Tom Olmstead of Twin Falls Reservoir District.

Tom, we are happy to have you here today. You may proceed with your statement.

Mr. OLMSTEAD. I have a six-page statement, rather lengthy and quite a bit of it is repetition and if you will submit it for the record, I will summarize.

Senator CHURCH. Good, you set a precedent and I hope others will remember it.

STATEMENT OF TOM OLMSTEAD, TWIN FALLS, AMERICAN FALLS RESERVOIR DISTRICT

Mr. OLMSTEAD. My name is Tom Olmstead. I am a farmer and cattle rancher and I live at Route 2, Twin Falls, Idaho.

I serve on the board of directors of the American Falls Reservoir District. I am also a member of the Twin Falls Canal Co., board of directors and I am a past member of the Idaho Water Resource Board and the Western States Water Council.

I am engaged in a cattle feeding operation with my father and my two brothers. I am proud to say that I am a bona-fide farmer, and my income is from farming, ranching, and cattle feeding. With this background and as a water user out of American Falls Reservoir, I want to stress the extreme emergency that does exist.

I am proud to appear at this hearing representing the American Falls Reservoir District. The American Falls Reservoir District is an irrigation district formed under the laws of the State of Idaho.

The district was originally organized at the time of the original construction of the American Falls Dam.

As members of the committee may or may not know, the American Falls Dam was originally constructed under an unusual arrangement. Those irrigation companies that wished to purchase storage water in the American Falls Reservoir banded together and formed the American Falls Reservoir District, held a bond election, sold bonds, and paid cash in advance for their share of the space in the American Falls Reservoir.

Since that time, the American Falls Reservoir District has operated as the coordinating agency between the Bureau of Reclamation as owners of the dam, and the five operating companies represented in the American Falls Reservoir District.

The district represents approximately 490,000 acre-feet of space in the American Falls Reservoir when the reservoir was operating at full capacity of 1,700,000 acre-feet. The American Falls Reservoir District represents in total acres approximately 440,000 acres of land.

The companies that comprise the American Falls Reservoir District are the Twin Falls Canal Co., the Woodville Canal Co., and the Martin Canal Co. Each have varying amounts of American Falls storage water which they own through their participation in the American Falls Reservoir District.

In the opinion of the spaceholders, the restriction order of October 1972, created an immediate emergency. To companies that comprise the American Falls Reservoir District, the North Side Canal Co., relies to the largest extent upon their stored water rights. The other companies in the district have natural flow rights. For those companies, American Falls used for the last irrigation and the maturing of most crops, especially sugar beets, and potatoes. Without American Falls water available, these crops would probably not be grown by the local farmers.

The loss of one-third of the American Falls storage capacity by the restriction order brought the spaceholders together on common bases to remedy the emergency situation.

Following the adoption of a resolution by the American Falls Reservoir District board of directors, all American Falls spaceholders were called together and an informal association was formed. From that spaceholder meeting, an executive committee was designed to proceed to evaluate all alternatives toward the earliest possible replacement of the American Falls Dam.

In early March, spaceholders endorsed the concept of private financing for the replacement, and selected the American Falls Reservoir District as the bonding agency because of its size and because of the amount of lands which would be security for the bonds which would eventually be sold.

The spaceholders began to work, and through the cooperation of the Idaho Congressional Delegation, Senate bill 1529 as introduced, would allow us to pursue the private replacement concept.

Under Senate bill 1529, the American Falls Reservoir District, the district for which I speak, would be authorized to contract with the Secretary of Interior for the replacement of the American Falls Dam after the designs and specifications have been approved by the Secretary.

Upon substantial completion of the dam, the replacement dam would be a government dam to be thenceforth maintained and operated by the Bureau of Reclamation as a feature of the Upper Snake River project.

In substance, there will be no change in the operation of the American Falls Reservoir. The relationships of the present spaceholders shall remain the same if the spaceholders so select. The American Falls Reservoir District would then enter contracts to which the Secretary would be a party, with all of the other spaceholders for the repayment of their proportionate share of the total cost of the replacement structure.

The bill would also provide for the authorization and appropriation of Federal moneys for specfic recreation and fish and wildlife facilities in the manner similar to the procedure followed by the Bureau of Reclamation in proposing the reconstruction project of American Falls Dam.

Because of the total financial exposure to the water users in a replacement situation, the American Falls Reservoir District board of directors approached the Idaho Power Co. in December of 1972, to explore the possibility as to whether or not power generation would be feasible in connection with the operation of the American Falls Dam.

The reservoir district representatives met with the Idaho Power Co., to determine if a falling water contract might be a possibility, with the insurance that no change in operation of the reservoir would be incurred and that the irrigation preference would remain the same.

The Idaho Power Co. employed the Bechtel Engineering Co. of San Francisco to evaluate the possibility and presented a written proposal to the American Falls Reservoir District Board, the executive committee of the spaceholders, and the total spaceholder organization, and at each level obtained an endorsement of the proposal.

In summary, the proposal provides that the Idaho Power Co. would be willing to enter into a falling water contract with the American Falls Reservoir District in connection with the districts replacement of the dam. The falling water contract would provide for the payment of $19 million dollars plus tax exempt interest to the American Falls Reservoir District over a period of 40 years.

The proposal coincided with the replacement figures advanced by the Bechtel Corp. for the replacement of the dam. The Idaho Power Co. proposal fully recognized the irrigation preference, although it did require that the American Falls Reservoir District and the spaceholders cooperate in every possible way in obtaining a Federal Power Commission license for the construction of a power generation facility by the Idaho Power Co. below the dam.

It also provided that the spaceholders would be responsible for working out any environmental matters, as well as alleviating the company from any responsibility for the highway.

One of the factors on which the cost figures depend is on letting one contract include both the construction of the dam and also the powerplant, to gain the economies of a large scale project.

In short, the history I have given you is a synopsis of the history which preceded the introduction of S. 1529. The American Falls Res-

ervoir District would endorse S. 1528 only in the event that proceeding in accord with S. 1529 were to become impossible.

We are confident that if the Congress of the United States would favorably consider S. 1529 and the measure would be enacted into law, the cooperative effort between the American Falls Reservoir District, the American Falls spaceholders, and the Bureau of Reclamation would allow the earliest possible replacement of the American Falls Dam. We feel that we have unified support throughout Idaho for the proposal and we thank the Idaho congressional delegation for their help. We encourage your early and favorable consideration of S. 1529.

I thank you for the opportunity to appear before the committee today with this statement.

Thank you for your kind attention.

Senator CHURCH. Thank you Tom. I just have one question. Is there any reason at all to doubt that this money can be obtained at the low-interest rate by virtue of the tax exemption? We encountered a problem on the Swan Falls project.

Mr. OLMSTEAD. Yes; I know that. There are some witnesses here who can better answer that than I can. It is a different situation.

We seem to think we are all right, but I guess there are some problems.

Senator CHURCH. Isn't it true that we have actually experienced on the river a dry cycle where a reduced reservoir at American Falls containing only two-thirds of the capacity would be insufficient to take care of the water needs?

Mr. OLMSTEAD. Yes, sir, in some areas it would be. Where I live in Twin Falls, the two-thirds capacity would cause you some change in plans but you would still have the ability to raise a crop. Maybe not the crops you like. In other areas, the Gidding area in particular, on the north side of the river who have latter water rights, they need this desperately and all of it. They don't have enough in good years.

Their right is dependent, part of it, almost entirely from water from this reservoir.

Senator CHURCH. Yes.

Senator McClure.

Senator MCCLURE. I think the record ought to be made to reflect your long experience in more than just the farming and ranching that you alluded to. I think everyone in the room knows, but the record will not reflect, that you have been active for a good many years in the Idaho Water Users Association and the Idaho Reclamation Association.

You might just state for the record how long, Tom.

Mr. OLMSTEAD. I was elected to my first water board job in 1957. I got involved in the State level at about 1958, and I have had an office of one sort or another since that time.

I was president of the Idaho Water Union Association and National Director of the NWRA today. I served there for several years. Also I served on the Idaho Water Resource Board and the Western States Water Council.

Senator MCCLURE. I think it would be a fair statement that there would be a lot less magic in Magic Valley if we didn't have that water.

Mr. OLMSTEAD. There wouldn't be any magic at all, it would be just another dry desert.

Senator MCCLURE. Thank you.

[The prepared statement of Mr. Olmstead follows:]

STATEMENT OF TOM OLMSTEAD, TWIN FALLS, IDAHO

Mr. Chairman, members of the committee, ladies and gentlemen:

My name is Tom Olmstead. I am a farmer and cattle rancher, and I live at Route 2, Twin Falls, Idaho. I serve on the Board of Directors of the American Falls Reservoir District. I am also a member of the Twin Falls Canal Company Board of Directors and I am a past member of the Idaho Water Resource Board and the Western States Water Council. I am engaged in a cattle feeding operation with my father and my two brothers. I am proud to say that I am a bona-fide farmer, and my income is from farming, ranching and cattle feeding. With this background and as a water user out of American Falls Reservoir, I want to stress the extreme emergency that does exist.

I am proud to appear at this hearing representing the American Falls Reservoir District. The American Falls Reservoir District is an irrigation district formed under the laws of the State of Idaho. The district was originally organized at the time of the original construction of the American Falls Dam. As members of the committe may or may not know, the American Falls Dam was originally constructed under an unusual arrangement. Those irrigation companies that wished to purchase storage water in the American Falls Reservoir banded together and formed the American Falls Reservoir District, held a bond election, sold bonds, and paid cash in advance for their share of the space in the American Falls Reservoir. Since that time, the American Falls Reservoir District has operated as the coordinating agency between the Bureau of Reclamation as owners of the dam, and the five operating companies represented in the American Falls Reservoir District. The district represents approximately 400,000 acre-feet of space in the American Falls Reservoir when the reservoir was operating at full capacity of 1,700,000 acre-feet. The American Falls Reservoir District represents in total acres approximately 440,000 acres of land.

The companies that comprise the American Falls Reservoir District are the Twin Falls Canal Company, the North Side Canal Company, the Aberdeen-Springfield Canal Company, the Woodville Canal Company, and the Martin Canal Company. Each have varying amounts of American Falls storage water which they own through their participation in the American Falls Reservoir District.

In the opinion of the Spaceholders, the restriction order of October 1972 created an immediate emergency. To companies that comprise the American Falls Reservoir District, the North Side Canal Company relies to the largest extent upon their stored water rights. The other companies in the district have natural flow rights. For those companies, American Falls water is the "topping-off" water which in normal water years is used for the last irrigation and the maturing of most crops, especially sugar beets, and potatoes. Without American Falls water available, those crops would probably not be grown by the local farmers.

The loss of one-third of the American Falls storage capacity by the restriction order brought the Spaceholders together on common bases to remedy the emergency situation. Following the adoption of a resolution by the American Falls Reservoir District Board of Directors, all American Falls Spaceholders were called together and an informal association was formed. From that Spaceholder meeting, an Executive Committee was designated to proceed to evaluate all alternatives toward the earliest possible replacement of the American Falls Dam. In early March, Spaceholders endorsed the concept of private financing for the replacement, and selected the American Falls Reservoir District as the bonding agency because of its size and because of the amount of lands which would be security for bonds which would eventually be sold. The Spaceholders began to work, and through the cooperation of the Idaho Congressional delegation, Senate Bill 1529 as introduced, would allow us to pursue the private replacement concept.

Under Senate Bill 1529, the American Falls Reservoir District, the district for which I speak, would be authorized to contract with the Secretary of Interior for the replacement of the American Falls Dam after the designs and specifications have been approved by the Secretary. Upon substantial comple-

tion of the dam, the replacement dam would be a "government dam" to be thenceforth maintained and operated by the Bureau of Reclamation as a feature of the Upper-Snake River Project. In substance, there will be no change in the operation of the American Falls Reservoir. The relationships of the present spaceholders shall remain the same if the spaceholders so elect. The American Falls Reservoir District would then enter contracts to which the Secretary would be a party, with all of the other space-holders for the repayment of their proportionate share of the total cost of the replacement structure.

The Bill would also provide for the authorization and appropriation of Federal monies for specific recreation and fish and wildlife facilities in a manner similar to the procedure followed by the Bureau of Reclamation in proposing the reconstruction project of American Falls Dam.

Because of the total financial exposure to the water users in a replacement situation, the American Falls Reservoir District Board of Directors approached the Idaho Power Company in December of 1972 to explore the possibility as to whether or not power generation would be feasible in connection with the operation of the American Falls Dam. The Reservoir District representatives met with the Idaho Power Company to determine if a falling water contract might be a possibility, with the insurance that no change in operation of the reservoir would be incurred and that the irrigation preference would remain the same. The Idaho Power Company employed the Bechtel Engineering Company of San Francisco to evaluate the possibility and presented a written proposal to the American Falls Reservoir District Board, the Executive Committee of the Spaceholders, and the total Spaceholder Organization, and at each level obtained an endorsement of the proposal. In summary, the proposal provides that the Idaho Power Company would be willing to enter into a falling water contract with the American Falls Reservoir District in connection with the districts replacement of the dam. The falling water contract would provide for the payment of $19,000,000 dollars plus tax exempt interest to the American Falls Reservoir District over a period of forty years. The proposal coincided with the replacement figures advanced by the Bechtel Corporation for the replacement of the dam. The Idaho Power Company proposal fully recognized the irrigation preference, although it did require that the American Falls Reservoir District and the Spaceholders cooperate in every possible way in obtaining a Federal Power Commission license for the construction of a power generation facility by the Idaho Power Company below the dam. It also provided that the spaceholders would be responsible for working out any environmental matters, as well as alleviating the company from any responsibility for the highway. One of the factors on which the cost figures depend is on letting one contract include both the construction of the dam and also the power plant, to gain the economies of a large scale project.

In short, the history I have given you is a synopsis of the history which preceded the introduction of SB 1529. The American Falls Reservoir District would endorse SB 1528 only in the event that proceeding in accord with SB 1529 were to become impossible.

We are confident that if the Congress of the United States would favorably consider SB 1529 and the measure would be enacted into law, the cooperative effort between the American Falls Reservoir District, the American Falls Spaceholders, and the Bureau of Reclamation would allow the earliest possible replacement of the American Falls Dam. We feel that we have unified support throughout Idaho for the proposal and we thank the Idaho Congressional delegation for their help. We encourage your early and favorable consideration of SB 1529.

I thank you for the opportunity to appear before the committee today with this statement.

Thank you for your kind attention.

Senator CHURCH. Our next witness is Mr. Everett Daubner, who is a rancher and farmer in the area.

STATEMENT OF EVERETT DAUBNER, FARMER AND RANCHER, GOODING, IDAHO

Mr. DAUBNER. I am Everett Daubner of Gooding, Idaho.

For many years I have been actively engaged in farming and stock raising in this area.

I represent the American Falls Reservoir District No. 2 of Shoshone, Idaho, an irrigation district comprising 98,667 acres in Lincoln, Gooding, and Jerome Counties in south-central Idaho.

My association with the American Falls Reservoir District No. 2 dates back to its formation on July 15, 1925. On that same date I was elected a member of the first board of directors. I remained on the board of directors for many years.

On September 21, 1927, the U.S. Government entered into a contract with the American Falls Reservoir District No. 2 to construct an irrigation system including a large diversion canal from Milner Dam on the Snake River to the North Gooding Canal of the Big Wood Canal Co. of Shoshone. In addition, 23.53 percent of the total capacity of the American Falls Dam, within limits and on terms and conditions provided in the contract, was assigned to the district.

This percentage, so long as the reservoir had an active capacity of 1,700,000 feet, was to be treated as the equivalent of 400,000 acre-feet of the active capacity.

The construction cost of the system and the 400,000 acre-feet of storage in the American Falls Reservoir totaled about $6,685,208,000. $5,776,485 of this amount has been repaid by the water users of the district.

The problem now is the drastic 33 percent cut in the stored water and the time it will take to replace the present failing dam. It is of interest to note these following comments from early reviews of American Falls Dam:

1. From May 12, 1928, report of A. J. Wiley, consulting engineer:

> Ice Pressure: This being a strictly storage reservoir, in which the reservoir will naturally be drawn at the end of the irrigation season and filled during the spring flood season, no provision has been made in the design for ice pressure. Accordingly, no condition should be allowed to rise which will cause a full or nearly full reservoir in the winter season.

2. From August 1, 1928, report of Major I. S. Butler, Corps of Engineers:

> Stability of the Sections: The various sections of the dam have been checked for stability against overturning, excessive pressures and sliding, and for normal water pressures to which they may be subjected, they are believed to be safe. However, for the usual consumption of the ice pressure applied at normal high water and for upward pressure under the foundation varying from full pressure on upstream side to zero pressure at one-third distance of base, the condition of stability as shown by the calculations is not at all favorable. It is therefore recommended that the lake level during the winter months be lowered so as to avoid any excessive ice pressures on these structures. It is assumed that the present careful supervision and inspection system to prevent excessive pressures over the foundation will be continued to insure the proper operation of the drainage system.

If the deterioration of the dam continues there is a possibility that even the drastic cut of 33 percent may be increased by the U.S. Bureau of Reclamation for safety reasons.

On page 2, dated December 1972, American Falls Dam replacement by the U.S. Department of the Interior, Bureau of Reclamation, we read:

> Because the concrete deterioration is continuing, further storage 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 the same report on page 3, we read further:

Construction of the replacement dam could be completed within 5 years after first construction funds become available.

There does seem to be a way out for those who have water rights in the American Falls Dam, but it is our understanding it would take some enabling legislation by Congress to make it available.

The Idaho Power Co. has come up with a proposal which could expedite the dam's replacement, save time and save money for both the water users and the Government. Briefly, the power company is proposing to pay almost the entire cost of a new American Falls Dam and complete the project 14 months after construction is started.

Details of the plans and its financing will no doubt be explained by others.

At a meeting held in Burley, Idaho, recently, water users with rights in the American Falls Dam were nearly unanimous in approval of the Idaho power proposal.

Senator CHURCH. Thank you for a fine statement.

Tell me whether you know of any dissent of water users served by the area?

Mr. DAUBNER. I have heard of none, Senator.

Senator CHURCH. I have heard of none either. It has to be an awfully good proposal if water users can't find something wrong.

Mr. DAUBNER. That is true. I have been associated with them for a long time.

Senator CHURCH. Senator McClure.

Senator MCCLURE. Just this, Mr. Chairman. I appreciate a couple of the excerpts in your statement because they underscore something I had not seen in print before, but nevertheless suspected. That is that the changes of operation of the river which have increased the level of the reservoir and increased ice pressures on the dam were a part of the problem.

It sems the continuing deterioration of the dam itself has changed the nature of the problem and I suspect that is one reason why there is such a meeting of the minds.

Thank you very much.

Senator CHURCH. Thank you very much.

Our next witness is Mr. Wendell Johnson, farmer and rancher in the Richfield area.

Mr. Johnson, we are pleased to have you here today.

STATEMENT OF WENDELL JOHNSON, FARMER AND RANCHER, RICHFIELD, IDAHO

Mr. JOHNSON. My name is Wendell Johnson. I am a resident of Richfield, Idaho. I am the owner-operator of a family ranching operation in Richfield and Dietrich, Idaho.

I am on the board of directors of the American Falls Reservoir District No. 2 and, also, on the board of directors of the Big Wood Canal Co.

This irrigation project is quite complicated inasmuch as there is an overlapping of the two projects, with approximately 61,000 acres under the American Falls Dam and about 38,000 acres under the Magic Dam, the latter dam being located in Camas and Blaine Counties, Idaho.

Magic Dam holds 191,000 acre-feet, which, with the stream flow of Big Wood River, Malad River, and Little Wood River is an adequate supply when there is an ample carryover and normal precipitation.

To further complicate the situation, if the American Falls side is short of water for an extended period of years, the users under the Milner Canal can, according to the contract, demand and receive water from Magic Dam sources.

On the other other hand, in the event that Magic Dam is short, it is physically impossible for the Magic users to receive American Falls water.

The American Falls Dam is vitally important to this project as it supplies water to approximately 61,000 acres of diversified farm ground. We are in an area which is made up of mostly family-type farming operations with almost no large corporation operations.

The entire area is dependent upon the success of the irrigated farms. The annual precipitation in this area is about 10 to 12 inches, coming mostly in the winter in the form of snow with summer precipitation being mostly thunder showers. It is obvious therefore that we are entirely dependent upon irrigation for our livelihood.

We are not operating under very severe restrictions on the old dam in American Falls—almost 400,000 acre-feet short of capacity—due to the unsafe dam. The 400,000 acre-feet restriction falls most heavily on American Falls Reservoir District No. 2 because this is the only storage that we have and we have four-seventeenths of the storage in American Falls Reservoir; thus, the seriousness of the situation is apparent.

One year, with 50 or 60 percent water supply, would severely hamper farming operations. Two years would put a lot of small operations in bad financial trouble. I would like to explain what this means in the terms of dollars per acre.

Let us take livestock for an example. With ample irrigation one can graze one cow and 1 calf on 1 acre for about 6 months which, at today's prices would result in approximately 450 pounds of beef production and, based upon 60 cents per pound, would result in a gross return per acre of $270. Without irrigation it would take approximately 24 acres to run the same cow and calf. The calf would weigh about 400 pounds and at the same price of 60 cents would yield $240 for a gross return of only $10 per acre.

Compare, also, a crop of wheat in our area. Irrigated land would yield aproximately 120 bushels, and at $2.25 per bushel a gross yield of $270 per acre.

On the other hand, one would expect about 30 bushels on dry land which at the same price would have a gross yield per acre of $67.50.

Even these figures are based upon the assumption that we have good summer rains. Without them, crop failure would be a certainty for the grain and would result in a reduced carrying capacity and a much smaller calf in the livestock operation.

This area raises about 11,000 acres of row-crops, such as potatoes, beets, corn, and peas. These crops simply cannot be raised without ample irrigation water.

Another factor to be considered is the fact that this project is not a new proposed project, but an old established one that has had enough water for irrigation for the last 30 years.

This fact makes an extended water shortage very hard to bear because the operating units are set up and organized on the basis of an abundant water supply and are, therefore, much smaller than would be required if the units were either short of water much of the time, or had only a reduced amount of water available every year.

One thing that came to mind while we have been discussing this this morning is everybody has said if we are short. It is not a matter of if we are short on our project. We are definitely short this year.

The spaceholders are urging that legislation be passed which would permit the spaceholders, through private financing, to rebuild the American Falls Dam. This position is taken, not as a result of any conflict with the Bureau of Reclamation, but for two very compelling reasons.

The first, and most important, is the element of time. All of the information thus far given to the irrigators is to the effect that, if replacement is made by the Bureau of Reclamation, it might not occur for as much as 10 or 12 years, or even longer. I have heretofore tried to indicate that this is a real matter of survival.

The second reason is the matter of cost. For owners of approximately 75,000 acres in the district, this will represent a third system that the farmers will have paid for, if it is constructed under the Bureau of Reclamation plan.

The original Carey Act project, developed by the Idaho Irrigation Co., which is now the Big Wood Canal Co., developed the system at a cost of $7,096,703. After a long history of short water years, due to over-subscription and sale of land, American Falls Reservoir District No. 2 was formed, including an additional 20,000 acres.

The cost for the storage and distribution system amounted to another $6,685,208. The farmers included in the additional 20,000 acres, consisting of 203 farmers, still have a total of $918,723 to pay on the contracts which will extend until the year 2000. Now we are faced with a $20 million construction cost for a new dam. On top of this, it will cost, if available, approximately $67,500 per year for supplemental water until a new dam is constructed.

In light of these facts, the proposal that makes the most sense to the average irrigator is the one that will get him his original amount of water back in the shortest possible time with the smallest amount of money coming out of his pocket.

We are not here asking for a handout, as is so popular in this day and age of "let Uncle do it."

The original dam has failed, even before it has been paid for and yet all we ask is for the necessary legislation to let us help ourselves.

Thank you.

Senator McCLURE. I might just advise you that we are having a roll call on the floor of the Senate right now. That is the reason Senator Church left. As soon as he gets back I will go and we will try to keep the hearing going.

I do appreciate your statement and I think the two things that you stress are a common theme through all of the statements.

The first and most important is the element of time; is that correct? And the second one is that you are not asking the Federal Government to do anything other than allow you to do it yourself?

Mr. JOHNSON. That is correct.

Senator MCCLURE. Thank you very much. It has been very helpful.

Mr. JOHNSON. Thank you.

Senator MCCLURE. The next witness is Adonis Neilson, attorney for the Burley Irrigation District.

STATEMENT OF ADONIS NEILSON, ATTORNEY AND FARMER, REPRESENTING THE BURLEY IRRIGATION DISTRICT

Mr. NEILSON. Thank you, Mr. McClure.

I am Adonis H. Neilson, attorney for the Burley Irrigation District and Milner Low Lift Irrigation District make the following statement:

I was admitted to practice law in the State of Idaho on December 14, 1926. I came to Burley, Idaho on January 12, 1929, and have been a resident of Burley since that date.

I was the owner of a farm within the confines of the Burley Irrigation District until Christmas of 1972, when the farm was deeded to our children.

The following facts are given to aid your committee in making its determination regarding the replacement of American Falls Dam on the Upper Snake River in Idaho.

1. The Burley Irrigation District lands comprise 48,000 irrigated acres. They are located along the Snake River. Burley Irrigation District has 157,942 acre-feet of storage space in American Falls Dam and Reservoir on the Snake River.

This storage space is three-fifths of the storage water space belonging to the Burley Irrigation District. Burley Irrigation District was one of the early districts to have storage space on the Snake River for the irrigation of its lands.

The Burley Irrigation District had storage space in Jackson Lake and was requested by the Bureau of Reclamation of the United States to change that storage space to the storage space behind the American Falls Dam, with the understanding that such transfer would not be detrimental to the interests of the Burley Irrigation District.

2. The city of Burley with its approximate 10,000 inhabitants is located within the confines of the Burley Irrigation District on the banks of the Snake River. Most of its inhabitants depend on agriculture for their living. The city of Burley would be directly in the path of any floodwaters that would occur because of the breakage of the American Falls Dam.

The Bureau of Reclamation of the United States has informed the Burley inhabitants that there is no immediate danger of the dam breaking. However, there is still a feeling of uncertainty of many residents of the city of Burley and the Burley Irrigation District to what would happen if the American Falls Dam is not replaced within a very short time.

The city of Burley and the Burley Irrigation Districtt would receive great damage from any breakage of the dam. A restriction of 11 feet down from the top of the dam has been placed by the Bureau of Reclamation of the United States on the storage space in the American Falls Dam. This elimination caused by a decrease of one-third of the water stored behind the American Falls Dam.

The Bureau of Reclamation of the United States in the event the dam continues to deteriorate will eliminate more of the storage space to the great damage of the Burley Irrigation District.

3. If the Burley Irrigation District is unable to get water from the American Falls Reservoir, there would be a loss of approximately $10 million to the farmers and livestock owners and a great loss to the mercantile establishments in the city of Burley each year.

4. Milner Low Lift Irrigation District has 45,687 acres of storage space in the American Falls Reservoir. This storage space is the only storage space which 9,459 acres of the Milner Low Lift Irrigation District has and the Milner Low Lift Irrigation District depends entirely for its storage water from the water stored in the reservoir behind the American Falls Dam.

5. The Milner Low Lift Irrigation District pumps water out of the river that is backed up by the Milner Dam which is located approximately 70 miles west of American Falls Dam.

In the event the American Falls Dam broke the Milner Dam would be swept away and the Milner Low Lift Irrigation District would not have any means of obtaining water. In addition to the destruction of the Milner Dam, all the pumping installations of the Milner Low Lift Irrigation District would be completely wiped out.

6. There are two bills now before Congress which have been submitted by the space holders of the American Falls Dam and Reservoir, regarding the replacement of American Falls Dam. The Burley Irrigation District and the Milner Low Lift Irrigation District request the passage of Senate bill No. 1529.

Now, it is true that the Bureau of Reclamation has said they don't think the dam will break. But when you read of other dams breaking around the country, we wonder if that can happen there. So we do have that fear.

Senator McCLURE. There is no tendency on the part of any of the water users at this time to challenge the decision of the Bureau of Reclamation of safety?

Mr. NEILSON. No. At all of the water meetings we have attended and I am on this committee of eight that was appointed to more or less spearhead this, no, there hasn't been.

Senator McCLURE. Thank you very much. I think you have added to the record and I appreciate your statement.

Mr. Howard Corless is the next witness.

Welcome to the committee, Howard.

I have 5 minutes, I am afraid, to get over to the Capitol to vote, so we will have to suspend until Senator Church gets back and we can pick up from there.

[Recess.]

Senator CHURCH. The hearing will please come back to order.

I am sorry about the interruption but we may be called back to the floor from time to time by rollcall votes. I hope we don't have a series of those votes.

Mr. Corless, you had not started your testimony yet when Senator McClure adjourned the hearing. Why don't you proceed.

STATEMENT OF HOWARD CORLESS, FARMER AND RANCHER, RUPERT, IDAHO, REPRESENTING MINIDOKA IRRIGATION DISTRICT

Mr. CORLESS. All right.

My name is Howard S. Corless of Paul, Idaho. I am a lifetime resident of Minidoka County which is located in the south central part of the State of Idaho and in the heart of the Snake River Plain.

I am by occupation a farmer and have been so engaged in this occupation since 1934, except for interruptions occasioned in obtaining an education. I am also appearing before you as a director of Minidoka Irrigation District which is located in Minidoka and Cassia Counties, State of Idaho.

The lands lying within Minidoka Irrigation District often referred to as the gravity division of the Minidoka project which was authorized by Congress in 1904.

Minidoka Dam and spillway was completed in 1906 and water deliveries started in the year 1907 from the Minidoka Dam to the lands within Minidoka Irrigation District.

The district was formed and commenced operation and maintenance of this project in 1916. There are approximately 1,690 farm units in Minidoka Irrigation District, consisting of 72,369.47 acres of irrigable land. Crops grown upon lands within the district are barley, oats, wheat, mixed grain, alfalfa, pasture, sugar beets, potatoes, beans, sweet corn, silage, and alfalfa and clover seed.

These lands are entirely dependent upon a water supply for irrigation to enable crops to be grown thereon. As this subcommittee knows, this is arid country and it is impossible to grow any crop without irrigation.

All of the irrigation water appurtenant to the lands within Minidoka Irrigation District are obtained from the Snake River.

Besides certain natural flow rights, Minidoka Irrigation District holds storage in Jackson Dam and Reservoir, American Falls Dam and Reservoir, Palisades Dam and Reservoir, and Minidoka Dam and Reservoir.

In 1972, Minidoka Irrigation District diverted 534,119 acre-feet of water for the irrigation of lands within the district. The maximum storage capacity, of the district, with full storage at American Falls, is 337,887 acre-feet of water; 83,563 acre-feet is derived from American Falls Dam when water is stored at American Falls without restriction to its full capacity of 1,700,000 acre-feet.

In the year 1934 our area suffered a severe drought. During that year, American Falls Reservoir filled with 1,031,000 acre-feet, I was engaged in farming on my own for the first time, with one-half of the land I was renting planted to grain and the other one-half to potatoes.

By the first part of August 1934, all irrigation water had been used and no further irrigations were possible.

As a result, the potato crop was a failure, as were all other potato crops in the district. Of course, the only loss in 1934 was my seed and labor. Today, it is necessary to expend nearly $400 per acre to raise a potato crop.

It would be impossible to continue to farm should we experience a crop failure as a result of the lack of water. Other crops such as beans and sugar beets are equally affected if there is not sufficient water to finish the crop to maturity. A partial supply of water is not sufficient.

It is impossible for anyone to forecast when we will have another year such as we experienced in the year 1934.

For this reason, it is absolutely necessary that we maintain all water storage facilities to obtain full storage capacities.

The cities of Rupert, Heyburn, Paul, and Accquia are dependent upon the agricultural economy of this area. Minidoka Irrigation District and all persons concerned with the irrigation of lands with water from American Falls Reservoir recognize the need to rebuilt American Falls Dam as quickly as possible.

We cannot afford to take the chance that a restriction of one-third of the normal capacity in American Falls Reservoir will provide sufficient irrigation water every year.

Speaking on behalf of Minidoka Irrigation District and all water users therein, we respectfully urge that Senate bill 1529 be reported favorably from this committee. As a result of studies made by all spaceholders within the American Falls Reservoir, we have concluded that construction of a new American Falls Dam can be realized within the shortest possible time under the provisions of Senate bill 1529.

The loss that could occur in southern Idaho should we experience a short water year at a time when American Falls Dam is being operated with a restriction on its storage is of such a magnitude that any delay in the replacement of the existing American Falls Dam results in a gamble which the people of southern Idaho are not willing to experience.

I might add, this is not in my prepared statement, but we recognize the need of a river crossing and we have no opposition to this new crossing that has been proposed as part of this bill.

Senator CHURCH. Thank you very much, Mr. Corless. I think your testimony underscores the fact that we are not talking about a theoretical situation. You already experienced this in your career as a farmer.

Mr. CORLESS. You bet I experienced it. That was my college money. I didn't go to college that year.

Senator CHURCH. So this would be a disaster of unprecedented proportion, would it not?

Mr. CORLESS. It really would. It was disastrous that year and it would be a greater disaster if it occurred again.

Senator CHURCH. Senator McClure, do you have any further questions?

Senator MCCLURE. I have no questions.

Senator CHURCH. All right.

I would like next to call on Joe Allen. Joe is the State senator and chairman of the American Falls Bridge Commission.

Joe, it is nice to have you before the committee.

STATEMENT OF JOE ALLEN, STATE SENATOR AND CHAIRMAN OF THE AMERICAN FALLS BRIDGE COMMISSION

Mr. ALLEN. Mr. Chairman, Senator McClure, other interested members in the group that are here on this very vital situation. I have a prepared statement, but I think I will deviate from that and just briefly say who I am.

I am Joe Allen, chairman of the American Falls Bridge Committee. I live 12 miles northwest of American Falls.

We have farmed west of American Falls for the last 20 years and we have a real interest in the river crossing, of course.

About 8 years ago a group of us got together and began to explore ways of enlarging and improving the river crossing.

We met with some of the people here in Washington, congressional delegation. I think Congressman Ralph Harding worked very hard for us as did Senator Church to try to effect some way to widen the present dam and strengthen it at the river crossing. But we have been thwarted any number of times in this.

First it was because of financing. We couldn't get any financing, the Bureau wasn't willing to contribute additional money to do this. Later the entire dam had to be replaced. This held it up for a number of years. Then the water users weren't satisfied that it was necessary. It just took another year with a private study to determine that it was actually necessary to replace the dam.

In the meantime our traffic has mushroomed with the addition of the land western plant and the expansion of the potato processing plant with hundreds of workers crossing the dam every day.

In addition to that literally thousands of new acres of ground have been put under sprinkler irrigation west of the dam and have been intensively cropped producing every other year.

We estimate now that there are probably $25 million worth of agricultural crops that cross the dam annually. In addition to all of the petroleum, fertilizer, and probably 2,000 semitruck loads of processed potato products that cross it.

Most of you were on the tour that we took last year. Senator McClure couldn't be there, but we personally toured it with him at one time, and I am sure all of you realize the urgency of not only replacing the dam, and we go along with this 100 percent, our committee, we think it is very vital and should be done as soon as humanly possible. But we think there is at least as great, if not greater, urgency to have a new river crossing.

We have worked very closely in recent weeks at least with the water users. We have set up a new committee or subcommittee. Six of our members of the American Falls Bridge Committee which incidentally in my written testimony shows it is a broad spectrum of our population. The mayor of American Falls, Aberdeen, the representative of the chamber of commerce, not only American Falls and

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Aberdeen, but the mayor of Pocatello, and we all agreed that this river crossing has to be effectuated as soon as possible.

We have had serious accidents there recently and now we have one way traffic and at times you are held up 20 minutes to even cross the river.

So it is much worse than it was, Senator, when you were there last fall. We think that in harvest this is going to be a disaster. When the Land Western shift changes there is as high as a 20-minute wait now.

You add this to the thousands of trucks that have to cross there with their huge loads of produce and grain and sugar beets and this starts in July and runs almost continuously through November.

We think it is going to be a nightmare. We don't know how we can accomplish it. If we hold up the harvest of these crops then the weather could set in on us and we could actually lose these crops.

Just 2 years ago we lost a substantial portion of the sugar beet crops. It could amount to millions of dollars that we would lose because we cannot transport the product ot the warehouses or the beet piles or whatever it is.

So we think it is an extreme emergency. We have compromised now with water users very recently in this subcommittee and we have an amendment to offer. I don't have it, but one of the other people will submit this amendment. We have agreed to this amendment and with this our committee can support S. 1529 with the possible reservation that we do not want the four bay fishing eliminated. We want the fishing enhanced in the American Falls area. We think this is a must, it is the most excellent fishing in the State of Idaho and of course we have some of the best fishing in the United States there, so our people have come to us and said, now, can you handle this in your committee.

We have assured them we can. We have enlarged our committee and we think it is very representative of our total area and respective communities and we have told them, yes, we will testify in favor of protecting our fishing, and even enhancing the fishing and the wildlife and the total environment.

So our committee assumes this responsibility. Not just for the bridge, but for the total aspect of the impact on our area.

We are blessed, incidentally, that we have been able to compromise with the water users and we support them and they have given us their word that they will support us and the big thing we want, being absolutely necessary, is that funds are available, either private funds or State funds, State highway department funds or funds from our State legislature in combination with any Federal funds we can get to move ahead just as soon as possible and get the bridge built.

We have some tentative plans that the bridge can be built separately above the railroad track and between the railroad tract and the contemplated new dam and we have hopes this can be done prior to building the new dam.

We enlist your support. We thank you for the opportunity of meeting here and there are other statistics in my report, but I think I will bypass those and say we do appreciate coming here, and we again want to emphasize the urgency of the crossing as well as the urgency of the dam.

Thank you.

Senator CHURCH. Thank you very much.

Your written statement will be included in the record. It contains some very interesting statistics with respect to the traffic that now has to traverse the dam. Two-and-a-half to 3 million sacks of potatoes crossing each year, up to 25 to 150 thousand tons of sugar beets, 2½ million bushels of grain, $4.5 million worth of hay and livestock and 4,000 semitruck-loads of finished potato products, all of which, according to your figures, represent commodities that in the aggregate are worth around $25 million.

Mr. ALLEN. Right.

Senator CHURCH. Obviously the roadway is important to the economy of the area.

Now, I understand you endorse an amendment to this bill that relates to the question of the type of highway to be built; is that correct?

Mr. ALLEN. That is correct, Senator.

Senator CHURCH. The amendment reads as follows:

> The constructing agency shall include as part of the project a river crossing meeting the then current Department of Transportation standards for federal aid secondary highway two-lane traffic. This crossing shall be located on top of the replacement dam or immediately downstream. This crossing shall be financed by state, federal, private funds or any combination thereof that the construction agency deems appropriate.

That is the first paragraph of the proposed amendment.

Now, I take it by that language you seek to impose a requirement for the construction of no more than an adequate two-lane highway that meets the Federal standard; is that correct?

Mr. ALLEN. That is correct. The State highway department has given us assurance that they will contribute the funds and so forth for the additional two lanes.

It has been determined that while we are spanning the river we need to look ahead to more than just next year or 5 or 10 years because of the limited space in crossing the river.

This was the mistake made in 1972 when the present roadway built on top of the dam. We don't want that to happen again. So the State highway board and department has assured us in writing that they will contribute the moneys necessary for an additional two lanes when the river is crossed by the new dam.

But as stated in the amendment, we do want the water users and whoever constructs the dam to take the responsibility, we will work with them but we want them to take the responsibility to see that we get the initial two lanes and the State highway department will cooperate to give us the other two lanes to cross the river.

Senator CHURCH. You heard the Governor's earlier testimony on the question of State participation. Is there any problem in connection with the role of the State of Idaho that should be raised at this time, or are you satisfied that the State will fully cooperate in doing its part in the construction of an adequate highway across the dam or downstream from the dam?

Mr. ALLEN. Certainly Governor Andrus has worked just hand-in-glove with us on this. He realized the necessity of this and we appreciate it so much, and we are sure that he will do everything in

his power to get the additional funds that are necessary to help with the crossing.

We feel with the cooperation of the water users that possibly we can get some additional State funding to accomplish this. But it is going to take a cooperative effort. Until recently we haven't had that complete effort, but we had numerous meetings and we think we are in agreement now so that we can move ahead.

Senator CHURCH. Do you think it is necessary to amend this bill in order to accomplish that purpose?

Mr. ALLEN. Yes, we think it is necessary to see that we have these funds available so the bridge can be built prior to the dam or at least have the funds available so it can be built on top of the dam.

It is a nonreimbursable item, for instance, as in the other bill. This means that the U.S. Congress has to appropriate the money, as you well know. This could be delayed for years. So we think it is absolutely necessary that this language be put in there, to assure funds to build the bridge.

Senator CHURCH. Senator McClure.

Senator MCCLURE. I want to be sure I understand the position with respect to the alternative of building a bridge.

Is it your thought that a bridge downstream from the dam would be financed out of the same funds as the construction of the dam or would that be an alternative to be funded at a later date?

Mr. ALLEN. This would be a combination of other funds. Under S. 1529 it is contemplated that the builder would have to have a temporary bridge and we don't know what that would cost. But it is a substantial sum. So the water users we meet with said it is useless to spend this kind of money for a temporary bridge. We would rather put that money toward a permanent structure.

Senator MCCLURE. And that might obviate the necessity of putting the lanes on top of the dam?

Mr. ALLEN. It is possible.

Senator MCCLURE. The amendment for construction of two lanes on top of the dam. I assume if you arrive at an agreement for the bridge, it would be a suitable alternative as far as you are concerned?

Mr. ALLEN. Yes, I believe in the original amendment it was either on top of the dam or in the vicinity. Either or.

Senator MCCLURE. That is correct, but you contemplate a portion of the money that would be spent in replacement of the dam would be spent in the replacement of the crossing on top of the dam or in the bridge; is that correct?

Mr. ALLEN. That is correct.

Senator MCCLURE. And you want to leave those options open?

Mr. ALLEN. That is correct. We have been informed this will probably expedite the building of the dam, especially if the bridge can be built prior. This would expedite the building of the dam and save the water users a considerable amount of money, not having to build a temporary bridge.

Senator MCCLURE. It won't take a lot of money if they contributed an equal amount.

Mr. ALLEN. We might add here that we feel strongly that the water users do have a responsibility for that crossing. Were it not for the

present dam in the reservoir, we would have had a good crossing 3 years ago. It would have been a simple matter to span the river.

With the situation as it is, it is a $5 to $7 million item.

Senator CHURCH. At that point, I think we have to be clear as to just what the responsibility is and what requirement is imposed by this amendment.

Now, as I read the amendment, the construction agency is required and would undertake to provide for an adequate two-lane crossing. That is meeting present Federal standards and that if the Idaho Department of Highways comes up with money to provide two additional lanes, then all the better. But I wouldn't want to adopt language here that might have the effect of delaying the design and construction of the dam while we wait for the highway department first to decide and then find the money to build a four-lane road.

That is the only question I would have about this amendment. It is clear that the requirement on the construction agency is to make certain that there is an adequate two-lane highway there.

Fine, but we ought not to get hung up waiting for a four-lane highway in the way that might delay the construction of the dam.

Would you agree to that?

Mr. ALLEN. The State Highway Department has assured us in writing that they will furnish the funds and construct the additional two lanes. We worked with the Governor on this and talked to a number of legislators and we think with good cooperation we can get the job done. The water users, this is an agreement that was worked out with the representative of the water users, the committee of eight adopted this amendment.

Senator CHURCH. I understand that. I just want to be sure that there is no confusion as to what the amendment required.

What obligation is invoked on the construction agency and what obligation is imposed upon the State Highway Department, if any? We can't impose on obligation on the State Highway Department by amending this bill. If you do get full cooperation, there won't be any problem. The problem is not that, it is writing language that may create some difficulty down the line in the event that the Highway Department doesn't perform, if you don't get the money that you expect to get when you expect to get it. That is what we want to be certain of.

Senator MCCLURE. I would understand that your feeling is that the water users have an obligation for a crossing and that the water users have at least agreed to the obligation which would express this amendment. That the four-lane is beyond either your sense of their obligation or their assumption of obligations.

That is within the discretion of the Highway Department. Your expectation is that the Highway Department will come through with the money for the two-lane addition to make it a four-lane crossing. In coordination with the construction schedule for the project. But I would assume with that background that if anything should happen that would render that impossible, if they did not meet the construction schedule of the project, that it is not the desire of your committee or your expectation that the project would be held up because the State Highway Department did not meet their commitment?

Mr. ALLEN. Again, we do not want to be trapped into a crossing there that is going to be inadequate down the road. Because of the narrowness of the area to span the river, we think that this language provides the wherewithal of getting the four-lane crossing and, yes, there has to be additional work done, but we think whoever builds the dam has the responsibility of helping coordinate this.

Senator MCCLURE. And apparently they have agreed they will attempt to do all they can without being able to promise you they can achieve these results?

Mr. ALLEN. That is correct.

Senator MCCLURE. One other problem that has to be explored is the question of the Four Bay fishing. Do you know whether the design contemplated for the reconstruction of the dam would reserve the Four Bay?

Mr. ALLEN. We have a member of our committee who worked on that and will be testifying. He has met with the Fish and Game Department and they tell us that the Four Bay must be maintained for adequate fishing.

Senator MCCLURE. Do you know what the financial costs of doing that is or do you want to leave that with the later witness to bring that out?

Mr. ALLEN. We don't have exact costs, but again, I would defer to Ben Caveness, a member of our committee, to address that.

Senator MCCLURE. And I assume he will be prepared to address himself to the water requirement of doing that, the impact that would have on the cost of the project and also the water use and feasibility of the project?

Mr. ALLEN. Right.

Senator MCCLURE. Thank you very much. I appreciate the fact that you are here. I know of your long attention to this project and your concern with it.

While I was not able to be there at the time the rest of the delegation was there, I do remember the two or three occasions that I was down there looking at that with you and to express my concern. That is why I think we have to recognize there are two emergencies involved here, not one.

Thank you.

Senator CHURCH. Thank you.

Mr. ALLEN. Thank you.

[The prepared statement of Mr. Allen follows:]

STATEMENT OF JOE ALLEN, STATE SENATOR AND CHAIRMAN OF THE AMERICAN FALLS BRIDGE COMMISSION

Mr. Chairman, Members of the Committee, Ladies and Gentlemen, my name is Joe Allen. I am Chairman of the American Falls River Bridge Committee. I live 12 miles northwest of American Falls, Idaho.

Included in our full committee are the mayors of American Falls and Aberdeen; representatives of the Aberdeen, American Falls and Pocatello Chambers of Commerce; Power County Commissioners; presidents of all the farm groups; area managers for Lamb-Weston and Western Farmers Association Potato Processing Plants; all of the state legislators from Dist. 35; the State President of the Potato Growers of Idaho; and other interested individuals. In addition to promoting the construction of a new bridge and replacement of the old dam, our group also represents the American Falls—Aberdeen—Pocatello areas in regard to Fish and Wildlife, Recreation and Ecology.

This committee which was formed about eight years ago had as its primary purpose replacement or extensive improvement of the obsolete 17½ foot wide crossing on top of the dam. This project was intially delayed for lack of funds, and more recently, has been further delayed until a decision on the dam itself was resolved.

As some of you already know, the American Falls Dam and the 17½ foot wide river crossing on top of it are in critical condition. Our committee believes that the need to replace both the dam and the bridge must receive highest priority priority for safety reasons as well as the potential economic loss of farm crops in southern Idaho.

Recent limitation to one-way traffic is already costing affected residents of the area thousands of dollars in lost time. The harvest crossings of grain, potatoes, and sugar beets starting in July and running almost continuously through November 15 will make the situation almost intolerable.

Following is a breakdown of commodities which have to cross this bridge annually:

2½-3 million sacks of potatoes.
125-150 thousand tons of sugar beets.
2½ million bushels of grain.
4½ million dollars of hay and livestock.
4 thousand semi-truck loads of finished potato products.

The above totals more than $25,000,000.

When you add to this the several million dollars in fertilizer, petroleum products and machinery plus the labor force crossing this bridge to work on farms, in the potato plants at Lamb Weston and Western Farmers Association, the urgency of this project becomes very obvious.

It has now been agreed by all concerned that the dam must be replaced as soon as humanly possible because of the deterioration of its concrete which has forced the Bureau of Reclamation to reduce the American Falls Reservoir capacity by one-third.

Excellent year-around trout fishing is provided in the forebay immediately below the present dam. Our communities are very interested that the quality of fishing in this area not be diminished but enhanced when the new dam is constructed. Otherwise, we support S. 1529 with the proposed amendment and ask your help in expediting its passage.

Thank you for this opportunity to testify regarding these urgent matters.

Senator CHURCH. Our next witness is Mr. Russell Woolley from Jerome County, representing the North Side Canal Co.

STATEMENT OF RUSSELL WOOLLEY, FARMER AND RANCHER, JEROME COUNTY, REPRESENTING THE NORTH SIDE CANAL CO.

Mr. WOOLLEY. Thank you, Mr. Chairman.

On behalf of the North Side Canal Co. which is a Carey Act company charged with the responsibility of delivering the water to the stockholders of that company in Jerome County and Gooding and Elmore Counties, I have a statement I would like to submit for the record.

I am personally in the business of farming on a family sized farm, 320 acres and the restriction placed upon American Falls would, I feel, represent a serious economic loss to myself and to the members of our project who are also engaged in similar type operations.

We depend on irrigation almost entirely for our crops because of the shortness of rainfall from April to October. In the 1930's which were extremely short years, I was engaged in farming with my father and at that time we left a third of our land idle because of the shortage of water and it presented a serious economic loss to our family at that time.

I feel that now it would be much more severe due to the high cost of production and taxes. In our area potatoes and sugar beets are

some of the principal crops and it is imperative that these crops have adequate moisture late in the season so they can be harvested by mechanical methods.

If you try to harvest potatoes and beets in dry soil, there is extreme bursting and breakage and would cause more serious losses there.

When American Falls was operating at full capacity, we had approximately 2⅞o acre feet of our available storage in that reservoir. reservoir.

With the restriction of 11 feet imposed on it now for the reason of safety, we stand to lose approximately one-third of that storage.

So it is a real serious problem for our project.

So, Mr. Chairman and members of the committee, I would urge that the committee support and recommend passage of Senate bill 1529 for the earliest possible construction of American Falls Dam.

We recognize also that the bridge people have a problem that is important also and we support them in their efforts to obtain crossing at that site.

I would like to thank you for being allowed to be present and express my views.

Senator CHURCH. Your views are very helpful because you confirmed on the basis of your own personal experience the disaster of a water shortage in that part so the State which depends so heavily on this reservoir.

I think that testimony from farmers who have lived through this is very important.

Senator MCCLURE. Mr. Chairman, I think the fact that Mr. Woolley's statement indicates, as we all know, that they did experience water short years in the 30's and again in the 50's underscores the likelihood of the shortages justifies emergency action.

I couldn't help but feel with you, as you say in your statement, a summer can be very long for a farmer on an irrigation tract if there is not adequate water supply. It is certainly very true.

Mr. WOOLLEY. I might say at this time we are threatened with going on our storage supply of water at one of the earlier times during the life of the reservoir. We are starting on storage early in May of this year and normally we get clear into June before we draw heavily on our storage.

Senator MCCLURE. Thank you very much.

Senator CHURCH. Thank you, Mr. Woolley.

[The prepared statement of Mr. Woolley follows:]

STATEMENT OF RUSSELL WOOLLEY, JEROME COUNTY, IDAHO, REPRESENTING THE NORTH SIDE CANAL CO.

Mr. Chairman, members of the committee, ladies and gentlemen, I am Russell Woolley. I farm 320 acres in Jerome County, Idaho. I am a member of the North Side Canal Company Board of Directors and represent that company on the American Falls Reservoir District Board of Directors. I have farmed in Jerome County since 1937.

The North Side Canal Company is a Carey Act operating company with an intensely complex system. Our main canal runs 99 miles from its diversion at Milner Dam to the final delivery. There are many hundreds of miles and laterals. Our system encompasses portions of Jerome, Gooding and Elmore Counties. Our water supply is provided through the North Side Canal Company system for 160,000 acres.

Prior to the original construction of the American Falls Dam, the North Side Canal Company annually experienced water shortages. Even following the construction of the reservoir, and during those years in the 1930's when American Falls did not fill, shortages were experienced.

Although our company has some natural flow rights, they are late priority rights and are generally cut off early in the season. In normal years, we must rely on storage water for irrigation from some time in June through the last watering of beets and potatoes in late September or early October.

The North Side Canal Company is in fact the largest operating company spaceholder in the American Falls Reservoir. They own, through the American Falls Reservoir District, 272,234 acre-feet of water. In the 1950's after some additional water short years had been experienced, the North Side Canal Company was able to contract for an additional 124,980 acre-feet of water in the American Falls Reservoir. In addition, as an operating copany, the North Side Canal Company delivers the water owned by the Hillsdale Irrigation District in the amount of 41,146 acre-feet. In total, if the reservoir were operating at full capacity, and all of the storage water were to be used, the 160,000 acres which we service would be entitled to the delivery of 438,360 acre-feet of American Falls storage water.

Because of our company's high stake in American Falls storage water, the restriction order will hit us particularly hard in other than above average years. It is a possibility that we will experience such a shortage this year. We have been advised by the watermaster of Water District No. 1 for the Upper-Snake River basin that it appears that this year the natural flow will not hold up as in normal years. We will be on storage water before the end of May of this year. Whether or not we experience an economic loss depends on many factors in 1973. If 1974 follows with a watershed which is below normal as it is this year, we might well experience substantial water shortages.

Personally I grow many varied crops, beans, peas, corn, hay, grain and sugar beets. More irrigation water is necessary prior to the harvest of beets. I also feed some cattle.

In today's economy, in an operation the size of mine, I must be involved in production of sugar beets or some other cash crop in order to make what I feel is an adequate living for my family. My income would be substantially reduced if I had to convert my total operation to hay and grain and would not be able to obtain the third cutting of hay. I think that most farmers in the North Side Canal Company system, and within the American Falls Reservoir District No. 2 system will be confronted with similar decisions during the time period that American Falls Reservoir is under restriction.

The North Side Canal Company Board of Directors has pledged their financial support in paying advanced monies necessary to do the preliminary things necessary toward the earliest possible replacement of the dam and reservoir. They have endorsed the concept of SB 1529 and encourage this committee to recommend it favorably and support its passage. Because the private replacement proposal can be accomplished more quickly, and because it will cost each water user such as myself less net dollars, I support the private financing construction alternative. As a member of the American Falls Reservoir District Board of Directors, I sense a feeling of cooperation among the Spaceholders and everyone else concerned with the early replacement of the dam. I feel that we can accomplish the replacement if the Congressional bill is enacted into law.

I recognize that SB 1528 is not controversial legislation. Its enactment would authorize an appropriate replacement at American Falls. In the event that replacement can not be accomplished in accordance with SB 1529, I assume that the Spaceholders would then attempt to obtain authorization of the replacement project through SB 1528. We recognize that time is the most important factor. A summer can be very long for a farmer on an irrigated tract if there is not an adequate water supply.

We encourage your support so that the waterusers might not find themselves in the position they were in prior to the original construction of the American Falls Dam. Thank you for the courtesies that you have extended me in allowing me to testify today.

Senator CHURCH. Our next witness is Mr. Russell Holm from Shelly. Mr. Holm is well known to the committee because of his long service on behalf of various water development projects.

STATEMENT OF RUSSELL HOLM, FARMER IN BINGHAM COUNTY, IDAHO

Mr. HOLM. Thank you, Mr. Chairman, members of the committee, guests.

I have a prepared statement and I will pass over many of the observations that I have observed over the last 18 years that I have been involved in the irrigation business and many other things that I have been involved in.

But I will get down to the bridge deal which I think is very critical to the construction of the dam first.

We have done quite a little bit of work on this, done some engineering. Jack Harper and Goodman Construction people have done quite a lot of surveying there to determine the feasibility of it and have come up with some pretty realistic approaches to a dam there.

In fact, if I had had clear answers, he could have gone to work the next day after we made some determinations on it and put a design engineer on the spot and he said he could do the job in 6 months but double shifting. He said he could get crossing there in less time by devoting his attention to two lanes and then going back and finishing the other two lanes.

Now, the determination—our first determination was probably thinking of myself because I am going to be here long, long after your other short lived people are gone 50 years from now, but there has been some thinking that maybe the 80-foot bridge isn't necessary.

Well, if it is or isn't, we certainly want to do the job right in the first place and the work in the river.

Mr. Chairman and faithful ones, I will relinquish now to other people.

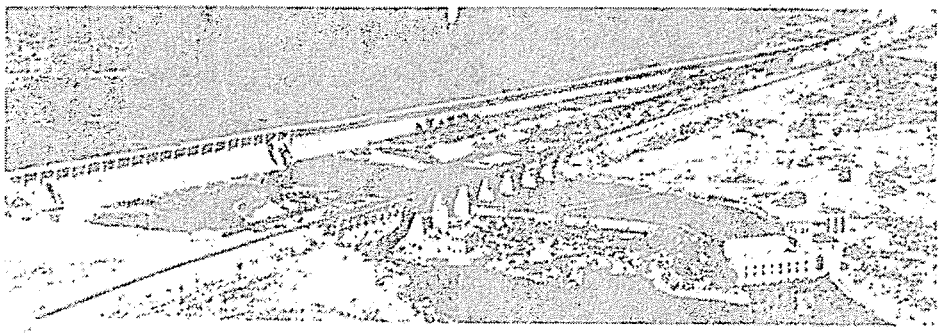
Senator CHURCH. We will see to it that all of your written testimony appears at this point in the record and I want to thank you personally for the assistance and good advice you have given over the years in connection with some other water projects you have worked on in Idaho, including the Teton Dam. There aren't many dams being built any more, as you know.

Mr. HOLM. We are having a roster completed so you will know what we are talking about, and the fishing is going to be good this year.

Thank you.

[The prepared statement of Mr. Holm follows:]

AMERICAN FALLS BRIDGE, DAM AND POWER PLANT REPLACEMENT



MAY 10, 1973
STATEMENT OF RUSSELL HOLM,
AMERICAN FALLS DAM REPLACEMENT COMMITTEE

HONORABLE CHAIRMAN, COMMITTEE MEMBERS AND GUESTS:

My name is Russell Holm, Shelley, Idaho. A farmer, livestock raiser, Irrigation Director and hold several other non-paying jobs.

The Idaho Irrigation District which I represent, owns 22,911 acre feet of storage in American Falls Reservoir, 58,000 acre feet of storage in Palisade Reservoir and 13,230 acre feet of storage in the Jackson Lake-Reservoir.

Our storage in American Falls Reservoir will be reduced from the total fill of 22,911 acre feet to 13,746 acre feet or less due to the reduced level of safety.

This toral storage supplement of our three reservoirs space areas amounts to 2.63 acre feet of additional water which is badly needed during late season irrigation when decreed natural stream flows are reduced.

The American Falls water users will be using storage water from American Falls Reservoir this week, a very unusual condition for this time of year.

Space holders of these upper valley reservoirs have a very fine working relationship. Those holding space in an upper reservoir may exchange space for a like amount in a lower reservoir if their land lies below such reservoir.

One reason why all reservoirs in the system should function properl, and to full capacity for a full andproper means of exchange.

Some tracts under American Falls depend entirely on storage water from American Falls Dam.

Those of us with decreed natural and flood flow rights will some how lend some degree of help to those depending entirely on only storage water.

If the present pattern of run-off continues through the balance of spring and summer, many of those land owners with short supplies of irrigation water will be hard pressed to mature their late crops with-out help with additional water supplies.

The conditions in many parts of the United States and else where the world over where an abundance of food as we have become more or less accustomed to could very well become a real blessing indeed.

Unusual storm patterns have layed vast areas useless so far as the production of food and fiber are concerned.

Generally irrigation areas with firm supplies of storage water has more latitude of control in the production of food and fiber.

With a system of reclamation dams the length of the working Snake River there is also much more latitude for control of unexpected death dealing and property damaging floods.

Even with all the protective measures we try to install in these man made structures for mens protection, recreation, fish and wild life habitat, food and fiber in abundance there are still some most unbelieveable things that could bring devastation down on us.

The enormous weight of the some eleven million acre feet of water in Yellowstone Lake at elevation 7737 feet above sea level, should an earth quake, the frequenby of which in the area has been most frighting, open a seam between Yellowstone Lake at 309 feet deep and Heart Lake 400 feet lower, that sudden gush of such a volume of water would tax every dam structure along the Snake River.

The block on block structure of American Falls Dam could be most vulnerable. Through the Grace of God may such a thing never happen.

We strongly urge your consideration of our private funding for the replacement of American Falls Dam with revenues from the tumbling water generation of it's own resource as a means of taking the load of repayment off the back of the space holders who have already paid for a supposedly 100 years life dam structure.

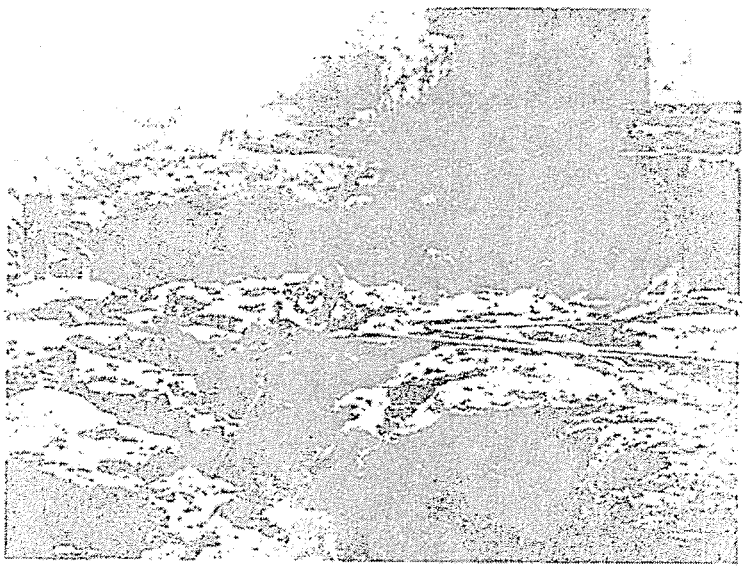
The badly needed bridge crossing for the vast amount of produce to feed the hungry, the dam replacement to protect vast areas from flood or drought and the power plant for maximum use of the tumbling water as a pay off for a greater share of the two first items.

We respectively pray for your endoresement of this meritorious undertaking on the part of the space holders as a means of helping themselves.

May I also respectively request that this paper be included in the records.

Thanks most kindly for this privilege to appear before this distinguished committee.

Russell Holm



Is this a scene which will be repeated in the not-too-distant future?

This is a photograph of the foundation lava upon which the first American Falls dam was built—the present deteriorating structure which has to be replaced. The picture was taken on June 24, 1926, and shows the final stages of washing dirt from lava before the dam's foundation work was started.

Idaho's congressional delegation has introduced two bills in Congress, either of which could lead to rebuilding the dam. One proposal will authorize the familiar route, reconstruction by the Bureau of Reclamation. The second would authorize Snake River valley water users to build the dam themselves. The latter could provide a shortcut in time to completion of the project via a contract with the Idaho Power Company.

Senator CHURCH. Thank you.

Our next witness is Mr. Dale Depew, director, American Falls Reservoir District.

STATEMENT OF DALE DEPEW, DIRECTOR, AMERICAN FALLS RESERVOIR DISTRICT

Mr. DEPEW. I am glad to be here, Mr. Chairman, and members of the committee.

Ladies and gentlemen, I am Dale Depew. I reside and farm near Wendell, Idaho, in Gooding County. I am a stockholder in the North Side Canal Ca., serve on their board of directors, and also serve as a member of the board of directors of the American Falls Reservoir District.

My farm is approximately 275 acres. I raise sugar beets, beans, hay, and grain and am involved in a livestock operation to a limited extent.

With a good water supply, my farm is a good one. It has provided a home and income for myself, my wife, and our children. I like farming and I hope to continue farming. For these primary reasons, I am involved and constantly concerned about irrigation water supplies.

I have enough tenure in farming to have lived through short water years when deliveries were restricted with proportionate reductions in crop yields. The North Side Canal Co., which delivers my water, relies very heavily on the American Falls Reservoir for their water supply.

Because of the extent of the canal system, which serves my farm and the complexities of the water rights, any reduction in available water supply at American Falls directly affects me and the other stockholders.

As a member of the board of directors of American Falls Reservoir District, I concur in the board's effort to pursue and encourage the passage of Senate bill 1529 as the most expeditious alternative available for the replacement of the American Falls Dam.

It is the feeling of the Board of Directors, and my personal feeling, that if Senate bill 1529 receives congressional approval, that the water users can help themselves in replacing the American Falls Dam at the earliest possible date.

When the reservoir district board first approached the power company about the possibility of a falling water contract to assist in private financing, the idea was received by the spaceholders with enthusiasm.

In the opinion of the American Falls board of directors, the private financing alternative, and the execution of the falling water contract, not only makes sense because of the time factor, but to the farmer who must pay for each acre-foot of water in the new reservoir, it helps them with the financial burden.

It is my opinion that if the congressional bill is passed, that a bond issue will be favorably received within the confines of the American Falls Reservoir District.

It is also my opinion that elections necessary within other districts will be successful to the eventual point that all spaceholders now

involved in the American Falls Reservoir will be willing to pay for and will receive the same share of storage irrigation water from American Falls as was the case when the reservoir was full, prior to the implementation of a restriction order. I encourage your favorable consideration of Senate bill 1529.

The water users also owe a vote of thanks to the congressional delegation for your assistance to date. We appreciate the early hearing date. The water users would like the opportunity to pursue the plan outlined by S.B. 1529 to its completion. If for some reason this arrangement would become impossible, we would then ask your help in the consideration of 1528.

I appreciate the opportunity to appear here today.

Senator CHURCH. Thank you very much.

How many acres do you farm, 275?

Mr. DEFEW. Yes, and this year I have an 80-acre beet contract.

Senator CHURCH. Well, I think it is good to point out for the record how late you irrigate, both for the beets and the potatoes.

Mr. DEFEW. The soil down there is of a sandy nature and they can harvest potatoes only with the moisture. A few day of dry weather and the harvesting is just almost impossible.

Senator CHURCH. Senator McClure.

Senator MCCLURE. I have no questions.

Senator CHURCH. According to my listing here, this completes the testimony of those who are in the Governor's party. Is there anyone else who is going on the Governor's plane who needs to be heard this morning?

Would it be satisfactory then, it being 10 minutes to 1, if we broke for lunch and came back at 2 o'clock and then we will hear from the balance of the witnesses?

If that is all right, then we will break now for lunch and resume the hearing at 2 o'clock this afternoon.

[Whereupon, at 1:10 p.m., the committee recessed, to be reconvened at 2 p.m.]

AFTERNOON SESSION

Senator CHURCH. The hearing will come to order.

Our next witness is Mr. Jim Patrick, head of Bechtel Engineers, Hydro Division.

STATEMENT OF JAMES G. PATRICK, HEAD OF BECHTEL ENGINEERS, HYDRO DIVISION

Mr. PATRICK. Mr. Chairman, ladies and gentlemen, my name is James Patrick, manager of Hydro Engineering for Bechtel, Inc., one of the Bechtel companies doing worldwide engineering and construction services. I would like to discuss today the plans for replacement of the American Falls project. I have an aide here, which happens to be a little zigzag, but the top figure on this drawing shows in dotted lines the existing American Falls Dam and in solid lines shows our proposed replacement and this is what I would like to describe today.

The existing American Falls Dam is 5,200 feet long and that extends from off the chart here, including and through the embank-

ment to this side, also including an earth embankment. The river is flowing up on the sheet, the town of American Falls is on the left. American Falls Dam, as you know, was constructed in 1927 and in 1929 there was evidence of cracking, which was later attributed to—in addition to that, there was later discovered an opening of lift joints, which allowed more pressure to enter into the interior of the dam and cause conditions which were considered unsafe. This brought about the restriction of the reservoir capacity of 1,700,000 acre-feet. The most serious part of the deterioration of the existing dam was in approximately this area, lots 1 and 2.

Early in January of this year, we were requested to make preliminary plans and cost estimates for one, rehabilitation of the American Falls Dam, two, the replacement of the American Falls Dam and in both cases to include installation of a 90,000 kilowatt powerhouse. Utilizing the releases for irrigation water and the head behind the dam to the foot of American Falls. The design was to be safe under full reservoir operation with ice loading and with modern-day earthquake application.

Based upon our involvement in the study and strengthening of other concrete dams of approximately this vintage, we set about to develop a plan and cost estimate to rehabilitate the dam, we did this. We also concurrently set about to come up with a layout and a plan to replace the dam.

When these studies were completed, we had the cost estimates, which by comparing the cost estimates and other factors pro and con, the spaceholders elected to proceed with the replacement plan. And that is what I would like to describe today.

Early in the assignment, we inspected the site and we obtained data from the Bureau of Reclamation including the results of their studies on the condition of existing concrete. We obtained geology and hydrology data and used those in our analysis. In the replacement plan it appeared to us that construction money and construction time could be saved if we could use as much of the existing dam as we could safely do so. Our inspection revealed that the existing concrete section extends from here way over to here on existing dam. That there was a good part of it here that was in pretty good shape.

In fact, the concrete in our opinion would last for a good many years. However, that section had not been designed to withstand ice loading nor had it been designed for modern seismistics. So, another factor to reduce the cost of replacement, is to make the new concrete section the minimum possible, and I will get into that later.

So, I would like to show a cross section of our proposed replacement dam which will be through here, which is through the existing concrete dam. Another one through this point here, which is the new concrete dam, a section where the powerhouse would be located and a fourth section over on the right abutment.

So, from here then to here [indicating] for a distance of 2,375 feet, we proceeded to use the existing dam, but use it only as a water barrier which in a dam that would be considered a rockfill or an embankment type of dam. It is shown on this cross-section. By placing embankment both upstream and downstream of existing concrete, we are relieving the existing dam from carrying the load of the water.

It is only acting as a water barrier. We find that this plan is a less costly plan than building an entirely new dam.

My next section is through the new concrete section and here we have a reduced cost by combining the several effectors required to be in that concrete section. One, the sluice waste for release of irrigation water, two, the spillway, which would have a spillway gate, and then the penstock. Our concrete section is just long enough to accommodate the requirement of the concrete section and enough on each end to tie in.

So, this is the section to the spillway section. And we have reduced the number of spillway gates compared to the existing project by making them deeper. This reduces the land for the same spillway capacity. Beneath the spillway we have put the sluice wastes with the double sluice gates for their control.

Then we have increased the height of the spillway gates, we find it is necessary to provide for a basin downstream. Our concrete section of the new dam is only 557 feet long.

The next section shown will be the powerhouse section. Here is a conventional-type dam with provision for three penstocks through it, with gates operating on the upstream side of the dam.

The powerhouse is located 285 feet downstream of the dam, which is shown on this view at this point. The last section is a new earth-fill dam on the right abutment which is a conventional earth dam. The length of this section from here to here is 750 feet.

Now, I have shown all of the principal sections in the dam except for one, which is really too small to show on a section, but it is a small connecting section between the existing dam and the new dam and it is only 50 feet long and it provides for this, as you see here, the water surface being shown here and offset to the new dam and continue on with the new structure.

I might also point out in our layout that shown in dotted lines is the existing four-bay dam downstream, we have located the powerhouse in locations where it will be filling part of that four-bay dam, but have added to it by building a new four-bay dam at this area. The cost of this replacement based on early 1973 prices, without the highway, is $17,021,000, our estimate, and with the highway, $18,491,000. Or a difference of $1,470,000.

Now, these estimates that I have just quoted, include construction costs, include allowances for contingencies and engineering costs, but they do not include allowances for escalation and other possible costs such as land, recreation, fish and wildlife, and other owner costs, such as taxes, financing, and so forth.

Our construction schedule——

Senator CHURCH. Before you get to that, may I ask if the plan would accommodate a four-lane highway on the top?

Mr. PATRICK. No; our plan is a two-way highway. A two-lane highway under today's standards, about 44 feet wide and that is what we based it on.

Senator CHURCH. If a four-lane highway is to be built, it would have been built apart from the dam.

Mr. PATRICK. It would be quite a chore to put a four-lane highway on the dam.

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Senator McCLURE. The 44 feet, is that 44 feet of roadway or does it include walkways?

Mr. PATRICK. It includes a shoulder on each side. I have forgotten the exact dimensions. But in the earth part of the dam, in this section [indicating] the total width would have to be 44 feet, this is between guardrails.

Senator McCLURE. Thank you.

Mr. PATRICK. Our estimates are based on a construction schedule. In order to utilize the river flows, natural river flows, and reservoir releases as well as the drawdown of the reservoir for irrigation bases, it would be our plan that a construction contract would have to be awarded not later than the 1st of January. This would allow construction to proceed such that by the spring of the following year, the new dam could or would be in place, so that the runoffs from the spring could be stored behind the new dam.

The powerhouse would have to come later and the equipment would be installed and the plant in operation in late fall of that year.

Since our early study in January and February of this year, we have been continuing with what we call our facility type of study and to date, we have found nothing that upsets our original preliminary plans for the replacement of this dam.

Thank you.

[The prepared statement of Mr. Patrick follows:]

Bechtel Incorporated
Engineers—Constructors
Fifty Beale Street
San Francisco, California
Mail Address: P.O. Box 3965, San Francisco, CA 94119

STATEMENT OF JAMES G. PATRICK ON SB 1528 AND SB 1529
BEFORE WATER AND POWER RESOURCES SUBCOMMITTEE
INTERIOR AND INSULAR AFFAIRS COMMITTEE

May 10, 1973

Mr. Chairman, members of the committee, ladies and gentlemen:

I am James G. Patrick. I am an engineer and hold the position of Manager of Hydro Engineering in Bechtel Incorporated, one of the Bechtel companies which provides world-wide engineering and construction services.

The American Falls Dam, on the Snake River near American Falls, Idaho, was completed in 1927. It is a concrete gravity dam with earth abutments, approximately 5200 feet long in total length and 94 feet high at maximum section, impounding a reservoir of 1,700,000 acre-feet. The concrete portion, 3100 feet long, includes non-overflow sections and a spillway section consisting of 15 gates each 33 feet long and 11.33 feet high. Gated sluiceways for water releases and penstocks for future hydroelectric power installation are provided in non-overflow sections. A two-lane highway, 18 to 21 feet wide, was provided in the design and construction of the dam.

Abnormal cracking throughout the concrete was observed as early as 1929. Subsequent observations have indicated continuing alkali-aggregate reaction with progressive cracking and consequential leakage. Other investigations have revealed poor bonding at a number of horizontal lift joints which have allowed water, at reservoir pressure, to penetrate well into the mass of the structure. These conditions prompted the Bureau of Reclamation to limit the storage to no more than 66 percent of the reservoir capacity. Restrictions also have been placed on the use of the highway.

Early in January 1973, Bechtel was requested by Idaho Power Company to prepare preliminary plans and cost estimates to (1) rehabilitate the dam and (2) replace the dam, both studies to include provisions for a 90 MW powerhouse utilizing the head from the American Falls Reservoir to river level at the foot of American Falls. The plans for both rehabilitation and replacement were to provide adequate safety for full reservoir conditions and loading imposed by reservoir icing and earthquake accelerations.

The site was inspected and pertinent data regarding the quality of the concrete, piezometric pressure within the mass of the structure, geology and hydrology were obtained from the Bureau of Reclamation. It appeared to Bechtel that economy could be achieved by utilizing the existing structure to the maximum extent possible in both the rehabilitation and replacement plans. This procedure would minimize the length of existing concrete dam requiring rehabilitation and

strengthening or the length of a new replacement concrete dam. Therefore, as the long concrete non-overflow section on the left abutment was considered adequate as a water barrier but inadequate to withstand full reservoir pressure with ice and earthquake loading, the plans for both rehabilitation and replacement provided for strengthening this section by the placement of gravel and/or rock both upstream and downstream.

Based on Bechtel's involvement in rehabilitating similar concrete dams const ucted during the early part of this century and suffering similar deterioration, plans were made to rehabilitate and strengthen the remaining concrete portion which could not be strengthened in the same manner as the left abutment non-overflow section. The plan for a replacement dam utilizes the existing structure as much as possible, thereby minimizing the length of the replacement dam, reducing its cost and reducing the construction time.

After comparison of the costs of the rehabilitation dam and replacement dam and other factors, the spaceholders determined that the replacement dam should be constructed. The length of concrete replacement dam would be decreased by locating the water release sluices in the spillway section which is reduced in length by providing higher spillway gates. The plan for replacement dam consists of (1) essentially no modification to the existing earth embankment on the left abutment, 1600 feet; (2) utilizing 2375 feet of existing concrete non-overflow dam as a water barrier and strengthening it

with gravel and/or rock upstream and downstream; (3) a short, 70 feet, earth and rock fill dam connecting the existing structure to a new concrete dam; (4) a new concrete gravity dam 557 feet long containing water release sluices, spillway and penstocks; and (5) a new earth embankment 750 feet long on the right abutment.

The three unit, 90 MW, powerhouse would be located 280 feet downstream of the new concrete dam and would utilize penstocks provided in the new dam.

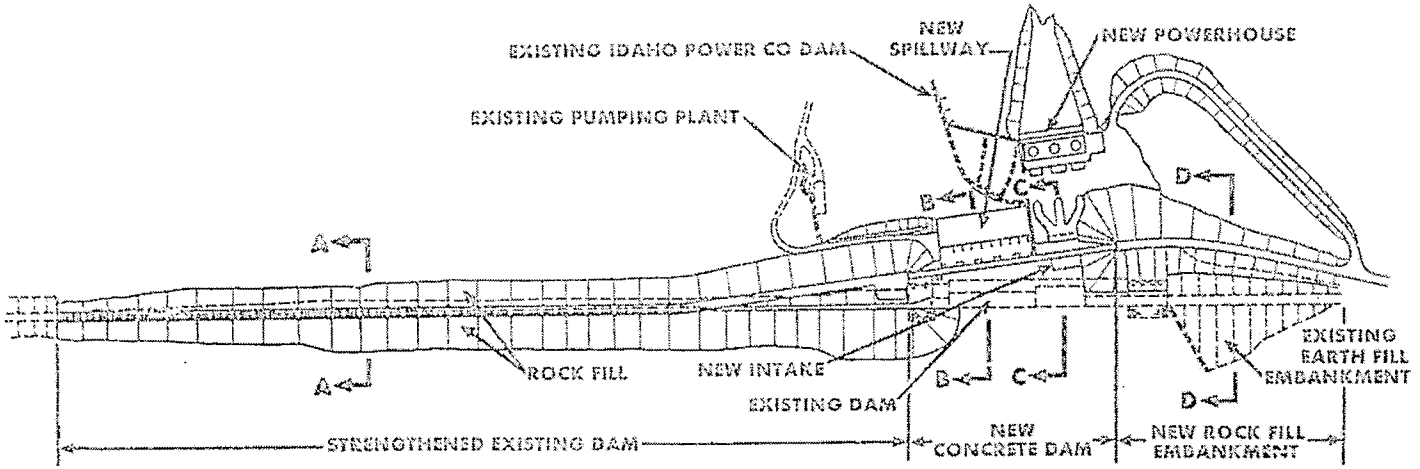
The construction costs of the replacement dam were estimated, based on early 1973 costs. The cost of the replacement dam without replacement of the highway was $17,021,000 and the cost of replacing the dam with replacement of the highway was $18,491,000, a difference of $1,470,000. These estimates include allowances for contingencies and engineering but do not include allowances for escalation, possible costs associated with land, recreation, fish and wildlife and other Owner costs including taxes, financing, etc. The construction schedule provides for a construction contract to be awarded not later than January 1 of the construction year so that advantage could be taken of river flows and drawdown of the reservoir for irrigation releases. Rehabilitation and strengthening or replacement would be completed in time to permit storing the high river flows in the spring of the following year. The powerhouse would be completed and equipment installed during the fall of that year.

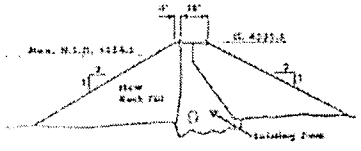
The general layout and design developed during the initial phase of the project has been substantiated by continuing engineering studies.

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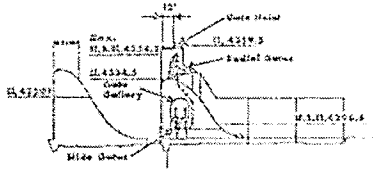
AMERICAN FALLS

DAM REPLACEMENT

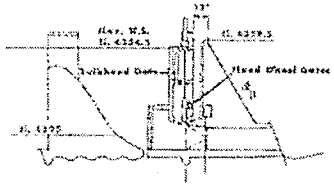




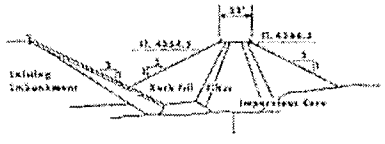
LEFT EMBANKMENT A-A



SPILLWAY SECT.B-B



INTAKE SECT.C-C



RIGHT EMBANKMENT D-D

Senator CHURCH. Do you have and could you supply, to the committee, any more detailed information concerning this proposal than that which you have given us in your testimony? Do you have any further data that we can include in the file, concerning this proposal?

Mr. PATRICK. No, sir, we have put out no report as such. I have attempted to get into the statement the pertinent facts and dimensions, that is all we have.

Senator CHURCH. You have no written feasibility statement of any kind that you prepared for irrigation district?

Mr. PATRICK. We are now working on what I call the feasibility report.

Senator CHURCH. This is not yet available?

Mr. PATRICK. No, sir.

Senator CHURCH. Can you tell us when it will be available?

Mr. PATRICK. We expect it would become available by the middle of July.

Senator CHURCH. You mentioned in your testimony that the old dam which will be covered by the landfill would act simply as a water barrier. If the old dam were not there and you were just relying on the landfill, wouldn't that itself be impervious? Is there a necessity for a water barrier within it?

Mr. PATRICK. Yes, sir, there must be a water barrier within the dam. A conventional rockfill dam would be included as an impervious section, and this is being used for that. By putting the embankments upstream and downstream, we are relieving the old dam from the possibility of carrying the load.

Senator CHURCH. Senator McClure.

Senator MCCLURE. I look at several of the sections here. Your plan shows sections of 22 feet in width, yet it is on the crest of these sections where the 44 foot roadway would be constructed, is that correct?

Mr. PATRICK. My sections here are for the dam without highway. The width varies depending on the type of structures. For instance, on an earth dam, the top width would be normally 20 or 24 feet, because that is the convenient width for construction purposes. Now, a concrete dam is something different. The concrete dam you would narrow it down to as narrow a width as possible.

We have shown here a road width of 12 feet simply for operation and maintenance purposes.

Senator MCCLURE. On top of those sections then would be constructed a wider section for the road.

Mr. PATRICK. If there were to be a two-lane highway on top of this dam, this top width would have to be considerably wider and in addition to that it would have to be higher. Now, with the roadway on top, the operating equipment for spillway gates and other things would have to be beneath the bridge deck.

Senator MCCLURE. But your costs included the provision for that width roadway on all of those sections?

Mr. PATRICK. Yes, sir.

Senator MCCLURE. Have you made any estimate of the cost of the temporary bridge that would have to be built to service during the construction and for the construction period?

Mr. PATRICK. In our planning here, we tried to provide for traffic during construction, this is principally applicable to the rehabilita-

tion scheme. I believe we had in our costs, an estimate for a detour road of pretty close to, if I remember correctly, better than three-quarters of a million dollars, for a detour road.

Senator McCLURE. If you would find from any checking of your records that you would like to correct that figure or give us a more accurate figure, I think we would be happy to accept any addition to the record on that point.

Now, I indicate that the kind of construction that you have anticipated requires spilling bases. Is that spilling base below the powerhouse or is it in the four-bay area?

Mr. PATRICK. It is part of the four-bay area. It is shown right over here [indicating].

Senator McCLURE. Is that separated from the four-bay?

Mr. PATRICK. No, sir, it is part of it.

Senator McCLURE. Does all of the water that passes through the powerhouse, pass through the powerhouse and the four-bay?

Mr. PATRICK. The only water that passes through the spilling basin, is the water that is released.

Mr. McCLURE. It would be that in excess for proposed flowing through the powerhouse?

Mr. PATRICK. Yes.

Senator McCLURE. Is there any provision for maintenance of water in the four-bay for the action of power production?

Mr. PATRICK. These sluice wastes could be used at any time and all of the time for release of water.

Senator McCLURE. But the water in the four-bay does not run through the powerhouse?

Mr. PATRICK. Yes.

Senator McCLURE. So any waters which are released to maintain in the four-bay, would be water that is lost to power production?

Mr. PATRICK. Yes, sir.

Senator McCLURE. Is the powerhouse located at a higher elevation than the present powerhouse?

Mr. PATRICK. Are you referring to the powerhouses way down here?

Senator McCLURE. Yes.

Mr. PATRICK. I would say essentially the same. It uses the same water elevation. The powerhouse here is excavated into the rock and upstream from the dam to the river level of downstream of American Falls.

Senator McCLURE. Thank you very much.

Senator CHURCH. I have no further questions. Thank you very much.

Our next witness is Mr. Robert Hogg of the Idaho Power Co.

Mr. Hogg, it looks like you have arrived just as another vote is called. Don't think it is disinterest on our part in your testimony, Mr. Hogg, but we have to stagger this so one of us will go first.

STATEMENT OF ROBERT A. HOGG, CONSULTANT, IDAHO POWER CO.

Mr. HOGG. Thank you, Mr. Chairman, and members of the committee, my name is Robert A. Hogg, Boise, Idaho. I was superintendent of the Idaho Power Co., at the time the American Falls

spaceholders contacted us and wanted to know if we can be of any help to them in replacing the American Falls Dam. Since my retirement, I have been retained in a consulting basis on this program.

Mr. Chairman, I have a statement of five pages and attached to that I have a 10-page written proposal which was presented to the spaceholders on February 27, and I would ask that that be made a part of the record as though read and I would like to highlight a few points.

Senator McCLURE. Both your statements and the attachment proposal will be made a part of the record.

Mr. HOGG. I would like to call your attention to pages 7, 8, and 9 of the proposal submitted to the spaceholders, that is about a two-page proposal of the company to the spaceholders, and we are proceeding now in the interest of getting all of the material and data together which we need to proceed with FPC license applications and contractual arrangements and so forth.

Another part of my statement includes some water records, as to the effect of the decreased storage capacity on the river for irrigation purposes. I think you might be interested in knowing that the loss of 600,000 acre-feet of storage in American Falls changes the number of years over a 40-year period of study, from the reservoir's being emptied 16 times out of that 40 years to being emptied 26 times out of the 40 years, which is a very significant factor.

I think Senator Hansen would be interested in knowing that the Jackson Lake Reservoir would be emptied nine times with the restriction, whereas without the restriction it would be only emptied four times out of the 40 years.

Other points I would like to call your attention to is that we, of course, will need to construct a new powerplant to carry this project forward as contemplated and the production of that powerplant will be the same as burning 210,000 tons of coal per year or 28 million gallons of oil or 3¾ million cubic feet of natural gas.

Mr. Chairman, those are some of the highlights. If you do have some questions, I will be happy to try to answer them.

Senator McCLURE. Mr. Hogg, what is your professional background, other than having been vice president of the company? We ought to state that for the record.

Mr. HOGG. I am a graduate civil engineer and a licensed professional engineer in Idaho.

Senator McCLURE. You have been active as an engineer over all of your lifetime?

Mr. HOGG. Yes; pretty much. As such, we are at Idaho Power, 100 percent electric generated, and we make it our business to know everything about the area. We propose and anticipate a powerplant of 100,000 kilowatts.

Senator McCLURE. The proposed operation is to utilize the streamflows and irrigation releases from the reservoir, is that correct?

Mr. HOGG. Yes. At the present time our powerplant is not connected to the American Falls Dam and so the only head that uses it, is about 45 feet. When we connect it up to the American Falls Dam, we will have a head of about 100 to 105 feet.

Senator McCLURE. It is not contemplated to have releases solely for power production?

Mr. Hogg. Not at all. The releases, certainly in the summertime, will be entirely dependent upon the irrigation requirements.

Senator McClure. Idaho Power Co. is a spaceholder and the operation might contemplate its right as a spaceholder?

Mr. Hogg. Yes.

Senator McClure. With respect to people in the area who want to maintain flows in the four-bay, for fixture purposes, do you know what would that cost in terms of lost revenue? Do you have any estimates of varying flows?

Mr. Hogg. At this stage; no. Our fish biologist is working with the fish and game people and other people interested in working with that fishing resource in there and they have not made any determination as to the best way to handle that, so we have not had the opportunity to evaluate it.

Senator McClure. It would be premature for us at this time to say whether or not it can be resolved?

Mr. Hogg. Of course, it can be resolved, but the question is how much money it would cost in terms of production or loss of revenue.

Senator McClure. I would assume if it cost too great a loss of revenue, then the project would fail?

Mr. Hogg. The project is a very expensive one and we have endeavored to evaluate it and be of greatest help to the irrigators at this stage of the game. And we might have problems, yes.

Senator McClure. The bells indicate I am going to have to leave. There is a roll call, and I will be back as soon as I can.

[Short recess.]

Senator Church. The hearing will please come back to order.

Mr Hogg, you had completed your statement. I did not have an opportunity to read it. I will read it in the record and since I have not heard the statement, I would not question you at this time. Senator McClure said he did have the opportunity to question you.

Let me express my appreciation for your being here.

Mr. Hogg. Thank you very much, Mr. Chairman. I did not say it very boldly, but we are in favor of Senate bill 1529.

[The prepared statement of Mr. Hogg with an attachment follows:]

Statement of
Idaho Power Company
93rd Congress, First Session
in Support of
American Falls Dam Replacement S.1529
Before the Senate
Interior and Insular Affairs Subcommittee
on Water and Power Resources

My name is Robert A Hogg, Boise, Idaho. As Vice President of Idaho Power Company, I developed a proposal to assist the American Falls Spaceholders, through their contracting agency, the American Falls Reservoir District, to finance the repayment of a replacement dam at American Falls. I have been retained in a consulting capacity for the Company on this project since my retirement.

After the American Falls Spaceholders came to us to evaluate possible involvement in a Falling Water contract, the Idaho Power Company developed a proposal to assist the Spaceholders in restoring the American Falls dam to acceptable safety standards at the earliest practical date. A copy of the proposal submitted to the Executive Committee of the Spaceholders February 27, 1973 is attached hereto. The Company's primary interests are as follows:

1. The Company's electric generating capability, energy sales and revenue are directly affected by water conditions including water storage capacity which has been limited in the American Falls reservoir.

2. The economy of the Company's service area in southern Idaho, which includes the 900,000 acres of land depending on the American Falls stored water to finish the yearly crops, is exposed

to a severe setback as long as the American Falls storage limitation is in effect.

3. The Company presently owns and operates a 27,000 KW power plant below the American Falls dam.

4. The Company is a spaceholder in the American Falls reservoir.

The Idaho Power Company is a hydroelectric generating system and is keenly aware of factors which affect water conditions, including storage of water. Furthermore, Idaho Power Company's peak load is established by irrigation load, which also is dependent upon water conditions. The water conditions have opposite effects on the system, since with low water conditions the generation is low; however, at the same time, the electric load is high because the irrigators use more electricity to lift water from wells and streams to make up the irrigation water deficiency. The American Falls storage limitation will contribute to this adverse effect, because 600,000 acre-feet of reservoir space cannot be used to store flood flows for later release.

The Company's service area includes most of the 900,000 acres of irrigated land depending on a full capacity of 1,700,000 acre-feet of water in the American Falls Reservoir being available for the final and finishing irrigation. About 2-1/4 million acres of land are irrigated in the Company's service area; therefore,

nearly 40 percent of highly productive land is exposed to reduced production under adverse water conditions.

An indication of the seriousness of the change in irrigation water supply as a result of the restriction is illustrated by comparison of the number of years over a 40-year period of study the American Falls reservoir would be emptied at the end of the irrigation season without the limitation and with the limitation. The reservoir would be emptied at the end of the irrigation season about 16 times without the storage limitation. With the storage limitation, the number of years the reservoir would be empty is 26. Since the reservoirs on the Upper Snake are operated on a coordinated basis, the Jackson Lake Reservoir in the Grand Teton National Park would be emptied 4 years out of 40, but with the storage limitation on American Falls, operational studies indicate the Jackson Lake would be emptied 9 years out of 40 years.

The degree of economic loss will vary with the severity of water shortage, but there is no question that there will be an adverse economic loss in some amount before the American Falls dam can be replaced under the most favorable construction schedule.

The Idaho Power Company presently owns and operates a 27,000 KW power plant below the present American Falls dam. The power plant does not utilize the full head available at the site. The

Company's proposal includes the necessity of building a new power plant under a 50-year FPC license to develop the full energy potential of the site.

The present plant produces on the average about 146 million KWH and the new plant is expected to generate on an average 370 million KWH, or about 2-1/2 times as much energy. The installed capacity of the plant will be 100,000 KW, about 3-3/4 times the present plant.

The Company's proposal to the irrigators is made possible by the increased energy generation and installed capacity of a new plant built under the 50-year FPC license. The Company is able to utilize the type of power available from this project, and such power is not available from another source at a lower cost; consequently, the resulting high cost is justified.

The Company's interest as a spaceholder is very modest in contrast to the irrigators' interest; however, the Company's 45,000 acre-feet of storage capacity is important in meeting the Company's power supply requirements in the irrigation season.

The Company's proposed plant and use of the Company's storage rights through the Company's downstream plants will generate on the average about 420 million kilowatt-hours per year. This is equivalent to about 210,000 tons of coal per year, or 28 million gallons of oil per year, or 3-3/4 billion cubic feet of natural

gas. The hydro electric plant will be a source of clean electric energy without the environmental problems associated with coal, oil or gas.

In Idaho Power Company's opinion, an early approval of S-1529:

1. Will be a significant benefit to the irrigators in southern Idaho;
2. Will minimize the adverse economic effects of the American Falls storage limitation on the economy of southern Idaho because of possible early completion;
3. Will be a benefit to the nation's taxpayers, since no money is requested for the dam construction.

I urge your favorable decision on S.1529.

RAHogg:d

4/30/73

Proposed
AMERICAN FALLS DAM
Replacement Plan

The American Falls dam was constructed in the mid-1920's and first stored water in the 1926-27 period. The irrigators paid about half of the cost of the dam in cash and the balance has been or is being paid for by the irrigators. The Idaho Power Company acquired 45,000 acre-feet of primary storage and 255,000 acre-feet of secondary storage in the reservoir.

In 1929 a chemical reaction in the concrete of the dam was discovered, which has caused the concrete to swell or expand; however, the strength of the structure has declined at a very slow rate. Recently the strength of the structure has been seriously questioned. The relatively small columns supporting the bearings of the spillway gates are showing advanced effects of the chemical reaction. Reservoir operations are now different than planned in the 1920's by the addition of Palisades (1956), Island Park (1938) and Teton (under construction) and ice loading on the dam is an important consideration now, while it was not considered necessary when American Falls dam was designed. The result of these changes as well as data obtained from core drilling is the imposition of a storage limitation by the Bureau of Reclamation in the interest of safety, which limits the storage to about 1,100,000 acre-feet in the reservoir with a capacity when full of 1,700,000 acre-feet.

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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	80
Fishing mitigation	546
Fish & wildlife enhancement	196
Flood forecasting	131
Total	$ 29,460
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

Senator CHURCH. Our next witness is Mr. Jim Phelps, vice president of the First Security Bank of Idaho.

Mr. Phelps, it is good to see you.

STATEMENT OF JIM PHELPS, VICE PRESIDENT, FIRST SECURITY BANK OF IDAHO

Mr. PHELPS. My name is James Phelps, Boise, Idaho. I am a senior vice president, member of the board of the First Security Bank of Idaho and a member of the policy committee of the First Security Corp.

We do welcome the opportunity to testify as to the economic impact of the American Falls Dam in eastern Idaho.

As residents of Idaho we are concerned with the apparent deterioration of one of our very valuable working dams. The water used from this system is extremely important to our agricultural community and has a great deal of influence on its economy.

Idaho is sparsely populated and in this day of environmental concern could well be classified as a natural resource. The agricultural industry leads all others in the State and accounts for better than 16 percent of its gross product. In this arid, or semi-arid environment we produce tremendous quantities of potatoes, sugar beets, edible beans, peas, and onions; are large producers of alfalfa seed and are the largest producer of Merion Kentucky Blue Grass seed.

Our potato crop is No. 1 in the U.S. and our sugar beets are No. 2. In 1972, income from agriculture was $760 million, up 45 percent from 1967. Livestock, cattle, sheep, and mink farming accounted for 42 percent of this total. Most interesting of these statistics is that Idaho, with barely more than a 700,000 population, accounts for 9.5 percent of dry edible beans, 8 percent of potatoes and 4 percent of the sugar beets produced in the United States.

These crops need irrigation and in fact, are high water consumers. Idaho has water and good irrigation systems, but we are now faced with a crisis. The primary dam, 42 percent holding capacity, of the Minidoka project is failing and needs repairs or replacement immediately. This series of dams irrigates 1,162,484 acres of farmland. This is 33 percent of the total acreage irrigated in the State. The cash return from this land is significant in the overall picture because these irrigated fields produce the big dollar value crops such as potatoes and beets. We are safe in saying that irrigation is the economic lifeline of agriculture in Idaho.

We have analyzed the Minidoka project and submit the following: This series of dams can store almost 4 million acre-feet of water and services, or irrigates 1,162,484 acres of prime agricultural land that produced a cash crop in 1972 of approximately $53,500,000. Based on the last 10 years average, information would indicate another $42,532,000 was spent for labor, fertilizer, transportation, et cetera, in producing this crop. This production would not have been possible without the American Falls Dam which stores 42 percent of the total water available in the Minidoka system.

State employment statistics reflect 41,200 farm workers in 1972. Applying the 1.5 multiplier generally accepted by economists for

agricultural employees, means that 61,800 workers support that farmer. This total of 103,000 represents more than 34 percent of the total work force in Idaho. The same statistical source was utilized to determine that 10,134 direct farm workers produced crops in the 7 counties irrigated by the American Falls Dam. Once again, applying the 1.5 factor, we total more than 25,000 workers dependent upon this water source.

The Bureau of Reclamation has reduced the storage in the American Falls Dam by 35 percent because of safety considerations. This is a dry year and although we started out with a maximum allowable water stored, only outstanding management will stretch the water to irrigate this year's crop. A computer study by the Bureau of Reclamation indicates the dam will be empty by August. All agree that unless we have a very good 1974 water year, we will not be able to irrigate next year's crop. This will mean changing and reducing the crop plantings next spring with the attendant financial loss. Of most importance is that continuing erosion of the dam will further reduce its capacity.

Our study does not contemplate the flood control problems when this dam becomes less effective or the impact on the powerplant, that annually produces 146 million kwh, but accepts that real problems could occur.

There is an additional problem we have that is affecting the farmer. The roadway on top of the American Falls Dam has deteriorated badly. Traffic is one-way and frequent delays during the growing and harvest season are costly. A study conducted by the Idaho Potato Growers and Wheat Commission during the 18-day 1972 harvest revealed that this roadway services 250,000 acres of farmland. Truck crossings during that period totaled 7,800 and time delays cost farmers $318,650.

Fortunately, the weather did not interfere with the harvest, but if this had been a factor, the results could have been very damaging to the crop.

Our study was comprehensive and in all cases conservative in regard to dollar values. Suffice to say, this area is in a precarious position and faced with real economic loss unless prompt action is forthcoming. The dam must be replaced or repaired and a suitable roadway must be made available. It makes good sense to spend whatever funds are required now, as opposed to waiting until financial hardship overtakes this section of Idaho.

Senator CHURCH. Thank you very much, Mr. Phelps.

The figures you have cited are impressive, but it is true, there are many businesses that depend on agriculture, so that the total impact of agriculture is greater than the total cash value of the agricultural products.

Mr. PHELPS. Very true. If you want to relate this to the machinery and automobile business, and other businesses, they would feel the impact of this.

Senator CHURCH. In a sense agriculture is the broad base upon which the economy rests.

Senator MCCLURE. I think if you just take the multiplier as you have done, show over 100,000 people employed directly or indirectly

and then apply an average of between 2 and 3 percent per family, you have some 35 to 40 percent of the population of the State directly affected by what might happen here.

I certainly agree with you it is an emergency and I appreciate the additional statistical information that you have given with respect to the cost of delays that might be attendant because of the delays in truck crossings on the roadway. I think that is an element we have to consider and I appreciate the testimony.

Senator CHURCH. Thank you, Mr. Phelps.

Mr. PHELPS. Thank you.

Senator CHURCH. Our next witness is Ralph Wheeler, State legislator and member of the American Falls Bridge Commission.

STATEMENT OF RALPH WHEELER, STATE LEGISLATOR AND MEMBER OF THE AMERICAN FALLS BRIDGE COMMISSION

Mr. WHEELER. I am Ralph Wheeler from American Falls and I have been a city councilman and mayor of American Falls for the past 13 years and am presently a State representative from district 35 which includes Power County, the site of the American Falls Dam, as well as portions of Bannock and Bingham Counties in southeastern Idaho. Pharmacy is my profession.

During these years of public service I have seen the American Falls area change from the dusty, dying average farming community of rural America to a vigorous, viable, healthy area that has experienced a 30-percent population growth rate in the past decade.

The impetus behind this growth, in my opinion, has been one Federal reclamation project plus a great deal of private development that provided the opportunity for the farming community to diversify its crops. This in turn attracted a food processing industry that now provides jobs for some 800 people.

This prosperous economic climate is now threatened by the deterioration of the American Falls Dam which was constructed in the mid-1920's. A portion of the water stored behind this structure is used in the immediate vicinity of American Falls, but the Bureau of Reclamation has restricted storage to 70 percent of capacity. The result is obvious. But an even greater impact in my legislative district may result from the present one-way traffic restrictions imposed in January on the only crossing of the Snake River within 80 miles, and the only feasible access to market for the crops from thousands of acres.

Not only does the American Falls Dam support the roadway to market the crops, but also to supply the fuel, machinery, fertilizer, and other necessities of the agricultural community. Delays in delivery can skim the narrow profits of the farmer.

The water users of the American Falls Irrigation Districts face similar, if not worse, economic losses, with the storage restrictions, and especially in dry years such as is forecast for 1973, consequences can produce an adverse affect on the economy of the whole State of Idaho. 900,000 acres are involved.

I am sure you are all aware of the vast amounts of borrowed capital that are necessary to operate today's farming operations. A 30-

percent reduction in water storage can 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 Idahoans.

The water storage above the American Falls Dam is emerging as a major water sport recreation area. The downstream area has been, for 35 years or more, a major trout fishery with 15 to 20 pound trout being taken every year. The Idaho Fish and Game Department reports that an excess of 100,000 fish are taken annually. The water restrictions will have a deleterious effect here too. The 70-percent level will drastically reduce the boating season. Less than normal river flows may expose the natural spawning grounds and will curtail normal propagation of rainbow and brown trout.

The 120,000 residents within a 50-mile radius rely heavily on the American Falls area for summer and fall recreation.

My mission here today is to encourage, through this committee, the Congress of the United States to authorize the Secretary of the Interior to enter into agreements with Federal agencies for the replacement of the existing American Falls Dam.

We are not asking for a Federal handout; only a grant of authority for private enterprise, free from the burden of excessive redtape and the competition for Federal money, to replace the American Falls Dam and construct an adequate crossing of the Snake River as soon as possible.

I cannot overemphasize the emergency nature of this request. The impact of the present status of this project is equal, in scope if not in size, to that of the recent flooding in the Mississippi River Valley. No crops. No jobs. Even higher food costs for the American public.

Your cooperation in the passage of Senate bill 1529 with the recommended amendment, is in the best interests of Idaho and the whole Nation.

Senator CHURCH. You are referring, Ralph, to the proposed amendment that relates to the roadway?

Mr. WHEELER. Yes, I feel if there were to be a dam, that the roadway would be taken care of with other than Idaho State highway funds. I feel the water users should assume a responsibility.

Senator CHURCH. Do you agree the responsibility they are assuming under this language would be to furnish the two lane highway, meets present Federal standards and that additional lanes would be supplied by the highway commission?

Mr. WHEELER. Yes, sir, it is on a highway priority with the State highway commission.

Senator MCCLURE. Mr. Chairman, I am reminded by the witness's testimony of one factor that should have been brought out sooner. That is your mention of your role in seeing that the legislature did pass some bills that had to be passed to make this possible under State law.

I think comment should have been made earlier to the fact that it was probably a record of speed and efficiency by which that legislation got through, which simply underscores again the unanimity of feeling on the part of the people of Idaho and their representatives that this emergency demands immediate attention.

Mr. WHEELER. Yes, the last bill we passed was passed within 6 hours after receipt of it from Washington here at suggested legislation on the last day of the session.

Senator MCCLURE. It had to have unanimous support or it would not have done that.

Senator CHURCH. Even then, this could have only happened on the last day.

Senator MCCLURE. Your testimony has been very helpful, and we will do everything we can. Thank you.

Senator CHURCH. Thank you very much.

Our next witness is Mr. Ben Cavaness, attorney, from American Falls.

STATEMENT OF BEN CAVANESS, ATTORNEY, AMERICAN FALLS

Mr. CAVANESS. Senator, I have prepared a written statement which I would like submitted, and I will depart from it, since there have been developments from the preliminary testimony.

Senator CHURCH. The written statement will appear in the record.

Mr. CAVANESS. It is evident to us all here, that we are all singing the same song, and playing on different variations of the theme. There is no one opposed to the concept of private funds, we approved that concept, and the only objection we had at any time, was to be sure that the crossing under the Federal bill would be available to us.

The committee fought this thing out at length and we approved the substance of the amendment, and directing my attention to the amendment, Senator, it is clear in all of our minds, I believe, that the intent behind the wording, is that the water users will be responsible for a two lane full FAS standard crossing, which they can finance anyway they want to and they should make arrangements under their plan to provide that additional two lanes and that it be provided by the State.

I think the only thing we would ask of the water users, is that they not raid our dedicated source of funds that we have earmarked out of the highway department to finance their two lanes. If they can talk them out of more money, for their two lanes, fine. We just do not want them taking our money. That is the only question any of us would have in that regard.

As I have mentioned, in my written remarks, I am here representing the Falls Irrigation District and I also have a couple of county hats on, and I am the prosecuting attorney for the county, and the county commissioners have asked me to relay their feelings and also the highway division, every time they have a piece of overweight equipment, it takes three men and about a half-hour, to run over and stop traffic at each end to get the truck across.

This costs the county money every year and they have had this expense built in for 40 years and they would like to make sure when we do the thing again, at least we do not build it in for another 40.

The county commissioners are concerned because we have the same tieup, the traffic stopped on both ends for an extended period of time, whenever you have a tractor or a 12-foot implement on it, or

a combine with a harvester on it. Even a two lane crossing will not handle this traffic without still stopping all of the traffic.

There are about 80,000 acres of irrigated property across this property, and all of this machinery comes on American Falls where the dealers are. It is a real problem safetywise for us. We have been worried that if the bridge failed or if there was an accident under the deteriorating old bridge where the school buses have to cross there every day, it could easily be toppled over into the bay.

As a school bus operator, I was extremely nervous about that. This is something that worries us.

Also the fact that if there is an accident on the bridge, there is no movement either way. And if there is an emergency vehicle that has to get through, he can't move.

We are in the Aberdeen area and all of the Pleasan Valley feeds into this one outlet for all this emergency medical care and ambulance service. This is something that the county commissioners are worried about and something that should be taken into account under the new bill we have proposed.

I think there is no problem with any of us supporting Senate bill 1529. That is all I have.

[The prepared statement of Mr. Cavaness follows:]

PUBLIC HEARING
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

RE: REPLACEMENT OF AMERICAN FALLS DAM AND BRIDGE
SENATE BILLS 1528 AND 1529

CHAIRMAN CHURCH, MEMBERS OF THE COMMITTEE, AND LADIES AND GENTLEMEN:

MY NAME IS BEN CAVANESS. I AM THE PROSECUTING ATTORNEY FOR POWER COUNTY. I AM SPEAKING ON BEHALF OF THE FALLS IRRIGATION DISTRICT, THE POWER COUNTY HIGHWAY DISTRICT AND POWER COUNTY. SINCE IT IS A LITTLE DIFFICULT TO SERVE "THREE MASTERS", I WILL ATTEMPT TO PARTICULARIZE MAJOR CONCERNS OF EACH.

1. FALLS IRRIGATION DISTRICT - THIS IRRIGATION DISTRICT IS THE ONLY DISTRICT WHICH PROVIDES WATER FOR IRRIGATION OF CROP LANDS IN POWER COUNTY. THIS DISTRICT PUMPS WATER DIRECTLY FROM THE PRESENT DAM INTO CANALS WHICH IRRIGATE APPROXIMATELY 12,000 ACRES IN POWER COUNTY. ALL THE OTHER SPACEHOLDERS ARE SITUATE DOWNSTREAM AND HAVE LITTLE NEXUS WITH THE AMERICAN FALLS - POWER COUNTY COMMUNITIES. THE DISTRICT MANGER'S HOME, THE PUMP HOUSE AND PHYSICAL PLANT ARE LOCATED IMMEDIATELY UNDER THE PRESENT OLD DAM AND APPROXIMATELY 45 FEET BELOW THE HIGHWATER MARK OF THE RESERVOIR. IF THE DAM FAILS THE DISTRICT IRRIGATION MANGER WOULD BE THE FIRST TO FEEL THE EFFECTS OF THE FAILURE. PERHAPS THIS EXPLAINS WHY THE FALLS IRRIGATION DISTRICT HAS BEEN THE ONLY DISTRICT WHICH HAS EXPRESSED PUBLIC DOUBTS ABOUT THE SAFETY OF THE INITIAL DAM THAT HAS BEEN PROPOSED BY THE PRIVATE FUNDING GROUP. THE DISTRICT PREFERS THE TENTATIVE DESIGN OF THE REPLACEMENT DAM

PROPOSED BY THE BUREAU OF RECLAMATION, HOWEVER THE DISTRICT HAS A ASKED ME TO GO ON RECORD IN FAVOR OF SB 1529, WHICH PROVIDES FOR THE REPLACEMENT BY THE PRIVATE FUNDING CONCEPT WITH THE ULTIMATE DESIGN OF THE REPLACEMENT DAM TO BE APPROVED BY THE SECRETARY OF INTERIOR. THE DISTRICT HAS ALSO ASKED ME TO RELATE TO THIS COMMITTEE THE URGENCY OF THE NEED FOR THE IMMEDIATE REPLACEMENT OF THE OLD DETERIORATING DAM AND NARROW CROSSING AND URGE THAT YOU PROCEED WITH ALL POSSIBLE HAST TO ELIMINATE THE TRAFFIC AND SAFETY HAZARD THAT IS PRESENT WITH THE INADEQUATE STRUCTURE.

2. POWER COUNTY HIGHWAY DISTRICT - THE HIGHWAY DISTRICT IS PRIMARILY CONCERNED WITH THE REPLACEMENT AND IMPROVEMENT OF THE PRESENT INADEQUATE RIVER CROSSING. THE DISTRICT IS RESPONSIBLE FOR APPROXIMATELY 700 MILES OF COUNTY ROADS, APPROXIMATELY 250 MILES OF WHICH ARE LOCATED ACROSS THE SNAKE RIVER FROM AMERICAN FALLS, IDAHO. THE DISTRICT IS PRESENTLY WASTING TAX DOLLARS EVERY DAY WHILE THEIR TRUCKS ARE HELD UP OR SLOWED DOWN AT THE PRESENT CROSSING. MANPOWER IS ALSO WASTED EVERY TIME THE ONE AND ONE-HALF MILE CROSSING HAS TO BE TRAVERSED WITH ANY PIECE OF EQUIPMENT IN EXCESS OF EIGHT FEET IN WIDTH. ANYTIME SUCH A WIDE LOAD HAS TO CROSS THE PRESENT CROSSING, THE TRAFFIC HAS TO BE STOPPED AT BOTH ENDS BY A FLAGMAN AND THE VEHICLE SENT ACROSS THE DAM WHEN THE WAY IS CLEAR. THIS WASTE OF MEN, MANPOWER, AND EQUIPMENT HAS ALREADY EXISTED FOR OVER 40 YEARS AND THE DISTRICT TRUSTS THAT PASSAGE OF SB 1529 WITH THE PROPOSED AMENDMENT WILL INSURE THAT THIS WASTE IS NOT "BUILT IN" TO THE NEW DAM.

COUNTY ATTORNEY: THE BOARD OF COUNTY COMMISSIONERS OF POWER COUNTY, IDAHO, HAVE ALSO ASKED THAT I RELAY THEIR FEELINGS AS TO THE PROPOSED LEGISLATION. BOTH THE COMMISSIONERS AND MYSELF ARE CONCERNED ABOUT THE SAFETY THREAT POSED BY THE PRESENT DAM AND THE NARROW CROSSING. WE ARE CONCERNED ABOUT THE NUMBER OF SCHOOL CHILDREN WHICH MUST CROSS THIS BRIDGE EVERY DAY TO AND FROM SCHOOL AND RECENTLY WERE RELIEVED WHEN THE COUNTY SHERIFF'S OFFICE INSTITUTED ONE WAY TRAFFIC FOR ALL SCHOOL BUSES CROSSING THE DAM DURING THE HARVEST SEASON. WE ARE ALSO CONCERNED ABOUT THE SAFETY OF THE DRIVERS AND PASSENGERS OF THE 3,000 PLUS CARS A DAY WHICH MUST TRAVEL THIS EXTREMELY NARROW BRIDGE. FINALLY WE ARE CONCERENED ABOUT THE RESIDENTS OF THE COUNTY IN THE PLEASANT VALLEY AND FAIRVIEW AREAS WHICH RELY UPON THIS BRIDGE FOR ALL EMERGENCY AND MEDICAL ASSISTANCE. THE BOARD OF COUNTY COMMISSIONERS HAS GONE ON RECORD FAVORING THE EARLY ENACTMENT OF SB-1529. THEY TOOK THIS ACTION BECAUSE THEY BELIEVED THAT THE PRIVATE ENTERPRISE SYSTEM SHOULD BE GIVEN A CHANCE WHERE POSSIBLE AND BECAUSE THEY FELT THAT THIS AUTHORIZATION TO PROCEED WOULD BE THEIR BEST OPPORTUNITY FOR RESOLUTION OF THIS TRAFFIC AND SAFETY HAZARD.

IN SUM, LADIES AND GENTLEMEN, SUBSTANTIALLY ALL OF THE BODIES POLITIC IN THE AMERICAN FALLS-ABERDEEN AREA HAVE INDICATED THAT THEY SUPPORT THE PRIVATE FUNDING CONCEPT EMBODIED IN SB 1529, PROVIDED THE PERMANENT AND TEMPORARY CROSSING AMENDMENT IS INCORPORATED INTO THE FINAL BILL. WHILE CERTAIN INDIVIDUALS AND GROUPS

MAY HAVE RESERVATIONS ABOUT THE TENTATIVE DAM DESIGN OF THE PRIVATE FUNDING BILL, ALL HAVE INDICATED A WILLINGNESS TO DEFER TO THE ULTIMATE DESIGN JUDGEMENT OF THE SECRETARY OF INTERIOR.

THE AMERICAN FALLS DAM NEEDS TO BE REPLACED. EACH DAY, EACH HOUR, EACH MINUTE THAT WE DELAY INCREASES THE POSSIBILITY OF DAM FAILURE AND ADDITIONAL FATAL INJURIES TO THOSE CROSSING THE DAM. PLEASE HELP US ELIMINATE THIS HAZARD AT THE EARLIEST POSSIBLE DATE. WE URGE YOU TO FAVORABLY REPORT OUT SB 1529 AND PUSH FOR ITS EARLY ENACTMENT INTO LAW.

THANK YOU.

Senator CHURCH. I think we have a better understanding now of the amendment. I am glad that you mentioned this is the only bridge across the river within an 80-mile distance. I think that that is a fact that needs some emphasis, when we consider the importance of the crossing.

Also, four lanes may seem like a lot of highway, but I remember as a kid when the WPA put in the Memorial Bridge on Capitol Boulevard in Boise, and it looked to me like the widest bridge ever put up. Now it is the bottleneck on Capitol Boulevard. So we would be better off to err on the side of a little too much in width, than a little too little.

Mr. CAVANESS. Mr. Patrick mentioned the difference of two lanes and four lanes is 20 feet, and it is actually one-third of the cost.

Senator MCCLURE. I have one question.

It was suggested earlier that you had looked at the question of four-bay fishing and might have some comment on that problem.

Mr. CAVANESS. I had talked to Mr. Patrick regarding the ecological considerations in that this is sort of the area I had grabbed on to, in that everybody else had plenty to say, and had more expertise about the traffic patterns than I have. We have not gotten to the ecological problems yet, the FPC license, the environmental impact statement.

The four-bay, as it will be changed, will be actually eliminating the dead water area. We will have less water flowing through the four-bay and will have to make some arrangements to get the oxygen that we are now getting through the huge valve of water. I was talking to Mr. Patrick and he was having some real interesting ideas about some fountains that could utilize the head which is free off of the present reservoir structure to provide a lot of aeration and oxygen they need.

They would produce the head, and we were talking right then about changing the level of the penstock up to the four-bay level, which will make the present situation as we have now, the efficiency light through the penstock, and they go through, and if they can't see light they won't go through. They could do this, and have their traveling screens and shoot them into four-bay. He has not done any of his environmental work yet, because they were rushed to get the basic plan without the frills at this stage.

So, I am satisfied that their plan now is not to eliminate the four-bay, their plan is to mitigate the fish loss that would be costed by the powerplant.

The fish and gamers told them they would not allow them to eliminate the four-bay. They are going to insist on hydraulic traveling screens on the penstock. I have let them know that I keep them honest to the best of my ability.

Senator MCCLURE. I would assume from all that has been said, that there is a legitimate concern about the fishery resources in the four-bay. We all recognize that there may be some economic costs in one way or another to maintain the fishery resources at that point. I would assume that it is not the desire of anyone with whom you are associated to impose economic burdens that would render this unreasonable. It is just that you want attention paid to this problem and the mitigation

to the extent that is feasible, bearing in mind the various economic costs that might be involved?

Mr. CAVANESS. I don't know anyone who wants to make the physical or economic sacrifice imposed to build the structure. We are going to do our best to maintain the best level of fishery that is best. I don't know that we have that either/or situation at this stage. I think we are talking about how much water we are going to have to put through the four-bay.

Senator MCCLURE. As far as you know, there is no one who says this is so critical that it would have to fail to reduce the fishery?

Mr. CAVANESS. No.

Senator CHURCH. Before you leave the table, Mr. Dreyfus has given me a draft of the environmental statement. This may be a preliminary draft.

Mr. CAVANESS. That is what I understand.

Senator CHURCH. It has been prepared by the Department of the Interior. We will see that you are supplied with a copy of that if you will read it over and give us your input. If there is anything you think that should be drawn to our attention or any recommendation you would like to make after you have an opportunity to read this, we would like to have it.

Mr. CAVANESS. I am chairman of the Power County Water Waste Commission, and that is one of my additional free duties I have picked up.

Senator CHURCH. Let's see, you spoke for the commissioners, for the prosecutor, you mentioned you were a schoolbus driver?

Mr. CAVANESS. You wear many hats in a small community.

Senator CHURCH. I think the U.S. Senate is one of the last jack-of-all-trades callings, but I think you have one too. Thank you, Ben, for your testimony.

Mr. CAVANESS. Thank you.

Senator CHURCH. Our next witness is Mr. Lenard Schritter, also a member of the bridge committee and a farmer.

Lenard, it is good to see you and welcome you here.

STATEMENT OF LENARD SCHRITTER, MANAGER, LAMB-WESTON POTATO PROCESSING, AND MEMBER OF THE BRIDGE COMMITTEE

Mr. SCHRITTER. Thank you Mr. Chairman, Mr. McClure, my name is Lenard Schritter and I am president of the Potato Growers of Idaho, Inc. I am also vice chairman of the American Falls-Aberdeen Bridge Committee. I was born in Aberdeen and have lived and farmed there all my life. I wish to bring to your attention the urgent need for a new dam and modern river crossing at American Falls.

I think I am the only one here, Mr. Chairman, from the Aberdeen area, I think Joe Allen and I are the only ones from that side of the river. I live in Bingham County and the Aberdeen area is mostly all in Bingham County.

My testimony was pretty well gone through previously, so I will skip over it and tell you the problems involved in the Aberdeen area with people crossing the river to get to their areas on the other

side and get some of their food and stuff back over to their side of the river.

Aberdeen is located 12 miles northwest of American Falls across the Snake River. It is the only town west of the river in that area for about 80 miles. Aberdeen has a population of about 1,500, and a surrounding farm area of almost twice that amount. There are 1,014 students in the Aberdeen school system. Aberdeen schoolbuses must cross this bridge when they participate in interschool functions.

There are no medical facilities in Aberdeen, no doctors or hospital. In emergencies, people are transported to American Falls by Ambulance. Most area residents patronize the American Falls doctors and hospitals. The closest medical facilities in the other direction are at Blackfoot, some 40 miles in distance.

Services vital to the community use the crossing daily. These include such things as the U.S. mail, passenger buses, freight and parcel delivery trucks, and supply trucks for the various businesses including consumer suppliers. Power, natural gas, telephone, and other utility companies make constant use of the crossing for repairs and services. The bridge is also used to get to the municipal airport east of American Falls.

The communities of American Falls and Aberdeen are interrelated in many ways. Several businesses are jointly owned and operated with daily commuting between the two making a necessity. These include newspapers, farm supply houses, grocery stores, farm machinery and car dealerships, and many other enterprises vital to both communities.

In addition, there are many families living in one town and working in the other, commuting daily across the dam. Thousands of sportsmen make use of the dam as an access to their favorite fishing, boating, hunting, or recreation area.

Add to all this the countless trips made by area residents to see an optometrist, do some shopping, or simply for pleasure pursuits, such as seeing a movie or going golfing, and there can be no doubt that the traffic crossing on the dam is a vital necessity.

Since 1928 when the 17-foot wide by 1-mile-long bridge was built, five generations of the Schritter family have crossed this narrow bridge. Four generations have personally driven over it, the fifth is still too young. My grandfather crossed this bridge with one load of 50 sacks of wheat per day with team and wagon. My father hauled 100 sacks, five loads per day, on trucks across this bridge. Now we have 10-wheelers and semitrucks that haul 500 sacks per load at about 25 loads per day.

When I was a youngster, we would trail our years growth in cattle, about 100 head, across this bridge once a year to the railroad. Now from our feedlot we ship 100 head across this bridge every weeks in semitrucks. When the bridge was built, taxes on a section of land was about $200, now taxes on a section is approximately $3,000.

I am not complaining about taxes. I am only trying to give you a comparison of the conditions when the bridge was built and the present situation. This situation I have described is not one man's problem alone, but many hundred times over the same problem exists. Approximately one-third of these potatoes or 25 million hundredweight depend on this dam storage for water to grow them. Also,

approximately 10 million hundredweight of these potatoes must cross this bridge enroute to the final marketplaces.

For some 8 years I have been on the American Falls-Aberdeen Bridge Committee. During the time we have tried to find out who is responsible for the bridge crossing. The Bureau of Reclamation built the dam and bridge then turned the bridge over to the State of Idaho. The Idaho Department of Highways said they were to maintain and repair the existing bridge only but not to build a new one. Then we asked them to widen the present bridge. A bill to provide this almost came to a vote in the Idaho Legislature when word was put out that the Idaho Power Co. or water users were going to build the dam right away. Thus, plans for widening the existing bridge were dropped immediately.

So now we still have the 17-foot bridge with 3,500 vehicles a day waiting as long as 20 minutes to cross the bridge with one way traffic. During harvest for 1 year the estimated time and wage loss for trucks waiting to cross the bridge is $318,650.

Safety is very important on this narrow bridge. Many minor accidents happen there. In September of 1972, my son's mother-in-law was in a bad accident on the bridge and to this day is in a hospital semiconscious and unable to walk or talk.

During grain and potato harvest, a truck crosses the bridge every minute and 20 seconds. Women are reluctant to drive on the bridge and pass these trucks.

The Aberdeen area and the potato growers of Idaho see an urgent and emergency need to replace the present dam and for a new four-lane river crossing.

Therefore, we support Senate bill 1529, with the amendment to provide sufficient finances for a four-lane river crossing along with a new dam.

Mr. Chairman, I would like to draw your attention to the pictures I have of the dam on the next two pages of my testimony.

[The pictures referred to above are retained in the committee files.]

That is all of my testimony.

Senator CHURCH. Thank you, Lenard, very much for your testimony. I was intrigued to hear you give that little bit of family history, five generations of Schritter family having crossed that bridge. And the way you contrast your father hauling the 100 sacks and five loads a day on trucks across the bridge with the present 10-wheelers and trucks, it just shows how the bridge requirements have changed in that time.

Do you see any possibility, Lenard, that we might continue to have in the future the same kind of problem that we have had in the past? You mention in your testimony that no one agency has wanted to take full responsibility for the bridge. The Bureau built the dam and turned the bridge over to the State and the State saw its responsibility as very limited with respect to maintenance and nothing else. Is there any chance that we may find ourselves in the same predicament once we have constructed a new road?

Mr. SCHRITTER. I suppose it could happen. But it would be a long way down the road if you built a four-lane road. That would suffice for a long time. It has been frustrating to see what could be done

about getting a better crossing. We have worked long and hard, and we have not got much satisfaction, I might say.

Senator CHURCH. I should think one thing you would want to see to, if a four-lane highway is built on the dam or if it is built separately from the dam, that it becomes wholly a part of the State Highway system and that the State then assumes responsibility for it as it would any other segment of the highway system.

Mr. SCHRITTER. I suppose especially if it were built off the dam.

Senator CHURCH. Thank you, Lenard, for your testimony.

Senator MCCLURE. I have no questions. I might comment, since you are the only representative from Aberdeen here, my mother taught school in Aberdeen long before the dam was there, and I suspect before you were there, so there is a little history involved that is not associated with the dam.

I do appreciate your comments, and I think the growth, as shown by your testimony, is the kind of thing we have to look at right now, but also anticipate for the future. And I am certain that is what you have in mind on the bridge committee when we talk about a four lane highway.

Thank you.

Senator CHURCH. Our next witness is Mr. Bill Hauber, manager, Lamb-Weston Potato Processing.

STATEMENT OF WILLIAM HAUBER, LAMB-WESTON POTATO PROCESSING AND MEMBER OF THE BRIDGE COMMITTEE

Mr. HAUBER. Mr. Chairman, Senator McClure, it is my pleasure to have the opportunity to testify before you, and I have my written testimony already prepared and I would like to have that on record.

Senator CHURCH. Very well.

Mr. HAUBER. And I would like to skip through, if I may, various aspects of my testimony and hit on the highlights.

I am William Hauber, operations manager, representing Lamb-Weston, Inc., and the communities of American Falls, Aberdeen, Pocatello and the Magic Valley in Idaho. I am here to submit testimony in support of the urgent and immediate need for replacement of the American Falls Dam and State Highway 39 Bridge Crossing.

Lamb-Weston, Inc., is a major frozen French fry producer located at American Falls, Idaho. We produce approximately 200 pounds of frozen potato products per year. We process from 15 to 17,000 acres of potatoes. Based on recent Idaho potato statistics, this is 6 percent of the total production of the number one potato producing State in the Nation.

In monetary value, this means a return of $12 million to the growers of the area who are directly or indirectly dependent upon the water storage created by the American Falls Dam.

To accomplish our production schedule, we employ between 900 and 1,000 employees. These employees work three shifts per day, 6 days per week for nearly 11 months of the year. Our gross annual payroll is over $4½.

Additionally, we have two independent service companies, Kent Brothers Trucking and Northwestern Ice and Cold storage, that add another $500,000 to the economic well being of the American Falls community.

Due to unsafe condition of the American Falls Dam and Highway Bridge, in January 1973, water storage was reduced to 70 percent of capacity and one way limited traffic instituted across the bridge crossing. The State Highway Department is presently reinforcing the bridge to allow the reinstatement of two-way traffic and legal load limits. However, the bridge is still a safety hazard since the road width is a mere 17½ feet. This width just will not permit safe travel with modern day equipment.

My major concern is the economic loss that would occur in the event the dam or the bridge was ever declared unsafe. This action would be a major consequence both to Lamb-Weston and the agricultural communities it serves for the following reasons:

One, the nearest usable access to handle a legal load limit, 78,000 pounds, would be Tilden Bridge, a distance of 45 miles to and from American Falls.

Two, usage of this facility would add approximately $0.25 hundredweight, total transportation costs in the users of the American Falls Bridge.

Three, 40 percent, or 80 million pounds of the finished product of Lamb-Weston is moved by refrigerated trucks, if access is closed, this would add 90 miles ro each truck shipment. If access is limited by weight restrictions, it would require LTL, less than truck load, shipments across the dam with reloading to cover full load shipments to our markets, based on 40 percent volume and gross allowable load limits, this would mean reloading of over 2,000 trucks.

Four, Northwestern Ice and Cold Storage operates a 35 million pound cold storage unit at Borah Siding. They warehouse for all major frozen processors and any disadvantage created by the dam complex would force the same economic problems on Northwestern Ice and its customers.

Five, any change in access patterns will require the company and growers alike to find closer markets since added costs and additional equipment needs would preclude the feasibility of hauling under legal load limits or the additional distance that would be required.

Six, in addition to Lamb-Weston, other companies and fresh shippers transport an estimated 4 million CWT of potatoes across the dam and, therefore, it can be assumed that their transportation costs would increase accordingly. These companies include Western Farmers, Ore-Ida, Simplot, American Potato, R. T. French, and Rogers Bros.

Seven, the value of potatoes alone, at the grower level, which must be transported across the dam is 40 million dollars.

Eight, should it be necessary to impose either load limits or close the bridge to truck traffic, it would mean a serious economic loss to the farmers as transportation costs would be significant enough to cause a shift in potato procurement areas or a reduction in the price to growers to offset the added cost of transportation.

Nine, another definite impact to the community is the continuous inconvenience that approximately 800 to 850 employees that work at Lamb's who must cross this unsafe facility twice a day. This factor definitely creates problems for the labor pool we need to maintain our operation. The major input factor to our labor pool is the city of Pocatello which is 23 miles east of American Falls.

Ten, another major economic limitation is being placed on Idaho as the bridge is a major tool in the growing and marketing of vast acres of potatoes, sugar beets, wheat, hay, cattle, and other farm commodities grown in the area that utilized this valuable crossing. Total agricultural commodities being transported across the bridge is an estimated $25 million which is a vital input into the economy of Idaho.

The American Falls Dam and Bridge plays a vital role in making Idaho the number one potato producing state in the Nation. The holding capacity aids in the irrigation of crop lands through the State. The Highway Bridge aids in the marketing of millions of dollars of valuable agricultural products. Without these two components it would be difficult to pinpoint the total impact on the agricultural economy input into the Nation.

However, remember that Idaho grows 78 million cwt. on over 320 thousand acres per year. This is 25 percent of the Nation's total production and of this total 62 percent is processed into convenience foods which creates jobs for thousands of people. A recent study conducted by the University of Washington showed that for every dollar of agricultural products processed in the locality or State where it was grown, an input of $17 was reflected into the local economy. Agricultural crops are Idaho's most important product and any deterioration created by lack of water will definitely reflect on the economic status and tax base for the State of Idaho.

Gentlemen, you have before you two bills for your consideration. S. 1528 is a federally sponsored proposal and S. 1529 is a private funding sponsored proposal. These two bills call for immediate action in the replacement of the American Falls Dam. I support the private funding concept of S. 1529 provided the agreed upon amendment is inserted into the bill to insure that the legal and moral responsibilities of the Bureau of Reclamation are met by the private constructing agency.

We urgently need a new dam and crossing at American Falls, Idaho, and we need your authorization in order to proceed. I trust that the unanimity you have witnessed here today from all segments of the community stress upon you the urgency of our need and our unanimous desire to proceed with all due haste.

Thank you for your time and attention.

Senator CHURCH. The plant you manage depends very heavily on the roadway crossing the present dam, and it would depend on its replacement? It would be very dislocating to your entire operation, would it not?

Mr. HAUBER. Yes, Mr. Chairman. The closest crossing we could utilize is 46 miles to the north. It would cost not only the company but the grower approximately an additional 25 cents a hundred weight, from the American Falls area to the plant area.

Senator CHURCH. I know how your company has transformed the economy of that county, and you generate a great deal of traffic.

Mr. HAUBER. It is a good area, Mr. Chairman.

Senator CHURCH. It is.

Senator McCLURE.

Senator McCLURE. Thank you very much for your testimony.

Mr. HAUBER. Thank you, gentlemen.

[The prepared statement of Mr. Hauber follows:]

PUBLIC HEARING

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

RE: AMERICAN FALLS DAM AND BRIDGE REPLACEMENT
SENATE BILLS 1528 AND 1529

MR. CHAIRMAN, MEMBERS, LADIES & GENTLEMEN:

I AM WILLIAM HAUBER, OPERATIONS MANAGER, REPRESENTING LAMB-WESTON, INC., AND THE COMMUNITIES OF AMERICAN FALLS, ABERDEEN, POCATELLO, AND THE MAGIC VALLEY IN IDAHO. I AM HERE TO SUBMIT TESTIMONY IN SUPPORT OF THE URGENT AND IMMEDIATE NEED FOR REPLACEMENT OF THE AMERICAN FALLS DAM AND STATE HIGHWAY 39 BRIDGE CROSSING.

TO GIVE A BRIEF INSIGHT INTO THE IMPORTANCE OF THE DAM AND THE HIGHWAY CROSSING TO LAMB-WESTON AND TO THE ECONOMY OF IDAHO, I WOULD LIKE TO SUBMIT THE FOLLOWING:

LAMB-WESTON, INC., IS A MAJOR FROZEN FRENCH FRY PRODUCER LOCATED AT AMERICAN FALLS, IDAHO. WE PRODUCE APPROXIMATELY 200 MILLION POUNDS OF FROZEN POTATO PRODUCTS PER YEAR. WE PROCESS FROM 15 TO 17,000 ACRES OF POTATOES. BASED ON RECENT IDAHO POTATO STATISTICS, THIS IS 6% OF THE TOTAL PRODUCTION OF THE No. 1 POTATO PRODUCING STATE IN THE NATION. IN MONETARY VALUE, THIS MEANS A RETURN OF 12 MILLION DOLLARS TO THE GROWERS OF THE AREA WHO ARE DIRECTLY OR INDIRECTLY DEPENDENT UPON THE WATER STORAGE CREATED BY THE AMERICAN FALLS DAM.

TO ACCOMPLISH OUR PRODUCTION SCHEDULE, WE EMPLOY BETWEEN 900 AND 1,000 EMPLOYEES. THESE EMPLOYEES WORK THREE SHIFTS PER DAY, SIX DAYS PER WEEK FOR NEARLY ELEVEN MONTHS OF THE YEAR. OUR GROSS ANNUAL PAYROLL IS OVER FOUR AND ONE-HALF MILLION DOLLARS.

ADDITIONALLY, WE HAVE TWO INDEPENDENT SERVICE COMPANIES - KENT BROTHERS TRUCKING AND NORTHWESTERN ICE AND COLD STORAGE - THAT ADD ANOTHER 500,000 DOLLARS TO THE ECONOMIC WELL BEING OF THE AMERICAN FALLS COMMUNITY.

DUE TO THE UNSAFE CONDITION OF THE AMERICAN FALLS DAM AND HIGHWAY BRIDGE, IN JANUARY, 1973, WATER STORAGE WAS REDUCED TO 70% OF CAPACITY AND ONE WAY LIMITED TRAFFIC INSTITUTED ACROSS THE BRIDGE CROSSING. THE STATE HIGHWAY DEPARTMENT IS PRESENTLY REINFORCING THE BRIDGE TO ALLOW THE REINSTATEMENT OF TWO-WAY TRAFFIC AND LEGAL LOAD LIMITS. HOWEVER, THE BRIDGE IS STILL A SAFETY HAZARD SINCE THE ROAD WIDTH IS A MERE 17½ FT. THIS WIDTH JUST WILL NOT PERMIT SAFE TRAVEL WITH MODERN DAY EQUIPMENT.

MY MAJOR CONCERN IS THE ECONOMIC LOSS THAT WOULD OCCUR IN THE EVENT THE DAM OR THE BRIDGE WAS EVER DECLARED UNSAFE. THIS ACTION WOULD BE A MAJOR CONSEQUENCE BOTH TO LAMB-WESTON AND THE AGRICULTURAL COMMUNITIES IT SERVES FOR THE FOLLOWING REASONS:

1. THE NEAREST USABLE ACCESS TO HANDLE A LEGAL LOAD LIMIT (78,000 POUNDS) WOULD BE TILDEN BRIDGE - A DISTANCE OF

45 MILES TO AND FROM AMERICAN FALLS.

2. USAGE OF THIS FACILITY WOULD ADD APPROXIMATELY $0.25 CWT. TOTAL TRANSPORATIONS COSTS IN THE USERS OF THE AMERICAN FALLS BRIDGE.

3. FORTY PERCENT, OR 80 MILLION POUNDS OF THE FINISHED PRODUCT OF LAMB-WESTON IS MOVED BY REFRIGERATED TRUCKS. IF ACCESS IS CLOSED, THIS WOULD ADD 90 MILES TO EACH TRUCK SHIPMENT. IF ACCESS IS LIMITED BY WEIGHT RESTRICTIONS, IT WOULD REQUIRE LTL - LESS THAN TRUCK LOAD - SHIPMENTS ACROSS THE DAM WITH RELOADING TO COVER FULL LOAD SHIPMENTS TO OUR MARKETS. BASED ON 40% VOLUME AND GROSS ALLOWABLE LOAD LIMITS, THIS WOULD MEAN RELOADING OF OVER 2,000 TRUCKS.

4. NORTHWESTERN ICE AND COLD STORAGE OPERATES A 35 MILLION POUND COLD STORAGE UNIT AT BOHAN SIDING. THEY WAREHOUSE FOR ALL MAJOR FROZEN PROCESSORS AND ANY DISADVANTAGE CREATED BY THE DAM COMPLEX WOULD FORCE THE SAME ECONOMIC PROBLEMS ON NORTHWESTERN ICE AND ITS CUSTOMERS.

5. ANY CHANGE IN ACCESS PATERNS WILL REQUIRE THE COMPANY AND GROWERS ALIKE TO FIND CLOSER MARKETS SINCE ADDED COSTS AND ADDITIONAL EQUIPMENT NEEDS WOULD PRECLUDE THE FEASIBILITY OF HAULING UNDER LEGAL LOAD LIMITS OR THE ADDITIONAL DISTANCE THAT WOULD BE REQUIRED.

6. IN ADDITION TO LAMB-WESTON, OTHER COMPANIES AND FRESH SHIPPERS TRANSPORT AN ESTIMATED FOUR MILLION CWT. OF POTATOES ACROSS THE DAM AND, THEREFORE, IT CAN BE ASSUMED THAT THEIR TRANSPORTATION COSTS WOULD INCREASE ACCORDINGLY. THESE

COMPANIES INCLUDE WESTERN FARMERS, ORE-IDA, SIMPLOT, AMERICAN POTATO R.T. FRENCH AND ROGERS BROTHERS.

7. THE VALUE OF POTATOES ALONE, AT THE GROWER LEVEL, WHICH MUST BE TRANSPORTED ACROSS THE DAM IS TEN MILLION DOLLARS.

8. SHOULD IT BE NECESSARY TO IMPOSE EITHER LOAD LIMITS OR CLOSE THE BRIDGE TO TRUCK TRAFFIC, IT WOULD MEAN A SERIOUS ECONOMIC LOSS TO THE FARMERS AS TRANSPORTATION COSTS WOULD BE SIGNIFICANT ENOUGH TO CAUSE A SHIFT IN POTATO PROCUREMENT AREAS OR A REDUCTION IN THE PRICE TO GROWERS TO OFFSET THE ADDED COST OF TRANSPORTATION.

9. ANOTHER DEFINITE IMPACT TO THE COMMUNITY IS THE CONTINUOUS INCONVENIENCE THAT APPROXIMATELY 800 TO 850 EMPLOYEES THAT WORK AT LAMB'S WHO MUST CROSS THIS UNSAFE FACILITY TWICE A DAY. THIS FACTOR DEFINITELY CREATES PROBLEMS FOR THE LABOR POOL WE NEED TO MAINTAIN OUR OPERATION. THE MAJOR INPUT FACTOR TO OUR LABOR POOL IS THE CITY OF POCATELLO WHICH IS 23 MILES EAST OF AMERICAN FALLS.

10. ANOTHER MAJOR ECONOMIC LIMITATION IS BEING PLACED ON IDAHO AS THE BRIDGE IS A MAJOR TOOL IN THE GROWING AND MARKETING OF VAST ACRES OF POTATOES, SUGAR BEETS, WHEAT, HAY, CATTLE AND OTHER FARM COMMODITIES GROWN IN THE AREA THAT UTILIZED THIS VALUABLE CROSSING. TOTAL AGRICULTURAL COMMODITIES BEING TRANSPORTED ACROSS THE BRIDGE IS AN ESTIMATED 25 MILLION DOLLARS WHICH IS A VITAL INPUT INTO THE ECONOMY OF IDAHO.

THE AMERICAN FALLS DAM AND BRIDGE PLAYS A VITAL ROLE IN MAKING IDAHO THE NO. 1 POTATO PRODUCING STATE IN THE NATION. THE HOLDING CAPACITY AIDS IN THE IRRIGATION OF CROP LANDS THROUGH THE STATE. THE HIGHWAY BRIDGE AIDS IN THE MARKETING OF MILLIONS OF DOLLARS OF VALUABLE AGRICULTURAL PRODUCTS. WITHOUT THESE TWO COMPONENTS IT WOULD BE DIFFICULT TO PINPOINT THE TOTAL IMPACT ON THE AGRICULTURAL ECONOMY INPUT INTO THE NATION. HOWEVER, REMEMBER THAT IDAHO GROWS 78 MILLION CWT. ON OVER 320 THOUSAND ACRES. THIS IS 25% OF THE NATION'S TOTAL PRODUCTION AND OF THIS TOTAL 62% IS PROCESSED INTO COVENIENCE FOODS WHICH CREATES JOBS FOR THOUSANDS OF PEOPLE. A RECENT STUDY CONDUCTED BY THE UNIVERSITY OF WASHINGTON SHOWED THAT FOR EVERY DOLLAR OF AGRICULTURAL PRODUCTS PROCESSED IN THE LOCALITY OR STATE WHERE IT WAS GROWN, AN INPUT OF $17 WAS REFLECTED INTO THE LOCAL ECONOMY. AGRICULTURAL CROPS ARE IDAHO'S MOST IMPORTANT PRODUCT AND ANY DETERIORATION CREATED BY LACK OF WATER WILL DEFINITELY REFLECT ON THE ECONOMIC STATUS AND TAX BASE FOR THE STATE OF IDAHO.

GENTLEMEN, YOU HAVE BEFORE YOU TWO BILLS FOR YOUR CONSIDERATION. BILL NO. 1528 IS A FEDERALLY SPONSORED PROPOSAL AND NO. 1529 IS A PRIVATE FUNDING SPONSORED PROPOSAL. THESE TWO BILLS CALL FOR IMMEDIATE ACTION IN THE REPLACEMENT OF THE AMERICAN FALLS DAM. I SUPPORT THE PRIVATE FUNDING CONCEPT OF SB 1529 PROVIDED THE AGREED UPON AMENDMENT IS INSERTED INTO THE BILL TO INSURE THAT THE LEGAL AND MORAL RESPONSIBLITIES OF THE BUREAU OF RECLAMATION ARE MET BY THE PRIVATE CONSTRUCTING AGENCY.

WE URGENTLY NEED A NEW DAM AND CROSSING AT AMERICAN FALLS, IDAHO, AND WE NEED YOUR AUTHORIZATION IN ORDER TO PROCEED. I TRUST THAT THE UNANIMITY YOU HAVE WITNESSED HERE TODAY FROM ALL SEGMENTS OF THE COMMUNITY STRESS UPON YOU THE URGENCY OF OUR NEED AND OUR UNANIMOUS DESIRE TO PROCEED WITH ALL DUE HASTE.

THANK YOU FOR YOUR TIME AND ATTENTION.....

Senator CHURCH. Our next witness is Mr. Kay Hansen, also a member of the bridge committee.

STATEMENT OF KAY HANSEN, MEMBER OF THE AMERICAN FALLS BRIDGE COMMITTEE

Mr. HANSEN. Thank you, Mr. Chairman, I have four pages here I am going to read. This is my first trip to Washington, D.C. and you know you can't buy a bourbon and squirt here, you know squirt.

I am Kay Hansen, I am the manager of the First Security Bank of American Falls and I am also the past president of the American Falls Chamber of Commerce.

The American Falls Chamber has asked that I speak to you in their behalf regarding the two bills that have been introduced to date calling for the replacement of the dam at American Falls, Idaho. After lengthy discussion and negotiations with the water users and others, the American Falls Chamber of Commerce has asked that I speak in support of the prompt passage of S. 1529.

The American Falls Chamber believes that this bill promises to be in the best interest of both the community of American Falls, Idaho, and the Nation.

However, our support for this bill is conditioned upon an amendment being made to the wording of the original bill to include a provision that an adequate two-way, two lane crossing be included as part of the project to be financed by the constructing agency. The full text of the agreed upon amendment between the chamber, the bridge committee and the water users has been prepared and was presented to you today by Mr. Tom Nelson.

We have conditioned our support of this bill upon the foregoing amendment because an adequate crossing spanning the Snake River at American Falls, Idaho is a must for the American Falls businessman. The trading areas of Aberdeen, Springfield, Pleasant Valley and Fairview are completely dependent upon a fully functional river crossing. Since the present crossing is the only bridge spanning the Snake River for 80 miles, it is easy to see why this crossing is so important to us.

Additionally, the development of the area is such that the people in these trading areas must not only cross the bridge for their supplies and markets but they also must use this crossing to gain access to doctors, hospitals, schools and jobs.

Closure or further restriction on the use of the present river crossing would be disastrous for the American Falls businessman. I have discussed the economic impact of an inadequate crossing with various American Falls businessmen and they were unanimous in their evaluation of the impact of the foregoing trading areas. The concensus was that at least 35 percent of their business came from the above referenced trading areas. Also, when I consulted the farm supply centers, farm fertilizer dealers, farm implement dealers and grain elevator operators the figure was considerably higher.

As you can see, loss of this trading area through a loss of this crossing, for however short a period would mean financial ruin for a large number of American Falls businessmen. We cannot afford to allow this to happen.

One often hears that the small rural communities are drying up and blowing away. This is not true in American Falls, Idaho. Despite the fact that the community is within 25 miles of a metropolitan area, American Falls has grown steadily over the past 12 years. During this period of time we have maintained a growth rate of in excess of 3 percent per year. A new shopping center is being built, a large new subdivision has been platted and brought into the city and we are awaiting Federal approval of a new $500,000 Marina facility which will better utilize the back water of American Falls Dam

Additionally, the Small Business Administration is presently guaranteeing over one-half of a million dollars in real and personal property loans in our area. We want to continue this growth and progress, but we cannot do so without an adequate Snake River crossing.

Gentlemen, you can help us continue our growth and insure the health of our business community. Early reporting out and passage of S. 1529 with the amendment that has been proposed to you this date will not only help us eliminate the present traffic hazard that faces the approximately 4,000 people per day, that must use this narrow extremely dangerous crossing each day, but it will insure that the present unsafe dam is replaced prior to its causing another dam failure catastrophe which seems to have plagued this Nation during the past 18 months. We seek to eliminate this traffic and safety hazard and we can do so with your help.

We ask only that you grant us the authorization to proceed with this replacement with private funding as per the provisions of Senate bill 1529. This bill will allow us to proceed at the earliest possible date and at no cost to the Government.

You will receive over $1 million worth of flood control benefits at no cost and you will shift the responsibility for reconstruction of an adequate crossing to the private constructing agency. Passage of Senate bill 1529 not only makes good business sense in this area of tight congressional purse strings, but it also will lead to the quickest and best solution to the major barrier to increased growth and prosperity in the American Falls area.

Thank you for your time and attention.

Are there any questions?

Senator CHURCH. I agree, the most we can expect to build on the American Falls Dam is a two-lane highway. The present drawings perhaps show only a maintenance highway. So the four-lane road on top of that dam would probably entail very considerable extra cost. It is speculation, but I should think it would.

Mr. HANSEN. The four-lane crossing, it is not a case of which came first, the chick or egg here. The bridge has to come first. We have to have a crossing. As Ben said, we are all singing with Mitch now, and I think we are in harmony.

Senator CHURCH. You are not insisting the four lanes be built on the dam?

Mr. HANSEN. No. Originally that was where it was going to be, because they were going to keep the old bridge in use while constructing.

Senator CHURCH. Thank you.

Senator MCCLURE. As I understand it, the four-lane crossing is separate, as envisioned by the Chamber at this time. Is it suitable for your needs?

Mr. HANSEN. Yes, between the trestle and the new dam.

Senator MCCLURE. While that decision is not final, that is one that appears likely to you?

Mr. HANSEN. Yes, it is feasible. We might have to put the new dam back just a smidgen, we might not put it just where they wanted it.

Senator MCCLURE. You indicated a week ago, you might have come back here and suggested Federal construction.

Mr. HANSEN. Yes. But now we are in harmony.

Senator MCCLURE. It is that coupled with the time factor?

Mr. HANSEN. That is the big thing. We have waited a long time for a satisfactory bridge, and that is the very least we can do for them.

Senator MCCLURE. I am sure the people on the other side using that bridge, do not have all of the same interest of all of the irrigators.

Mr. HANSEN. Yes.

Senator MCCLURE. Thank you very much.

Senator CHURCH. Thank you very much.

Our next witness is Mr. Dwight R. Bowen, attorney for the Shoshone-Bannock tribes.

STATEMENT OF DWIGHT R. BOWEN, ATTORNEY FOR THE SHOSHONE-BANNOCK TRIBES, FORT HILL INDIAN RESERVATION, FORT HILL, IDAHO

Mr. BOWEN. Mr. Chairman, Senator McClure, I have a prepared statement I ask be made a part of the record. On behalf of the Shoshone-Bannock tribes, here are three concerns which I would like to express:

One, is that the bill provides that assurance that the level of American Falls Reservoir not be raised.

Two, that the appropriate action be taken to control erosion.

Three, that any funds necessary to meet the prorated construction costs apportioned to the reservation be provided for in the bill.

Each of these three concerns have been recommended for amendment in the Secretary of Interior's report earlier.

Senator CHURCH. You favor the three amendments?

Mr. BOWEN. Yes, I would endorse each of those proposals as set out in the report. I think if they were set out in the bill that would alleviate the concern of the tribe.

I have nothing further.

Senator CHURCH. All right.

Senator MCCLURE. I want to bring out for the record my understanding of the present erosion control. It serves as a check balance, in which an evaluation is made of the cost of erosion control as compared to the cost of paying for the cost of land. Is that not correct, at the present time?

Mr. BOWEN. In talking to Jack Horton, Assistant Secretary of the Interior, he was talking about that. We would be willing to rely on the precedent how that is handled. We would favor more control of the erosion. I realize this would have to rely on the precedent.

Senator MCCLURE. It is your preference, not necessarily your desire, to change the present operating condition?

Mr. BOWEN. Yes.

Senator MCCLURE. I am sure the firms on the Aberdeen side would rather have the erosion control then sell their land one acre at a time. I think providing erosion control is more important than just simply the economic tradeoff. There does come a point where I guess we have to accept the fact that it is technically possible to stop the erosion but economically unfeasible to do so. But in case of doubt, I would personally come down on the side of erosion control rather than compensation for lost land.

I thought the record needed to be clear on that point.

Thank you very much.

Mr. BOWEN. Thank you.

Senator CHURCH. Thank you.

[The prepared statement of Mr. Bowen follows:]

STATEMENT OF DWIGHT R. BOWEN, ATTORNEY FOR THE SHOSHONE-BANNOCK TRIBES, FORT HALL INDIAN RESERVATION, FORT HALL, IDAHO

By act of April 4, 1910, 36 Stat. 269, the United States Congress provided that the Secretary of the Interior should set aside and reserve certain lands between the Snake and Portneuf Rivers, known as the FORT HALL BOTTOMS, for the common use, benefit and enjoyment of the Indians, for grazing of cattle and horses, together with their use for the habitat of wild game and fish.

Portions of the Fort Hall Bottom lands remain this date as nearly primitive as any area in the entire United States. These lands are the nesting place of geese, Canadian honkers, hutchins, practically every specie of the duck family, blue heron, cranes, pelican, Meserangers, curlew, hawks, occasional eagles, doves, grouse, pheasant, and meadowlark, all of which abound in profusion. In addition to the above, you will find beaver, muskrat, coyote, bobcat, deer, ermine, skunk, rainbow and native trout.

The Shoshone-Bannock people have no interest whatsoever in any proposition for the substitution of other lands in exchange for these lands, inasmuch as it is inconceivable that there are other lands anywhere, much less adjacent to the reservation, that are comparable to these lands, insofar as water, feeding and grazing are concerned, together with all of the hunting and fishing abounding thereon. Moreover, the Fort Hall Bottoms constitute a place of sacred worship and repose for the Shoshone-Bannock people and numerous Indian graves can be found thereon. Further, the subject lands have already yielded a vast and rich cache of priceless artifacts and represent one of the most viable archaeological contexts in the region.

The heart, the mind, the society of the Shoshone-Bannock Indian, has historically been one of communion and deep spiritual intercourse with nature. The white man's utilitarian propensity to equate streams and trees and grass and wild game with dollars, is an aberration totally foreign and reprehensible to the Indian mind and spirit.

When the United States of America treated with the Shoshone Nation in 1864, it recognized and acknowledged the Shoshone Nation as the sovereign aboriginal possessor of some 34 million acres, comprehending the lands in question. In and under said treaty the region was reserved and set apart to the tribe as a home in perpetuity. The United States government further recognized that said tribe has its sovereign law and order system together with all the rights of self-government within its territorial purview.

If the United States government or any of its agencies, departments or bureaus, in concert with the Congress of the United States, sponsor or enact legislation providing for the raising of the American Falls Dam, by such act

and action, the United States government and the Congress will have clearly abdicated the integrity of the treaties of the United States Government and will further violate and desecrate the fundamental concepts of property and due process intrinsic in the Declaration of Independence and the Constitution of the United States of America. The authors and disciples of our Constitution clearly rejected the concept that justice is merely the interest of the stronger. History, however, clearly evinces that too often the treaty Indians have been plundered, profaned and disinherited.

Irrespective of the above matters, the raising of the American Falls Reservoir Dam is neither defensible nor economic from a pragmatic standpoint. Alternatives familiar to each of us, including storage upstream, are more constraining to the mind. Beyond such, when all of the foregoing concepts and reasons are considered in the proposition, raising the American Falls Dam is clearly untenable and unacceptable.

In summary, the Shoshone-Bannock Tribes solemnly and firmly petition the heart and conscience of every United States Senator and Congressman together with the agencies and administrators of the United States Federal Government and the President of the United States, to venerate and uphold the solemn promises embodied in the treaties, acts and agreements between these Indians and the United States government and its agencies to the end that these few vestigial remnants evidencing and embodying the deep eternal love and affinity between these First Americans and nature shall not pass by legislative requiem.

Senator CHURCH. Our next witness is Mr. Thomas G. Nelson, attorney, Twin Falls, Idaho.

STATEMENT OF THOMAS G. NELSON, ATTORNEY, TWIN FALLS, IDAHO

Mr. NELSON. Mr. Chairman, Senator McClure, I have submitted to the staff a prepared statement which I request be included in the record.

Also, before I forget, I have a number of written statements from other interested parties which I have brought with me and ask that they be included in the record.

Senator CHURCH. Very well, those statements will appear following your testimony.

Mr. NELSON. I don't believe there is any necessity to read my statement. One function I could serve is to cover some of the points that have been raised in the testimony of prior witnesses. Basically, a little more detail on how this particular proposal will be handled.

The American Falls Reservoir District is the largest spaceholder holding rights in American Falls Reservoir. It will be used as a vehicle to be the constructing agency and actually issue the bonds because of its greater land area and more bonding capacity, thereby, then other spaceholders would contract with the American Falls Reservoir District for repayment of their share of the construction costs to American Falls Reservoir District.

The district would also enter into a contract with the Idaho Power Co. on the inline water aspects for use in their powerplant which would be used to reduce the payments required by the spaceholders. In theory it would be possible to get a direct offset. I think in practice the cost of the dam will exceed the amount or value of the falling waters and the spaceholders will have a direct responsibility of several million dollars, I would estimate, to pay directly themselves.

At this point we are about 180° out of phase with the Bureau of Reclamation. The Bureau obtains financing and does a preliminary

study and comes in with a fairly detailed proposal upon which congressmen act. But the nature of our beast, we are forced to start at the other end and ask for congressional authorization first. Congressional authorization is something we have to have before we can pass a bond issue to get into the nuts and bolts of dam and powerplant and bridge design.

However, the spaceholders have——

Senator CHURCH. Do you see any problem, just to go back to a question I raised earlier today, do you see any problem involved in the bonds being tax exempt?

Mr. NELSON. Yes, there is a potential problem in that area. We had advice from counsel on how to proceed, and we do intend to apply to the IRS for a ruling on whether or not the interest from the bonds will be tax exempted, over 40 years, it amounts to $8 million.

We are told by tax counsel that the chances are good we can obtain a favorable ruling on the question of the industrial bonds versus tax-free bonds and we intend to pursue that on a parallel track with the legislation. So we can satisfy ourselves with that fact as soon as we can. But on the question of what you might call lead money, if we were in the land development business or front money, in order to get the matter moving, we have the space—the spaceholders have been asked if they would be willing to advance money toward engineering costs to get the project moving, instead of the bond issue.

If congressional action went quickly, we could not have a bond issue before the end of the year. The spaceholders have issued more than $1 million. We now have 94 percent of the spaceholders, or I should say, spaceholders representing 94 percent of the space have pledged themselves to pay money in advance of congressional authorization to get the project moving, which I think is an endorsement that speaks for itself.

As far as how the spaceholders feel about this project, Mr. Jim Patrick testified that his firm will be retained by the spaceholders to design the dam and the Idaho Power Co. will retain them on a parallel basis to design the powerplant, so we can get FPC licensing before congressional action.

On the question of FPC licensing, Senator Church, I believe you asked the previous witnesses, we have checked with the FPC staff, and the estimate they gave us is 4½ months from the time we lay it on the desk to license, at the very best. I understand last year they issued one license and that took 3 years. But they say if everything goes perfectly, it would be 4½ months to license. So if we are looking at January 1, 1975, to start construction, if you start backwards, we are running out of time on the FPC license right now and we are going to, in essence, gamble the money on the FPC license and get that started ahead of congressional authorization.

If we go one step at a time, we are probably 5 years away. So the spaceholders are risking this money, I think it is a good gamble and if so, we probably have saved ourselves several years at the end.

As a part of the engineering on the project, the spaceholders will retain a consulting board of engineers to give their view on the basic questions of dam design, which are raised by this particular approach, and we hope to have that board set up in the near future

so that the preliminary designs will be made on the basis of their advice.

The question of erosion control has been raised. Erosion control is, we think, a continuing maintenance problem at the reservoir and we suggest that erosion control be left to the Department of Interior, Bureau of Reclamation, as a maintenance project. That control is assessed to the spaceholders, operations and maintenance item, and we are prepared to pay whatever that particular program entails. We don't necessarily feel we should tie the two together. But as far as that program has gone and will continue to go, we will continue to pay for the operation and maintenance assessments.

On the question of evaluation, the spaceholders have no intention or desire to raise the elevation of the reservoir. The whole proposal is based on replacing the reservoir at its present location with the dam. We would suggest, initially, language to set that out specifically and we certainly would have no objection to language which which would make that a requirement. I think the language must be fairly carefully drafted, because there have been some storage limitations for the last several years based on ice loading, so I think it will have to be carefully drafted in order to not pick up one of these limitations.

On the last matter, I think, that I might cover on the question of the bridge, if anybody is interested in the history of where their obligation on the bridge crossing comes up, I think I may be one of the few people that has run down that answer. There were several contracts between the Bureau and the American Falls Highway District, back when the bridge was first built and an existing crossing was condemned as part of the original contract and there was a contract entered into in 1925 which contained language to the effect that the United States will maintain and continue maintenance on the dam or in that vicinity. Then a later contract was written in 1921 or 1929 which transferred the maintenance of the road to the highway district. In 1931, the route had been designated as a State highway and a new contract was entered into which, as I read it, abrogates the old contract and says maintenance of the road is a State responsibility.

I think it is this combination of contracts that has lead to the feeling on the part of the Bureau and State highway department that somebody else is responsible for those two lanes. I think the Bureau's position, as I get it now, the Bureau is responsible for a crossing at that location. I think inherent in the spaceholder's proposal, if we are going to build a bridge or dam for the Bureau of Reclamation, we will have to provide a crossing as part of the project.

I don't think it is palatable to Congress or American Falls or the spaceholders to replace the dam and leave the people with no crossing.

Senator McCLURE. Would it be your feeling that the spaceholder provides the dam, but the maintenance of the dam, together with the maintenance of the crossing after it is completed, is a State responsibility.

Mr. NELSON. That would be consistent with the last condition, the one they are now operating under; funds allocated to the road by the Bureau are the responsibility of the highway department.

Senator MCCLURE. Does the State highway department agree with you.

Mr. NELSON. I have not asked them about the maintenance of it. The contract pretty clearly says that.

Senator MCCLURE. I would suggest it might be well to pin that down in the various instruments negotiated and agreed upon in connection with this.

Mr. NELSON. I would think the fact they are out there spending about $100,000 to strengthen the highway, would show their feeling that maintenance is their problem. I assume that is where they are operating. I think we are at the point now, Mr. Chairman, where we have open discussions with the highway department relative to what they could do in the area of four-lane crossings.

Mr. Patrick gave you the figure of 1 million and a half to provide a crossing on the dam. I think in talking to Mr. Patrick, you would spend substantially more than twice that, to put a four-lane crossing on the dam. In discussing with the highway department, they thought if we were forced to put two lanes on the dam, they would put two lanes downstream, which would cost them about twice what it would cost us to put the two lanes on the dam, but you can put a four-lane crossing immediately downstream from the dam for not essentially too much more than the two-lane.

We have approached the highway department with the idea we can save a lot of money if we can do this. The highway board is meeting this week and we hope to have word when we get back as to what specifically they are willing to do.

We have bitten the bullet on two lanes, what would they be willing to do on the other two?

Senator MCCLURE. What would the timing on that be?

Mr. NELSON. On the preliminary statement 18 months. Working back from that you have to go into design by the 1st of July, and we are on schedule for that if we get a favorable response from the highway board at their meeting this week. Then hopefully, we can let a contract for the design at the bridge, or they can, and get that done.

Senator MCCLURE. I am puzzled with the mention of this just a little bit. It is your expectation that the highway board would agree to some kind of joint arrangement?

Mr. NELSON. Yes.

Senator MCCLURE. But the spaceholders have not yet bonded themselves to pay for their share?

Mr. NELSON. That is correct.

Senator MCCLURE. And the Congress has not yet passed this authorizing legislation. But to say that the design has to start by July 1, do you think we will have the legislation through Congress and signed by the President and the bonding all done by July 1?

Mr. NELSON. I cannot answer from the congressional end. I am sure we won't have the bonding. The way we approached the highway department was this, if they would let a contract for the con-

sulting engineer to design a bridge, then it would be programed for construction starting in 1974.

Senator McCLURE. In other words, all the State would be gambling would be the construction design?

Mr. NELSON. Design money. It is not a gamble. They have to do something down there pretty quickly anyway. They agree the place for the crossing is downstream from the dam. If things go right in Congress, we can have our bond issue hopefully, by the first of the year. We are approaching it at this point, that we can contribute to the bridge the money we would save by having the bridge there as a part of our project. If we get a different estimate from the bond counsel on that question, then there are a couple of routes out for us. We can go back to the Governor for a special session or wait until the January session and get the authorization for irrigation district amended to provide for river crossings.

Hopefully, it will work out that we can float our bond issue about the first of the year.

Senator McCLURE. The only advance on the thing is the design money that the irrigation district is putting up in advance for design work on the dam, the moneys that would be advanced by the State highway department in effect on contract. They would all come together with funding and construction at the same period starting at the beginning of next year?

Mr. NELSON. Yes; it is dovetailed to some extent. If everybody has the attitude, this is the problem they want to solve, we can do it. We are—good will time or slippage time is beginning to swindle a little bit. If we can get that license started on schedule, theoretically we can still make it. If we stub our toe in Congress or with a tax ruling or something of that sort, we are then off schedule. Right now we are on and the bridge will get carried along with the project.

Senator CHURCH. I think the Senate is going to stay on schedule. I cannot speak for the FPC, there are a lot of hurdles that have to be cleared.

Mr. NELSON. If we put a blackboard up when we started this project, we would not have scratched off very many, but added a whole bunch.

Senator McCLURE. With respect to the maintenance, do you have any comment on that?

Mr. NELSON. Yes; I have been in charge of that subcommittee. We have discussed the matter with the Fish and Wildlife Service, and apparently it is mechanically possible to provide a fish and water bypass to maintain the fishery for the four-bay. The question is how much does it cost to put in the facility, how much water comes out of the powerplant to run it? So far we do not have any real handle on that problem, but we are attempting to and that will tell us precisely where we are.

At this point I think there is an excellent possibility we can maintain the fishery in the four-bay. The surface area will be reduced in size, but the fish and game people tell us the area that will be eliminated by the powerhouse, contains only trash fish anyway. I might also mention my statement has an exhibit to it, which is agreed language on an amendment to the bill. If you have trouble finding one other copy, it is attached to my statement.

My understanding is that essentially the spaceholders have to or are obligated to provide adequate crossings as a part of the project to be funded at our discretion, because we may get a trade-off here with the State highway department and we will coordinate the effort to get the four-lane crossing, because everybody agrees including the State highway department, it is ridiculous to spend a lot of money on that river crossing and not get the four lanes.

So, essentially that is where we are. We agreed with that analysis, it is a spaceholders' obligation.

Senator McCLURE. One further comment, because you have included it in your statement and it was earlier put into the record by Governor Andrus. With respect to the plans not directly tied in with this development, it bears upon acceptance by the public.

I'm referring to plans for recreation enhancement on the reservoir. You refer to the State parks department plan for the construction of recreation facilities and the statement has been made that the city and county are also interested in recreation facilities?

Mr. NELSON. Yes; the real reason for the interest of the park department specifically in this proposal is that the Bureau of Outdoor Recreation is considering withdrawing that fund for the marina project because of the low elevation. So they are vitally interested in timing.

If we stay on the line with our rehabilitation plan they can stay on the line with their marina project.

Senator CHURCH. Thank you.

[The prepared statement and material submitted by Mr. Nelson follows:]

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STATEMENT OF THOMAS G. NELSON ON SB 1528 and SB 1529
BEFORE WATER AND POWER RESOURCES SUBCOMMITTEE
INTERIOR AND INSULAR AFFAIRS COMMITTEE

May 10, 1973

Mr. Chairman, members of the committee, ladies and gentlemen:

I am Thomas G. Nelson. I am a lawyer in Twin Falls, Idaho, and practice with the firm of Parry, Robertson, Daly & Larson. Our firm has for many years represented irrigation clients and we appear today at the request of the American Falls Reservoir District Board of Directors. The American Falls Reservoir District is a combine of five irrigation operating companies which include the Twin Falls Canal Company, the North Side Canal Company, the Aberdeen-Springfield Canal Company, Woodville Canal Company, and the Martin Canal Company. In total, the companies own through the district 487,063 acre-feet of water in a full American Falls Reservoir. The North Side Canal Company, whom we also represent, owns an additional 124,980 acre-feet of water in the reservoir through a separate contract with the Bureau of Reclamation. The North Side Canal Company is also a delivery agent for the Hillsdale Irrigation District. In effect, the American Falls Reservoir District directly affects water deliveries of 653,189 acre-feet from the American Falls Reservoir. The lands in the district total some 430,050 acres.

Following some eight years of meetings and discussions concerning the condition of the present American Falls Dam, a crisis was precipitated in October of 1972 when the Bureau of Reclamation put on their first year-around restriction. This restriction prohibited storage in the top eleven feet, thus eliminating slightly over one-third of the total capacity of the reservoir for the storage of water. Previously, restrictions had been imposed in the top eight foot section of the reservoir during periods of the year when ice remained on the reservoir. The Bureau released in December of 1972, an American Falls Dam replacement report entitled Executive Summary Report. This report was issued in a most capricious manner at a time when [illegible] the imposition of the restriction order.

The water users took a look at the proposal of the Bureau of Reclamation which indicated that $18.6 million dollars

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would be repaid by the irrigators in the construction of the Bureau proposal. The American Falls Reservoir District Board of Directors, in evaluating the appropriations problems which persist for Bureau of Reclamation authorizations, decided to investigate other possible alternatives. The Board of Directors approached the Idaho Power Company, which maintains a power plant at the existing American Falls Dam, to determine if a possibility existed that some type of arrangement might be worked out whereby the water users repayment burden might be decreased.

Shortly after that decision, the American Falls Reservoir District Board had preliminary conversations with Idaho Power Company officials.

In the meantime, the American Falls Spaceholders held a general meeting and formally organized. They selected a committee of eight members to represent the various geographical areas of Spaceholders in the American Falls Reservoir.

In late February, the Idaho Power Company had completed their proposal and presented it officially to the American Falls Reservoir District who had first approached them. The same proposal was approved by the district and subsequently by the Executive Committee of the Spaceholders, and by a general meeting of all of the Spaceholders.

Drafts of the Bills, which are being considered here today, were then prepared. Senate Bill 1528 delineates a procedure for the authorization of a replacement dam by the Bureau of Reclamation in accordance with their legislative and executive guidelines.

SB 1529 would authorize a replacement of the dam by utilizing private financing. In theory, the proposal of SB 1529 is simple. The American Falls Reservoir District would enter a contract with the Secretary of Interior authorizing the district as the constructing agency in the replacement of American Falls Dam. The district would then hold a bond election, authorizing the sale of bonds in a sufficient amount to replace the dam and related facilities. The district would then contract with all other American Falls Spaceholders for the repayment by those districts of their proportionate share of the replacement cost. The Secretary would be a party to these contracts.

The American Falls Reservoir District and the Spaceholders would cooperate with the Idaho Power Company in urging the Federal Power Commission to issue a license to the Power Company for a new generating facility below the American Falls Dam. In accordance with the understanding to-date, the American Falls [illegible] Idaho Power Company entered a contract with the

Idaho Power Company to sell them the falling water from the American Falls Dam at a figure of $19 million dollars, plus the tax exempt interest rate over a period of forty years, or the actual construction cost plus tax exempt interest if that cost were below the $19 million figure.

The American Falls Reservoir District would enter a contract with an engineering concern for the reconstruction of the dam, paying for such construction from bond proceeds. Upon the substantial completion of the dam, it would become Federal property and thereafter remain in Federal ownership to be maintained and operated by the Bureau of Reclamation in the same manner as it has been heretofore operated, including the existing preference for irrigation rights.

In conjunction with replacement of the American Falls Dam, several assurances have been made and both proposals under consideration here today, would authorize replacement of the dam at its existing height. The Reservoir when full behind the replacement dam would be 1,7000,000 acre-feet, the same as maximum capacity behind the present structure, prior to the imposition of the restriction order. Any obligations which the Spaceholders have in regard to land owners adjacent to the reservoir would remain the same.

In the reconstruction of the American Falls Dam, there will be a minimal environmental effect. The Spaceholders have communicated with various environmental groups and concerned individual environmentalists to-date. Two of the largest environmenal groups in Idaho have submitted testimony for the hearing record here today through Governor Andrus.

The water users are presently involved in efforts with State Fish and Game people, State Parks Department people, Federal Fish and Wildlife people, Bureau of Reclamation officials, and Idaho Power company officials to insure that there will be the least possible environmental damage.

Sections 6 and 7 of the SB 1529, which would authorize appropriations by Congress for the inclusion of such nonreimbursable items as are included in the report of the Bureau of Reclamation under date of December 1972. Since the American Falls Dam replacement authorized by SB 1529 must necessarily receive Congressional authorization before final engineering is completed, it is difficult to forecast at this point in time what would be included. It is presumed that the items would include possibly all of the facilities projected by the Bureau were constructing the project, save the flood forecasting facility.

Presently the State Parks Department has a confirmation of matching money for the construction of a recreational facility on the East side or American Falls City side of the re-

Reservoir. It includes marinas, boat docks, and eventually the construction of a golf course in conjunction therewith.

The Spaceholders Executive Committee has met with the American Falls Bridge Committee and interested townspeople. From that meeting evolved the formation of a Joint Bridge Committee which included representatives of the Irrigation Spaceholders, as well as representatives from the American Falls-Aberdeen area. This committee has met on several occasions to evaluate all alternatives concerning an improved river crossing. There are possibilities for the construction of a bridge independent of a replacement dam which are being evaluated. It is anticipated that close coordination with Federal and State highway officials, the Spaceholders, and the American Falls people will result in construction of the best possible highway crossing. Because of the concern of the American Falls-Aberdeen people for the construction of an adequate highway crossing at the earliest possible time, the Joint Bridge Committee recommends additional language be added to the Bill. This language, attached hereto as Exhibit "A", has been approved by both the Spaceholders and the American Falls-Aberdeen people. We ask that the language be incorporated into the Bill.

Mr. Chairman, the American Falls Reservoir District Board of Directors and the American Falls Spaceholders prefer the alternative approach to the American Falls Dam replacement which would be authorized by SB 1529. We would anticipate urging SB 1522 only if the completion in accordance with SB 1522 became impossible.

Presently, Spaceholders who represent 93% of the storage rights in the American Falls Reservoir have signed letters of intent indicating their consent to proceed with the private alternative and their willingness to advance necessary monies which will be necessary to pay engineering fees, and administrative expenses prior to the authorization and sale of bonds. The Spaceholders feel that SB 1529 is their best alternative.

Mr. Chairman, I would also ask for your consent for the inclusion in the record of several statements which I have been carried with me today. They represent the views of other water users and people in Idaho who are also concerned with the American Falls Problem.

I appreciate the opportunity to testify today. I hope that my testimony has been a value to the committee. I would attempt to answer any questions which members of the committee or staff might have.

* * * * * *

EXHIBIT "A"

The constructing agency shall include as a part of the project, a three traffic lane bridge meeting the then current Department of Transportation standards for Federal-Aid secondary highway two-lane traffic. This crossing shall be located on top of the replacement dam or immediately downstream from the dam. This crossing shall be financed by State, Federal and private funds, or any combination thereof as the constructing agency deems appropriate.

The constructing agency shall also coordinate the design of project crossing to allow the inclusion of an additional two lanes. However, the additional two lanes shall be the responsibility of the Ohio Department of Highways, which may be funded with State or Federal funds.

The plans and specifications for the construction of the dam shall also require that an adequate two-lane by crossing shall be maintained at or near the site of the dam during construction.



A & B Irrigation District

May 7, 1973

The Honorable Frank Church, Chairman
Subcommittee on Water and Power Resources
Senate Interior and Insular Affairs Committee
New Senate Office Building
Washington, D. C. 20515

RE: Senate Bill 1528 and Senate Bill 1529

Dear Senator Church:

As you may know, A & B Irrigation District is a stockholder in American Falls Reservoir of approximately 47,593 acre-feet. A & B Irrigation District is located within Minidoka and Jerome Counties in south central Idaho and comprises approximately 76,736 acres. Our district is one of the newest irrigation districts in Idaho, having assumed the operation and maintenance of what is known as the Northside Pumping Division of the Minidoka Project, an irrigation project developed by the Bureau of Reclamation of the Department of Interior of the United States of America. Approximately 14,522 acres of the lands within A & B Irrigation District are dependent upon storage in American Falls Reservoir and Palisades Reservoir. So long as there is a restriction of storage at the American Falls Dam, each of these farmers dependent upon water from the Snake River for irrigation are in jeopardy. This in turn jeopardizes the 635 original farm units in A & B Irrigation District, as the operation and maintenance of the district cannot be maintained unless the landowners within the district have a financially stable operation. It is fully understood by the landowners within A & B Irrigation District and the Board of Directors of A & B Irrigation District that additional construction costs for A & B Irrigation District can be some what of a burden to the landowners. However, it is also equally realized by all concerned that these farms are not capable of producing the many diversified crops that are are grown if an adequate water supply is not available. In many cases, 90% of the water requirements are not sufficient

to raise a successful crop. Therefore, any restriction of water available to the district for irrigation could be as serious as a complete lack of water for irrigation.

A & B Irrigation District, by and through its Board of Directors has gone on record as being in favor of Senate Bill 1529. It is our considered opinion that this Bill will provide the vehicle by which the replacement of the American Falls Dam can be accomplished within the shortest possible time. In view of the severe restrictions placed upon American Falls Dam for the storage of water, it is paramount that the existing dam be replaced within the shortest possible time, thereby reducing the possibilities of experiencing a short water year.

The gross crop returns from lands within A & B Irrigation District during the 1972 year averaged $265 per acre. This represents an approximate $3,900,000 gross return on the 14,522 acres dependent upon storage in the Snake River. A loss of this magnitude should these lands experience a crop failure by reason of the insufficiency of the water supply would have a serious effect upon the communities of Rupert, Burley, Paul and Hazelton, as well as the individual landowners. Because of the serious effects that may result from the restriction of storage by the present American Falls Dam, A & B Irrigation District is committed to the earliest possible replacement of American Falls Dam. It is respectfully urged that the Senate Subcommittee on Water and Power Resources give its support to the passage of legislation that will provide the vehicle for the spaceholders of American Falls Dam to realize the early replacement of the existing American Falls Dam at its present size. Considerable time and funds have been expended by A & B Irrigation District and the spaceholders of American Falls Reservoir to accomplish the early replacement of American Falls Dam within the scope of Senate Bill 1529. With the passage of Senate Bill 1529, replacement of the American Falls Dam can be realized.

Respectfully submitted,

George Glarborg

George Glarborg, Chairman
Board of Directors
A & B Irrigation District

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BUHL
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TWIN FALLS COUNTY
BOARD OF COUNTY COMMISSIONERS

H. A. LANCASTER, Clerk
TWIN FALLS, IDAHO 83301

May 10, 1973

Honorable Frank Church
Chairman
Water and Power Subcommittee
Interior and Insular Affairs
Dirksen Senate Office Building
Washington, D. C. 20515

Re: American Falls Replacement

Dear Senator Church:

The Twin Falls County Commissioners congratulate you and the Idaho Congressional Delegation for the prompt introduction of bills designed to assist in the early replacement of the American Falls Dam.

Twin Falls County, as a trade center in Magic Valley, recognizes the full impact of the lost storage water at American Falls. We encourage your subcommittee's early consideration of replacement legislation.

As a county commission, we support the Spaceholders in their effort and pledge our continued cooperation to assist them in any way possible.

Sincerely yours,

Bill Chancey

Bill Chancey
Chairman

AMERICAN FALLS RESERVOIR DISTRICT

1151 LOCUST STREET — TWIN FALLS, IDAHO 83301

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May 10, 1973

Honorable Frank Church
Chairman
Water and Power Subcommittee
Interior and Insular Affairs
Dirksen Office Bldg.
Washington D.C. 20515

Subject: SB 1528 and SB 1529

Dear Senator Church:

My name is John H. Barker. I am a farm owner and manager in Twin Falls County, Idaho. For nearly sixteen years I have served as a director of the American Falls Reservoir District, with offices in Twin Falls, Idaho. Since 1967 I have served as president of the Board of Directors of the district. I have also served in the Idaho State Senate since 1967.

I offer this letter for inclusion in the record of the hearing on the above bills scheduled for May 10, 1973. A conflict because of my involvement in State government prevents me from personally appearing at the hearing.

The American Falls Reservoir District Board of Directors is concerned first with the earliest possible replacement of the American Falls Dam. The possible loss of water due to the present operating restrictions and the decline in crop yields which will occur make replacement of the dam a matter of extreme urgency to the economy of the State of Idaho.

As a member of the Idaho State Senate, I am aware of the fiscal crunch and the demands on Congress to fund various programs in other areas. Because of the low priority presently

being afforded water development projects, it is my opinion and the opinion of the American Falls Reservoir District board that an alternative to Federal funding is mandatory for the earliest possible replacement of the dam. As a consequence, our board has consistantly supported the idea embodied in Senate Bill 1529. We are officially of record in supporting the concept and are willing to go forward with a bond election as the "constructing agency" described in SB 1529. If this bill passes both houses of Congress, we are certain that a bond issue within the confines of our district will be successful, enabling us to proceed as swiftly as possible thereafter.

Originally the American Falls Reservoir District was formed in 1923. Because the Bureau of Reclamation required cash in advance in the construction of the American Falls Dam, the district land owners approved a bond issue of $2,700,000 by a six to one majority. The bonds were sold at 6% interest. In the 1920's, the land owners pledged their property in repayment of the obligation. The money from the bonds was used to build the present dam. In theory, the proposal contained in Senate Bill 1529 is not much different than the situation that the American Falls Reservoir District confronted in the 1920's. The proposal which is being considered by the subcommittee would again allow private financing of a new dam at no cost to the Federal government.

In the recent Idaho legislative session, I had the opportunity to help sponsor two bills, and assist in the passage of another. These bills were considered and passed to facilitate the American Falls Spaceholders in their effort to help themselves and to pave the way for long-term financing of such a replacement project. I am attaching copies of these bills. In addition, the Idaho legislature enacted a joint memorial on the American Falls problem.

The American Falls Dam replacement is an urgent matter. We urge your consideration of SB 1529 at the earliest possible date. It is our opinion that the private financing alternative will be accepted by the Spaceholders and the land owners within the area concerned. In the event of the unforeseen, the district would then be in a position to ask Congressional support for SB 1528.

Sincerely,

John N. Barker
President

75-375 O - 73 - 11

Legislature of the State of Idaho] [First Regular Session
Forty-second Legislature

IN THE SENATE

SENATE BILL NO. 1160

BY STATE AFFAIRS COMMITTEE

AN ACT

AMENDING CHAPTER 4, TITLE 43, IDAHO CODE, BY ADDING A NEW SECTION 43-401A, IDAHO CODE, AUTHORIZING IRRIGATION DISTRICTS TO CONTRACT FOR RECONSTRUCTION, REHABILITATION OR REPLACEMENT OF IRRIGATION STRUCTURES AND WORKS AND AUTHORIZING THE ISSUANCE, CONFIRMATION AND SALE OF BONDS THEREFOR FOLLOWING A VOTE OF THE ELECTORS OF THE DISTRICT; AND AMENDING CHAPTER 4, TITLE 43, IDAHO CODE, BY ADDING A NEW SECTION 43-404A, IDAHO CODE, AUTHORIZING WATER USERS AND WATER USER ORGANIZATIONS TO CONTRACT WITH THE CONSTRUCTING DISTRICT FOR PAYMENT OVER A PERIOD OF YEARS OF A PROPORTIONATE SHARE OF THE COSTS OF RECONSTRUCTION, REHABILITATION OR REPLACEMENT AND AUTHORIZING ASSESSMENTS AND LEVIES BY WATER USER ORGANIZATIONS TO COLLECT FUNDS TO MEET THE ANNUAL COSTS OF SUCH CONTRACTUAL OBLIGATIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 4, Title 43, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 43-401A, and to read as follows:

43-401A. REHABILITATION OF IRRIGATION STRUCTURES. The board of directors may contract for the reconstruction, rehabilitation or replacement of dams, structures or works belonging to the district or to the United States, necessary to the storage, diversion or delivery of water appurtenant to land within the district. The board shall determine the necessity and cost of such proposed improvements, and determine what amount of money needs to be raised and call a special election, at which shall be submitted to electors of the district possessing the qualifications prescribed in section 43-401, Idaho Code, the question of whether or not the bonds of said district in the amount as determined, shall be authorized. Such election shall be held in the manner provided in section 43-401, Idaho Code.

Bold Type Indicates Added Material ~~Struck Type Indicates Deleted Material~~

except that no report need be obtained from the department of water administration and the notice of election need not recite anything concerning a report from the department of water administration. If the issuance of bonds is approved at the election, the board may thereafter proceed in conformity with chapter 4, title 43, Idaho Code, in the issuance, confirmation and sale of said bonds. The provisions of chapters 5, 6, 7, 8 and 9, title 43, Idaho Code, shall apply to the said bonds and the work proposed to be done with the funds derived from the sale thereof.

SECTION 2. That Chapter 4, Title 43, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 43-404A, and to read as follows:

43-404A. CONTRACTS OF PAYMENT FOR REHABILITATION. - If the reconstruction, rehabilitation or replacement of dams, structures or works determined necessary in accordance with section 43-401A, Idaho Code, involves a dam, structure or works which also provide water storage, diversion or delivery of water to water users or water user organizations for the use of said water on lands not within the boundaries of the district proposing the improvements, the district (hereinafter referred to as constructing district) may contract with such water users or water user organizations for payment by them, over a period of time not to exceed the period of any bonded indebtedness incurred by the constructing district to finance construction of the improvements, of a proportionate share of the cost of such improvements, including design, construction, land acquisition and other related costs, to include interest on the unpaid balance of said proportionate share of such water users or water user organization at a rate equal to the average rate of interest payable by the constructing district on any bonded indebtedness incurred by it in financing the improvements.

If the water user organization contracting for payment of a proportionate share of the costs of the improvements is an irrigation district (hereinafter referred to as contracting district) organized pursuant to title 43, Idaho Code, the board of directors of such district shall negotiate a proposed contract with the constructing district. Thereafter, the question of entering into the proposed contract shall be submitted to the electors of such contracting district in a manner substantially in conformance with the provisions of section 43-401, Idaho Code. If at least two-thirds (2/3) of the electors approve the execution of the contract, the board shall confirm the proceeding as provided in connection with a bond issue, and following confirmation, the board shall execute the contract and thereafter an annual assessment to provide revenue for payment of the obligation and interest thereon shall be levied and collected on lands within the contracting district

in the manner provided for assessment for payment of bonds and interest thereon. The provisions of section 42-104, Idaho Code, shall be applicable to apportionment of benefits accruing under the terms of said contract.

If the water user organization contracting for payment of a proportionate share of the costs of the improvements is an operating company entitled to a lien for maintenance charges under chapter 22, title 42, Idaho Code, it shall annually assess and collect the costs of meeting its obligations under the contract as a toll, assessment or charge under chapter 22, title 42, Idaho Code.

If the water user organization contracting for payment of a proportionate share of the costs of the improvements is a lateral ditch water user association organized and operating under chapter 13, title 42, Idaho Code, the annual cost of meeting the association's obligation under the contract shall be included in the assessment made under section 42-1303, Idaho Code, and chapter 13, title 42, Idaho Code, shall apply to the collection and disbursement of said assessment.

Legislature of the State of Idaho] [First Regular Session
Forty-second Legislature

IN THE SENATE

SENATE BILL NO. 1162

BY STATE AFFAIRS COMMITTEE

AN ACT

AMENDING SECTION 43-313, IDAHO CODE, BY ELIMINATING THEREFROM TIME AND MONETARY LIMITATIONS ON CONTRACTS FOR SALE OF SURPLUS POWER BY IRRIGATION DISTRICTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 43-313, Idaho Code, be, and the same is hereby amended to read as follows:

43-313. ELECTRIC POWER PLANTS — CONSTRUCTION AND OPERATION. — The board of directors of any irrigation district, organized under the laws of the state of Idaho, shall have the power to construct and operate, or to contract for the construction and operation, of electric power plants, power transmission lines, and all other works in connection therewith necessary or proper for generating and transmitting electric power, and for pumping water for irrigation and domestic use; and to contract to sell surplus power generated at such power plants ~~; provided, that no such contract for the sale of surplus power generated at such power plant shall extend for a longer period of time than thirty-five years, and no such contract involving more than $1000 shall be binding on the district until ratified by a two-thirds vote of the electors of the district voting at any election at which such question is submitted.~~

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IN THE SENATE
SENATE BILL NO. 1250
BY STATE AFFAIRS COMMITTEE

AN ACT

AMENDING CHAPTER 7, TITLE 43, IDAHO CODE, BY ADDING A NEW SECTION TO BE KNOWN AND DESIGNATED AS SECTION 43-701A, IDAHO CODE, AUTHORIZING ASSESSMENT LEVIES MADE PURSUANT TO SECTION 43-701, IDAHO CODE, TO INCLUDE SURVEYS, EXAMINATIONS, PLANS AND PROFESSIONAL SERVICES NECESSARY TO DETERMINE THE COST, FEASIBILITY OR AUTHORIZATION OF A PROJECT FOR REHABILITATION, RECONSTRUCTION, OR REPLACEMENT OF WORKS AND AUTHORIZING INCLUSION IN TOTAL PROJECT COSTS FOR ALL PARTICIPATING DISTRICTS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 7, Title 43, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 43-701A, Idaho Code, and to read as follows:

43-701A. If the rehabilitation, reconstruction or replacement of irrigation works is determined necessary by the board of directors and a bond issue authorized by section 43-401A, Idaho Code, will be required for financing of the project, the board of a district constructing the works or a district which will pay a proportionate share of the cost of the project may include in its assessment levy under section 43-701, Idaho Code, an amount sufficient to obtain surveys, examinations, plans and professional services necessary to determine the cost or feasibility of the project, or obtain its authorization. If other water user organizations contract with the constructing district for payment of a share of the costs of the project, sums expended by the constructing district or others as herein authorized may be included in total project cost.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

S 1250

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IN THE HOUSE OF REPRESENTATIVES

HOUSE JOINT MEMORIAL NO. 3

BY ANTONE, CHATBURN, HALE, JOHNSON (35), McHAN, RAVENSCROFT AND WHEELER

A JOINT MEMORIAL

TO THE PRESIDENT OF THE UNITED STATES, THE HONORABLE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, THE SECRETARY OF THE INTERIOR AND THE IDAHO CONGRESSIONAL DELEGATION REPRESENTING THIS STATE IN THE CONGRESS OF THE UNITED STATES.

We, your Memorialists, the House of Representatives and Senate of the State of Idaho assembled in the First Regular Session of the Forty-second Idaho Legislature, do respectfully represent that:

WHEREAS, the American Falls Dam, Upper Snake River Basin, Idaho, is the foundation of the existing irrigation development in the Upper Snake River Basin, and contributes almost one-half of the usable storage on the main stem of the Upper Snake River; and

WHEREAS, cracking throughout the dam has required restrictions on storage equal to one-third of its capacity and the continually deteriorating structure, if not replaced, will require further storage restrictions; and

WHEREAS, the Bureau of Reclamation, of the United States Department of Interior, has recommended that the structure be replaced; and

WHEREAS, if the structure is not replaced financial failure for hundreds of farmers and severe economic loss is predicted, as well as danger to human life; and

WHEREAS, alternatives exist to replace the dam with a structure downstream from the existing structure which would remedy the problems currently encountered.

NOW, THEREFORE, BE IT RESOLVED by the First Regular Session of the Forty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that the Legislature respectfully requests that the Congress take whatever action is necessary to replace the existing structure and to insure that the new dam is completed without delay.

BE IT FURTHER RESOLVED that the Clerk of the House of Representatives be, and she is hereby authorized and directed to forward

copies of this Memorial to the President of the United States, the Vice-President of the United States, the Speaker of the House of Representatives of Congress, the Secretary of the Interior, and the members of the Idaho Congressional Delegation representing this state in the Congress of the United States.

CITY OF TWIN FALLS

TWIN FALLS, IDAHO

Twin Falls, Idaho
May 10, 1973

The Honorable Frank Church
Chairman
Water and Power Subcomittee
Interior and Insular Affairs
Dirksen Senate Office Building
Washington, D. C. 20515

Re: American Falls Replacement

Dear Senator Church:

The City Council of the City of Twin Falls wishes to encourage favorable consideration by your Subcomittee of legislation which would authorize an expeditious replacement of the American Falls Dam. The City of Twin Falls is a major trading center of an eight County area, which includes nearly two-thirds of the lands which receive irrigation storage water from the American Falls Dam.

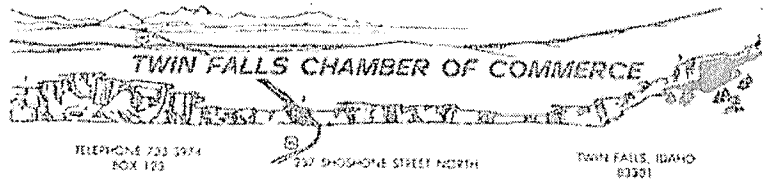
Obviously any economic effect felt by the farmers, will be directly felt by City businessmen.

We endorse the concept of the earliest possible replacement of the dam. We are advised of the proposal to provide private financing for the reconstruction. If this is the preference of the Spaceholders, the City of Twin Falls would encourage them in their efforts.

I ask that this letter be inserted in the record of the hearing of May 10, 1973, on the American Falls Dam replacement legislation.

Respectfully submitted,

John F. Christofferson
Mayor



TELEPHONE 733 3974
BOX 126
737 SHOSHONE STREET NORTH
TWIN FALLS, IDAHO
83301

May 10, 1973

Honorable Frank Church
Chairman
Water and Power Subcommittee
Interior and Insular Affairs
Dirksen Senate Office Building
Washington, D.C. 20515

Re: SB 1528 and SB 1529

Dear Senator Church:

As chairman of the Twin Falls Chamber of Commerce Agriculture Committee, I have been directed to send a letter to you indicating our concern about the American Falls Dam.

It is our hope that your committee will favorably consider the bills before you toward the end of the earliest possible replacement of the dam.

As the operator of a meat packing facility in Twin Falls, I am close to agriculture and realize the adverse effects which could occur if short water years are experienced while the reservoir is restricted. We encourage the Spaceholders' efforts toward helping themselves and ask favorable consideration of replacement legislation by the Subcommittee.

Sincerely,

Otto Florence, Jr., Chairman
Agriculture Committee

OF:sdm

JEROME CHAMBER OF COMMERCE

OFFICE OF THE EXECUTIVE SECRETARY

135 SOUTH LINCOLN

JEROME, IDAHO
83338

May 7, 1973

Honorable Frank Church, Chairman
Sub Committee on Water and Power Resources
Senator Interior and Insular Affairs Committee
New Senate Office Building
Washington, D.C. 20515

Re: Testimony for Senate Bill 1508 and Senate Bill 1529

Mr. Chairman:

Be it resolved that the Jerome Chamber of Commerce requests immediate replacement of the American Falls Dam by implementing Private Financing.

Water is the blood line of Jerome County. Your most expediant action is mandatory to replace the now obsolete American Falls Dam.

Sincerely,

Vince Alberdi, President
Jerome Chamber of Commerce

MEMBER OF
U.S. CHAMBER OF COMMERCE
IDAHO STATE CHAMBER OF COMMERCE
SOUTH SIDE COMMUNITIES

PROGRESSIVE IRRIGATION DISTRICT
BONNEVILLE AND JEFFERSON COUNTIES, IDAHO
OFFICE OF THE SECRETARY
2505 North Yellowstone Highway P.O. Box 2093
IDAHO FALLS, IDAHO 83401

Honorable Frank Church, Chairman
Subcommittee on Water and Power Resources
Senate Interior and Insular Affairs Committee
New Senate Office Building
Washington D.C. 20515

Re: American Falls Dam Replacement- Senate Hearing

Dear Honorable Frank Church:

We have enclosed a Statement prepared for the Progressive Irrigation District to be submitted for the record at the hearings to be conducted by the Senate Subcommittee on Water and Power Resources considering Senate Bills 1528 and 1529. Please consider this your authority to include the enclosed Statement, as a part of the record of the hearing scheduled for May 10th on SB 1528 and 1529.

Very truly yours,

PROGRESSIVE IRRIGATION DISTRICT

Lawrence Ricks
President

LR/ab
Enclosures

SUBCOMMITTEE ON WATER AND POWER RESOURCES
HEARINGS ON SB 1528 AND SB 1529
MAY 10, 1973
WASHINGTON, D. C.
STATEMENT OF PROGRESSIVE IRRIGATION DISTRICT FOR INCLUSION IN THE RECORD

The Progressive Irrigation District is an irrigation district created and existing under the laws of the State of Idaho and located North and East of the City of Idaho Falls in the upper Snake River valley. The District is composed of approximately 32,000 irrigable acres which are owned by some 1,400 members who pay annual assessments for the costs of the District's operation and maintenance. The District currently owns 12,465 acre feet of storage in the American Falls Reservoir.

Because of the rapid deterioration of the American Falls Dam, the Progressive Irrigation District, through its board of directors, wishes to formally record its support for replacement of the American Falls Dam structure at the earliest possible date. Approaching a water short year as the upper Snake River valley currently is, the need to maintain adequate stored water to supplement the District's decreed rights becomes all the more evident. With the economy of the region in which the District is located being primarily dependent upon its agricultural industry, the economic impact of a water short year, resulting in a reduction of crops harvested, can not be overstated.

The board of directors of the Progressive Irrigation District therefore wishes to urge the Congress of the United States to take whatever steps may be necessary to authorize replacement of the American Falls Dam in the fastest and most efficient manner available in order to help assure the stability and prosperity of the agriculturally oriented economy of the upper Snake River valley.

Respectfully submitted,
PROGRESSIVE IRRIGATION DISTRICT

Lawrence Picks

Lawrence Picks, President

Idaho Water Users Association, Inc.

May 10, 1973

The Honorable Frank Church
Subcommittee Chairman
Water and Power Resources
Interior and Insular Affairs
New Senate Office Building
Washington, D. C. 20515

Re: SB 1528 and SB 1529

Dear Senator Church:

Please file this as the official statement of the Idaho Water Users Association in regard to the bills which your subcommittee is considering.

The Idaho Water Users Association has for many years supported projects which would provide supplemental waters to give existing irrigated acreages an adequate water supply. The American Falls replacement falls within this category. About one-half of the water capacity of American Falls Reservoir constitutes the major portion of water rights for approximately 250,000 acres, and provides supplemental water for approximately 600,000 acres.

The acres served by American Falls constitute basically the prime agricultural lands along the Snake River valley in South Central Idaho. The replacement project is needed so that an adequate water supply can continue to be assured and the economic base of the State of Idaho will not be undermined.

The Idaho Water Users Association Board of Directors is aware of the approach preferred by the Spaceholders, that of Senate Bill 1529. Although we recognize that this is somewhat of a unique situation,

it is our board's feeling that it may be a more viable alternative in light of current appropriations problems which plague the Federal Congress. In a State like Idaho, where there any many potentially irrigable lands, we are keenly aware of not only the problems involved in authorization, but in obtaining federal appropriations for new construction starts. The backlog which presently exists is monumental and we recognize that proceeding in accordance with SB 1528 from the outset may provide lengthly delays. It is our observation that a possibility exists that the economic losses in one or two years might well exceed the cost of the replacement project at American Falls.

It is obvious that the most expeditious replacement of the American Falls Dam is in the best interests of the State of Idaho as a whole, as well as the farm owners who are directly affected. Because neither SB 1528 nor SB 1529 would in anyway upset the tranquility of the area, nor would they have adverse environmental effects, the Idaho Water Users Association supports the American Falls Spaceholders in their efforts to provide an alternative method of financing the construction of the American Falls Dam. Because the dam would remain part of the Upper-Snake River Project, prior water rights will in all respects be protected and the reservoir will be operated in conjunction with the other reservoirs in the basin.

The American Falls Dam replacement is an economically feasible project by Bureau of Reclamation standards. If the project can be constructed with private funds, some of the money to be repayed by the execution of a falling water contract, the irrigators will be alleviated of a substantial portion of this repayment obligation. We encourage this approach.

There appears to be a united effort by the water users to pursue the private alternative as I am advised that somewhat over 90% of the Spaceholders have indicated that they will be willing to advance monies to complete engineering studies and do the things that are necessary to begin construction at the earliest possible date.

We ask your help in assisting the Spaceholders to help themselves. It is unfortunate that the American Falls Dam, completed in the late 1920's developed the alkali reaction which weakened the concrete in the structure. At

this point in time, the Spaceholders have acknowledged that the dam must be replaced, and are doing everything in their power to proceed as swiftly as possible.

The Idaho Water Users Association urges the subcommittee to encourage the passage of Senate Bill 1529 by the Senate and the House of Representatives of the United States.

We thank you for the opportunity to present this letter, and ask that it be included in the record of the subcommittee hearing scheduled for May 10, 1973.

Respectfully submitted,

Jack Barnett
Executive Director

JB:ddm

Rudy Irrigation Canal Company Ltd.

Rigby, Idaho, 83442

April 27, 1973

The Honourable Frank Church, Chairman
Subcommittee on Water and Power Resources
Senate Interior and Insular Affairs Committee
New Senate Office Building
Washington, D.C. 20515

Dear Senator:

The intent of this letter is to acquaint you with the view as taken by the Board of Directors and Stockholders of the Rudy Canal and Irrigation Company regarding the replacement of the American Falls Dam.

Our company as a spaceholder in the present reservoir, during the coming irrigation season and those following until a new dam is existent, sustain a detrimental impact on the crop producing ability of our agricultural acres due to the present limitation to 62% capacity in the reservoir. There is no assurance, and most probably even this capacity will not be maintainable as the integrity of the dam lessens further. This fact, therefore, points up the same with our company as all other spaceholding companies, that even during this coming year, which is forecast as only slightly below normal in storage water supply, certain irrigators who solely rely on storage water will sustain losses. Add to this the distinct possibility of less abundant storage volume years, which will most likely occur before a new structure can be completed under the fastest possible feasibility, this company joins along with others in like position to urge the adoption of the present pending Senate Bills SB 1528--SB 1529, such that construction of a new dam can proceed as early as possible and continue to an early completion by reduction of "dead time" through the adoption of either or both of these bills.

We also urge this request be brought before and placed in the records of the congressional hearings in this matter in both the United States Senate and House of Representatives hearings to be held May 10th, 1973.

Thanking you sincerely,

Very respectfully yours,

James E. Kemper

James E. KEMPER
Sec'y, Rudy Irrigation Canal Co.
Director, Harrison Canal Co.

JKrck

94-375 O - 73 - 12

Aberdeen, Idaho
May 10, 1973

The Honorable Frank Church
Subcommittee Chairman
Water and Power Resources
Interior and Insular Affairs
New Senate Office Building
Washington, D.C. 20515

Re: SB 1529

Dear Mr. Chairman:

My name is Armin Schroeder. I have been a rancher and farmer in the Aberdeen area for over 50 years. I request that these remarks be included in the record of the hearing on the bills concerning the replacement of the American Falls Dam.

I also serve as president of the Aberdeen-Springfield Canal Company. It is a Carey Act operating company which irrigates approximately 63,000 acres. Our offices are in Aberdeen, Idaho.

The acreage served by our water deliveries is also within the boundaries of the American Falls Reservoir District. We are entitled to 55,591 acre-feet of American Falls storage water.

The Board of Directors of Aberdeen-Springfield Canal Company, although directly represented by the American Falls Reservoir District in this matter, have directed me to submit this statement concerning the Senate bills which are presently being considered by the Subcommittee. We heartily endorse the concept of Senate Bill 1529. It is our thought that the American Falls replacement should be accomplished in the shortest possible time. We believe that this can be accomplished more expeditiously by the American Falls Reservoir District utilizing private financing, than if Congressional appropriations are needed. Because of our proximity to the American Falls area, we also acknowledge the need for a highway crossing improvement. We are advised that the American Falls Spaceholders and the American Falls Bridge Committee are presently evaluating all possible alternatives toward providing a better river crossing. We support their continued efforts.

Our water right in American Falls is used by the company to provide irrigation water for late season irrigations. Because of the priority date of the American Falls Reservoir among reservoirs in the Upper-Snake River, and because of its physical location, it was as good a storage water right as could be obtained on the Snake River prior to the restriction on the American Falls Dam. We need American Falls Reservoir water in good as well as short water years.

We encourage the favorable consideration of SB 1529 by the committee and its early passage by the Congress. We thank the Idaho Congressional delegation for their work for us to-date. The Aberdeen-Springfield Canal Company and their water users stand ready to do whatever they are asked and to assume their fair share of the replacement costs if SB 1529 becomes law.

Respectfully submitted,

Armin Schroeder

Armin Schroeder

TWIN FALLS OFFICE

The Idaho First National Bank

BOX 709 ESTABLISHED 1889 83301

TWIN FALLS, IDAHO

May 8, 1973

Senator Frank Church
Chairman
Subcommittee on Water and Power
Interior and Insular Affairs Committee
Senate Office Building
Washington, D.C.

Dear Senator Church:

I am Lyle Frazier, Senior Vice-President of the Idaho First National Bank, with my office in Twin Falls. In the irrigated farming area located downstream from American Falls Dam, the Idaho First National Bank has seven branches, located in Twin Falls, Filer, Buhl, Hazelton, Wendell, Burley, and Rupert. The farming area served by these branches is almost totally dependent on irrigation water, and the large majority of it depends on water from American Falls Dam.

The branches of the Idaho First National Bank located in the above cities had total outstanding loans as of December 31, 1972 of $55,000,000.00. I estimate that eighty percent of those loans go directly to farmers or agricultural products processing operations, and to persons employed by the farmers or the processors. I believe that other banks operating in the same area would have a somewhat similar percentage of loans related to agriculture, processors or workers.

The consequences of a crop failure on the agriculturally based economy of this area would be disastrous. I have lived all my life in Gooding, Jerome and Twin Falls counties and can remember the leaves would fall in July and August, in Gooding, prior to water from American Falls Dam becoming available.

It is vital to the economy of this entire area to have the American Falls Dam replaced at the earliest opportunity. The American Falls Spaceholders proposal for private replacement offers the best method for speedy replacement, and we would support legislation authorizing such replacement.

Sincerely,

Lyle Frazier
Senior Vice-President
Idaho First National Bank

jm

Rigby, Idaho
April 29, 1973

The Honorable Frank Church
Chairman, Subcommittee on Water and Power Resources
Senate Interior and Insular Affairs Committee
New Senate Office Building
Washington D. C. 20515

Dear Senator Church:

The following statement is respectfully submitted to be included as part of the record of the hearing scheduled for May 10, 1973 on S. B. 1528 and S. B. 1529.

The Burgess Canal and Irrigating Company heads from the South Fork of the Snake River in the eastern part of Jefferson County, Idaho. The waters from the canal irrigate 22,000 acres of land in the Southeastern part of Jefferson County and the northern part of Bonneville County. Crops grown are: wheat 3000 acres, small grains 4000 acres, corn for silage 1000 acres, alfalfa and other hay 8500 acres. Irrigated pasture 2500 acres, Potatoes 2000 acres, and in 1973 seed peas300 acres, and 800 acres was used as set aside for the federal wheat and feed grain programs.

The canal services 425 shareholders, of whom about 275 are farmers residing on the land and engaged in production of crops and livestock. About 150 of the shareholders have built homes in the service area and receive water for gardens, lawns, and small acreages. A very productive livestock enterprise has been built up in the area of cattle, sheep and swine.

The Burgess Canal and Irrigating Company receives water under various decreed rights from the South Fork of the Snake River, and also owns storage space in Jackson Lake, Wyoming, Palisades Reservoir, and also 9,196 acre feet of storage space in American Falls Reservoir. Because of the lateness of some of the decreed water for the canal, from 25 to 50 percent of the natural flowmay be cut off in early August, or, in a short water year, in July. To sustain the productive agricultural production and livestock enterprise, it has been necessary to depend largely upon the storage waters from the reservoirs to carry through the irrigation season and finish the crops, maintain the pastures, and prepare the land for fall tillage. Potatoes are one of the crops which require late irrigation, and this is a very important crop for this area.

The loss of even a portion of the storage space, as in 1973, from deterioration of the old dam, may be critical, and the spaceholders could suffer heavy crop and livestock losses. It appears that this may be the year when the total storage space in the reservoir may be vital, as a snow pack of only 80 percent of normal is in the mountains.

Because of our vital need for supplemental water and our interest in American Falls Reservoir, we urge that Congress act immediately to authorize the replacement of American Falls Dam, and to see that is constructed at the earliest possible time.

Very truly yours,

Burgess Canal and Irrigating Company

Lowell R. Hix, President

Eldred Lee, Secretary-Treasurer

TED DIEHL, GENERAL MANAGER JOE L. PUTMAN SEC'Y-TREAS.

NORTH SIDE CANAL COMPANY
921 NORTH LINCOLN AVENUE
PHONE 324-2193 JEROME, IDAHO 83338

May 10, 1973

Honorable Frank Church
Chairman
Water and Power Subcommittee
Interior and Insular Affairs
Dirksen Senate Office Building
Washington, D. C. 20515

Re: SB 1528 and SB 1529

Dear Senator Church:

I am C. J. Marshall. I am a farmer in Jerome County, Idaho. I serve as president of the North Side Canal Company Board of Directors. I am a past member of the Idaho Water Resource Board. I presently serve as chairman of the Spaceholders' Executive Committee.

Because of potential critical water shortages for those companies which are nearly totally dependent upon storage water, the American Falls Spaceholders authorized the formation of an Executive Committee to evaluate the alternatives toward the swiftest possible replacement of the American Falls Dam. On January 6, 1973, the Executive Committee adopted a resolution, a copy of which is attached hereto. The resolution directed the Executive Committee to evaluate all alternatives toward immediate replacement.

Pursuant to our resolution and request, the Idaho Power Company obtained preliminary information from the Bechtel Engineers, and formulated a proposal which was presented to the Executive Committee and to the American Falls Spaceholders. In early March of 1973, the Spaceholders voted nearly unanimously in favor of pursuing the alternative of reconstruction with private financing. The Spaceholders are willing to bond to cover the construction costs. The consummation of a falling water contract will reduce the irrigators repayment. It is attractive for one other and

more important reason - the time factor. The Executive Committee feels that if SB 1529 is to become law, that construction will be started at the earliest possible date.

Even if SB 1529 were to become law tomorrow, there are many steps which must be taken and many problems which will be encountered by the Spaceholders. The Executive Committee and the Spaceholders have indicated their willingness to solve those problems so that construction of a replacement dam might be accomplished at the earliest possible date.

The Executive Committee has no objection to the provisions of SB 1528 but prefer the alternative outlined in SB 1529. We would encourage the Subcommittee to support the passage of SB 1529.

Mr. Chairman, on behalf of the Executive Committee and the Spaceholders, I would like to publicly express our appreciation to the members of the Bureau of Reclamation staff both in Washington, D. C. and at the regional level for their good cooperation in working with us on both alternatives. Obviously, we will need to continue to work together if SB 1529 becomes law. The proposal outlines almost total involvement of the Bureau of Reclamation in approving the plans and designs for the construction, owning the dam at the completion of construction, and continuing to operate and maintain the dam as it has in past years. The proposal also includes the involvement of the Bureau of Reclamation in contracts which would be authorized pursuant to this legislation.

We would also like to personally extend our thanks to the Idaho Congressional delegation for their involvement and their support. Also deserved thanks go to the Governor's office, the Idaho Legislature, and many State and Federal agencies which have been extremely cooperative.

Thank you for the opportunity to present this statement to the committee.

Respectfully submitted,

C. J. Marshall

TWIN FALLS BANK AND TRUST COMPANY

May 7, 1973

The Honorable Frank Church, Chairman
Water and Power Subcommittee
Interior and Insular Affairs
Dirksen Senate Office Building
Washington, D. C. 20515

Subject: American Falls Dam Replacement

Dear Senator Church:

Being involved in agricultural financing in Magic Valley, we are keenly aware of the economic emergency which may well exist if the American Falls Dam is not replaced at the earliest possible opportunity. The history of the plight of the North Side water users to obtain an adequate water supply over the past 50 years is well documented. They had difficulty in obtaining financing from major lending institutions in the valley during those water short years.

It would be a tragedy to regress to those times of hardship. If American Falls Dam is not promptly replaced, to remedy both the safety aspects and the economic disaster which might occur in water short years, those lands that are heavily dependent upon American Falls acreage water could find themselves in a situation similar to the Salmon River Canal Company service area. As you well know, Congress last year authorized the construction of the Salmon Falls Division Project to remedy that water short situation after more than 50 years of hardship. The impending problems would well be the same for American Falls Reservoir water users.

We encourage your support of the Spaceholders in their effort to reconstruct the American Falls Dam.

Sincerely,

Curtis T. Eaton

Curtis T. Eaton, Chairman of the Board
and President

TELEPHONE (208) 733-1772 · 102 MAIN AVENUE SOUTH · TWIN FALLS, IDAHO 83301

Enterprise Canal Company
c/o James Lovell, Pres.
Box 251
Rigby, Idaho 83442
May 4, 1973

Honorable Frank Church, Chairman
Subcommittee on Water and Power Resources
Senate Interior and Insular Affairs Committee,
New Senate Office Building
Washington D. C. 20515

Dear Senator Church:

Reference is made to Senate Bills 1528 and 1529, and House Resolutions 6781 and 6782, and to the hearing scheduled before your Subcommittee on the 10th of May, 1973.

At a meeting of the Board of Directors of the Enterprise Canal Company held following April 10, 1973, it was the unanimous opinion of the Board that the Enterprise Canal Company preferred an early replacement of the American Falls Dam, and therefore, that they felt that Senate Bill 1529 and HOuse Resolutions 6782, providing for private financing of the replacement would best effectuate their desires in this matter.

As the President of the Enterprise Canal Company I have been directed to write this letter directly to you.

BY ORDER OF THE BOARD.

ENTERPRISE CANAL COMPANY

By _____
President

WOOD RIVER RESOURCE AREA
COUNCIL of GOVERNMENTS
RESOURCE CONSERVATION and DEVELOPMENT PROJECT
Box 547, 302 Main, [illegible], Idaho 83350 Ph. (208) 431-5533

Draft

Senator Frank Church
Room 2Ma, Senate Office Building
Washington D. C. 20510

April 1972

Dear Frank:

This letter is a statement concerning the replacement of the American Falls Dam from the Wood River Resource Area Council of Governments.

The Council agrees that there should be the earliest replacement of the American Falls Dam as is physically and politically possible. The economic base of all of Southern Idaho rests upon the continued and adequate supply of irrigation water.

Judging from past performances and an unfavorable climate for dam building appropriations of the Congress, SB 1529 would bring about quickest action to alleviate our emergency needs. Therefore, the Council supports the passage of SB 1529 to provide private financing for the replacement.

Sincerely,

Don C. Frederickson, Chairman

cc: Governor Cecil D. Andrus
Vernon Havencroft, Pattle

SOUTHERN IDAHO PRODUCTION CREDIT ASSOCIATION

P.O. BOX 489, TWIN FALLS, IDAHO 83301

TELEPHONE AREA CODE 208 733 6411

May 7, 1973

Sub-Committee on Water and Power Reserves
Senate Interior and Insular Affairs Committee
Washington D. C.

Gentlemen:

The Southern Idaho Production Credit Association wishes to express its deep concern relative to the adverse effect on the agricultural and business economy of the counties of Gooding, Lincoln, and Jerome resulting from restricted water storage in the American Falls reservoir.

This association is chartered to provide agricultural financing in eight south-central Idaho counties. During 1973, the association closed 1165 loans to farmers and ranchers for a total of $67,158,000.

In seven of the district's counties, crop and livestock production depends heavily upon irrigation of lands in an area which has average annual precipitation of about nine inches. In five of these counties the primary source of irrigation water is from storage in American Falls reservoir. Operators whose livestock graze under BLM and Forest permits rely upon irrigated pastures and feed crops for a major portion of the year's feed supply.

Reduction of water storage for American Falls District No. 2 from 400,000 acre feet to 269,000 acre feet, a drop of 33% in available irrigation water, will seriously curtail the area's production of crops at a critical time in agriculture's attempt to meet national and world-wide demands for food and livestock feed.

As of December 31, 1972, this association had 1195 loans outstanding for a total of $31,929,283. In the counties of Gooding, Jerome and Lincoln there were 810 loans outstanding for $16,374,000, representing almost 43% of the total number and over 51% of the dollar amount outstanding.

Based upon the 1969 census of agriculture, there were 4379 commercial farms (with gross sales over $5000) in the eight south-central Idaho counties. Class 1-5 farms totaled almost $190 million in gross sales. Of these farms, 1449 (33%) were in the above three counties, and their gross sales were $59 million or 28% of the total.

During 1970 this association financed 572 farmers and ranchers in the three counties. This number was 49% of the total of 1418 financed in eight counties, and represented 39.5% of the commercial farms in the three-county area.

Due to an acceleration in prices of farm products since 1969, it would not be unreasonable to assume that gross sales in 1972 from farms in the three counties exceeded $75 million. A 33% reduction in irrigation water could be expected to lower anticipated income for 1973 by $25 million. Using the formula that each dollar produced from the soil revolves seven times in the business community, we are looking at a possible adverse impact on the area's economy of $175 million for each year until full water storage is available.

In the best interests of all farmers, ranchers and businesses of the area represented by American Falls District No. 2, this association respectfully submits the recommendation that action be taken to alleviate at the earliest possible date the critical circumstances pertinent to continued reduced storage of irrigation water.

Sincerely yours,

Earl R. Stansell

Earl R. Stansell
Manager

ERS:tw

Idaho Bank & Trust Co.
Member Federal Deposit Insurance Corporation
BOX 600 - BURLEY, IDAHO 83318

ROBERT D. HILLIARD
VICE PRESIDENT & MANAGER

April 30, 1973

The Honorable Frank Church
Chairman of Subcommittee of Water
and Power Resources
Interior and Insular Affairs Committee
New Senate Office Building
Washington, D. C. 25015

Dear Senator Church:

The Idaho Bank and Trust Company, with its fourteen offices in Idaho, has become very interested in the American Falls Dam Project.

I would like to make a statement from the Burley Office of Idaho Bank and Trust Company. Any loss of storage capacity at the American Falls Dam following a dry water year would seriously influence the economy of Burley and Cassia County. There are 48,000 cropland acres in Cassia County alone that depend upon irrigation from the control of American Falls Dam. Without water the immediate loss would amount to many hundreds of dollars per acre alone to the grower. In addition to this the affect upon the purchaser of farm products and the retailer dealing in these same agricultural commodities would more than triple the present dollar per acre loss. The economy loss would seriously affect our area.

It is of the utmost importance to our agricultural dependent state that the American Falls Dam Project be restored. Restoration should be accomplished before further immediate loss of capacity due to the deterioration of the dam occurs.

This statement respectfully submitted by:

Bob Hilliard
Vice President & Manager
Idaho Bank & Trust Co.
Burley Branch

BURLEY CHAMBER OF COMMERCE
Potato Processing Capital of the World
[illegible] BURLEY, IDAHO 83318

8 May 1973

Hon. Frank Church, Chairman
Subcommittee of Water & Power
Senate Interior & Insular Affairs Committee
New Senate Office Bldg.
Washington, D. C. 20515

Dear Senator Church:

Burley, Idaho, a community of some 10,000 persons, serving a trading area of 30,000, is almost solely dependent upon agriculture for its existence.

Total retail and wholesale figures gross at $17,400,691 for the last quarter of 1972, with $10,659,375 of that amount in retail sales alone.

Burley's contribution to the feeding of the people of the country and the world is impressive, with our unchallenged claim to being the "Potato Processing Capital of the World".

We are concerned at the present condition of the American Falls Dam and the possible loss of crops due to its deterioration and decreased flow of water to this area.

We are also concerned about the danger of the dam breaking and what it could mean to our safety.

We appreciate the opportunity to be heard on this important matter and urge you to take every means to rebuild the dam as hasenly fast as possible.

Very sincerely,

George P. Forschler, president
Burley Chamber of Commerce

By: Agnes Anderson
Mrs. Agnes Anderson, Secretary

BURLEY IRRIGATION DISTRICT
329 EAST MAIN STREET
BURLEY, IDAHO • 83318

The Honorable Frank Church
Chairman
Sub Committee of Water and Power Resources
Senate Interior and Insular Affairs Committee
New Senate Office Building
Washington, D.C. 20515

Re: Reconstruction American Falls Dam
Upper Snake River Project Idaho

The undersigned Burley Irrigation District by and through its President and Secretary respectfully submits the following statement:

1) The Burley Irrigation District is located in Cassia County Idaho along the Snake River approximately sixty (60) miles west of the American Falls Dam. All lands within the district would be arid except for irrigation water which is obtained from the Snake River in Idaho.

2) The district has within its boundary 48,000 acres of irrigated land. The District has 157,942 acre feet of storage space in the American Falls Dam and Reservoir on the Snake River in Idaho. This is 3/5's of all the storage water owned by the district.

3) At the request of the Bureau of Reclamation of the United States, the district transferred its storage rights in Jackson Lake to American Falls Dam and Reservoir with the understanding that such transfer would not be detrimental to the interests of the Burley Irrigation District.

4) There is always the pressing fear in the minds of the land owners within the Burley Irrigation District and residents of the City of Burley, that if the American Falls Dam would burst it would send a flood of water that would entirely inundate the City of Burley, which is located on the banks of the Snake River. The City of Burley and the lands in the Burley

BURLEY IRRIGATION DISTRICT
225 EAST MAIN STREET
BURLEY, IDAHO - 83318

Irrigation District are directly in the path of the flood that would be caused by the breakage of the dam. There are approximately 15,000 people residing within the area of the Burley Irrigation District that would be covered by the flood waters in the event the American Falls Dam gave away.

5) Representation has been made that in the event the American Falls Dam should break, the water would stand in Burley City twentyfive (25) feet deep. Burley is a city of approximately 10,000 people dependent almost entirely upon farming for their livelihood.

6) In the event the American Falls Dam would break, the storage space belonging to the Burley Irrigation District of 31,885 acre feet in Lake Walcott would be entirely destroyed. Lake Walcott is some fortyfive (45) miles down stream on the Snake River from the American Falls Dam.

7) The Bureau of Reclamation of the United States has now eliminated approximately 1/3 of the storage space in the American Falls Reservoir behind the dam because of the deterioration found in the dam. The Bureau has also informed the space holders that if the dam continues to deteriorate further restrictions on the amount of water stored in the Dam would be made. The elimination that has already been made and any further limitations to the storage of water in the Dam and Reservoir would cause a shortage of water to the district and an economic loss to the farmers within the district.

8) The reports given to the district for the 1973 season indicated that the water supply will only be 84% of normal from the Snake River. If the 1974 season is also less than normal, then the land owners within the

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BURLEY IRRIGATION DISTRICT
223 EAST MAIN STREET
BURLEY, IDAHO - 83318

Burley Irrigation District will suffer because there will not be sufficient water to enable the farmers to complete their crops.

9) The district computes that there is a gross income from farming and livestock operations in the Burley Irrigation District area of ten million dollars per year.

10) The undersigned district believes that it would be for the benefit of Idaho, for the environment in Idaho and would furnish electrical energy that is greatly needed and electrical power if a private agency were permitted to construct a power house near the replacement dam at American Falls. It is understood this private agency would use the free flowing water and would not in any manner interfer with the storage behind the Dam of the space holders.

11) The undersigned is in agreement with Senate Bill # 1529 now before your Committee.

12) It is understood by the Burley Irrigation District that a private agency has agreed if it is given the right to build a power house near the site of the replacement American Falls Dam, to contribute up to 19 million dollars toward the cost of the replacement of the American Falls Dam. This would mean a savings of approximately one million nine hundred thousand dollars to the Burley Irrigation District. The district feels it cannot afford to turn down such an offer and hereby requests that due consideration be given to Senate Bill # 1529. The district knows that your committee is well aware of the emergency now facing the space holders in American Falls Dam and the

BURLEY IRRIGATION DISTRICT
225 EAST MAIN STREET
BURLEY, IDAHO - 83318

District also knows that you will do all in your power to see that the bill passes the Seante of the United States that will provide relief for the space holders in American Falls Dam and Reservoir.

Respectfully submitted

BURLEY IRRIGATION DISTRICT

By: Clifford H. Livingston
Its President

ATTEST: Ingrid A. Slater
Its Secretary

The Honorable Frank Church
Chairman
Sub Committee of Water and Power Resources
Senate Interior and Insular Affairs Committee
New Senate Office Building
Washington, D.C. 20515

Re: Reconstruction American Falls Dam
Upper Snake River Project Idaho

The undersigned, Milner Low Lift Irrigation District by and through its President and Secretary respectfully submits the following statement:

1) The Milner Low Lift Irrigation District is located in Cassia County and Twin Falls County, Idaho. All the lands within the district would be arrid except for the irrigation water which is received from the Snake River in Idaho and a small irrigation well, pumping not more than 125 inches.

2) The District has within its boundaries 9,459 acres of land which depend entirely on its storage space in American Falls Dam for its water except for the well. The District has 45,587 acre feet of storage space in the American Falls Dam and Reservoir. The 9,459 acres is what is designated as old land in the district and does not have any other water right for its land owners except high water from the Snake River.

3) Milner Low Lift Irrigation District pumps its water out of a pond created by the Milner Dam on the Snake River located approximately 70 miles below the American Falls Dam. All water used by the Milner Low Lift Irrigation District is pumped. The pumps and the pumping facilities are all located near the Snake River except the small pump and in the event of the breaking of the American Falls Dam, the Milner Dam would be washed away and all the pumping facilities of the district would be destroyed.

4) It is questionable if there would be any flow of the Snake River not counting storage water that the district could use this year because of the light snowfall on the watershed of the Snake River. This year the Snake River watershed has only 84% of normal precipitation according to the

Government's survey. If next year is dry the farmers on the old land in the Milner Low Lift Irrigation Tract would be almost entirely without water.

5) Already one-third of the District's water stored in American Falls Dam has been eliminated to keep the dam from breaking and more elimination may be made.

6) The value of crops grown on the 9,459 acres would exceed $1,428,750.00 for each year when there is sufficient water to irrigate the lands.

7) The undersigned district believes that it would be for the benefit of Idaho, for the enviroment in Idaho and would furnish electrical energy that is greatly needed and electrical power if a private agency were permitted to construct a power house near the replacement dam at American Falls. It is understood this private agency would use the free flowing water and would not in any manner interfer with the storage space behind the Dam of the space holders.

8) The undersigned is in agreement with Senate Bill # 1529 now before your Committee.

12) It is understood by the Milner Low Lift Irrigation District that a private agency has agreed if it is given the right to build a power house, that it will contribute up to 19 million dollars toward the cost of the replacement of the American Falls Dam. This would mean a savings of approximately $52,240.00 to the Milner Low Lift Irrigation District. The District feels it cannot afford to turn down such an offer and hereby requests that due consideration be given to Senate Bill # 1529. The District knows that your Committee is well aware of the emergency now facing the space holders in American Falls Dam and the District also knows that you will do all in your power to see that a bill passes the Senate of the United States, that will provide relief for the space holders in American Falls Dam and Reservoir.

ATTEST: _____
Its Secretary

MILNER LOW LIFT IRRIGATION DISTRICT
By: _____
Its President

ENTERPRISE IRRIGATION DISTRICT

May 7, 1973

Honorable Frank Church
Chairman, Subcommittee on Water & Power Resources
Senate Interior & Insular Affairs Committee
New Senate Office Building
Washington D.C. 20515

Re: S. B. 1526 and S.B. 1529

Dear Senator Church:

We thank you for the opportunity of submitting this statement in behalf of Enterprise Irrigation District of Fremont and Madison Counties, Idaho, and request that same be included as a part of the record of the hearing scheduled for May 10, 1973, on the above referenced bills.

There are approximately 8,000 acres of some of the richest agricultural land in the State of Idaho located within the Enterprise Irrigation District, in the Counties of Madison and Fremont. Without water these lands would be dry farms only. With the water over half of the acreage within the district is used for the production of potatoes, and some sugar beets, together with wheat, barley, oats and alfalfa, in rotation. Consequently, the district contributes substantially to the food and fiber of the state and nation, and provides substantial tax base to the said two counties, employment to many people, and a way of life to many farm families.

The district has 8,510 inches of natural flow rights and some high water rights; however, historically it has proven that these natural flow rights are vastly inadequate to furnish the necessary water to complete the crops on the lands in the district. For instance, in 1944, the natural flow rights were cut off on May 30, and the records indicate that in many years the natural flow rights were cut off at such an early date that had the district not had the storage rights the potatoes and sugar beets particularly and all of the crops to some extent would have failed to mature.

In addition to 5,893 acre feet of storage in Jackson Lake and 10,323 acre feet of storage in Fremont-Madison Irrigation District, the Enterprise Irrigation District has 30,188 acre feet of storage in the American Falls Reservoir. Historically it has proven an absolute necessity and beneficial to the district that they have the storage in the American Falls Reservoir, and by means of exchange, have used natural flow rights of downstream users in exchange for the district's storage rights in the American Falls Reservoir.

BEST COPY AVAILABLE

The economy of Southern Idaho is based largely upon agriculture and agriculture is absolutely dependent upon water. The American Falls Reservoir is probably the single most important storage facility for impounding water to mature crops after natural flow rights on the rivers have been used of any facility in the State of Idaho. It is certainly essential that this reservoir be preserved and protected, and it is in the public interest that Congress do everything in its power to take all necessary steps to insure the continuation of this important reclamation project in the State of Idaho. The Enterprise Irrigation District stands ready to lend its assistance in every way possible, to furnish further evidence and testimony if desired.

Yours very truly,

ENTERPRISE IRRIGATION DISTRICT

BY: Douglas Bean

Douglas Bean, Chairman

STATEMENT OF THE CITY OF GOODING, IDAHO SUBMITTED TO THE SUB-COMMITTEE ON WATER AND POWER RESOURCES OF THE SENATE INTERIOR AND INSULAR AFFAIRS COMMITTEE ON SENATE BILLS 1528 AND 1529.

The City of Gooding is the County Seat of Gooding County, Idaho. The City is located geographically in the approximate center of 33,000 acres of farm land which, with the exception of a few deep wells, depends upon storage water in American Falls Reservoir.

Almost the entire economy of the City of Gooding is based upon agriculturally related businesses.

As an example, there are five financial institutions in the City, being the First Security Bank of Idaho, Bank of Idaho, Federal Land Bank, Branch Office of the Southern Idaho Production Credit Association and Farmers Home Administration.

Obviously, the Federal Land Bank and the Southern Idaho Production Credit Association are involved entirely in Agricultural undertakings.

The local Farmers Home Administration Office has stated that approximately 75% of its business is related directly to Agricultural undertakings and the other 25% in housing and sewage projects for rural communities. The City has been advised by one of the Bank Managers that 30 % of the business of the Bank of Idaho in Gooding, Idaho involves Agricultural directly and 5 % involves Agricultural indirectly. The Manager of the First Security Bank of Idaho states that approximately 42 % of the business of the First Security Bank in Gooding involves Agriculture directly and approximately 9 % involves Agriculture indirectly.

Before the restriction on storage space was imposed in the American Falls Reservoir there were dry water years and when the farmers and ranchers were unable to plant and harvest all of their land or unable to finish crops, every business in the City felt the impact.

Now, faced with a 65% delivery of water and the possibility of an even more extreme storage restriction in the future, every one in this community will be affected. This is as true of the Furniture Dealer who cannot sell to the wife of the car salesman who cannot sell to the employee of the Implement Dealer who cannot sell to the farmer because of the prospective crop loss as it is to the farmer himself.

It is truly an emergency and because of the time factors involved, considering the weather and the times of storage and periods of construction it is entirely possible that a twelve hour of time now could result in the possibility of loss of an entire irrigation season which could ultimately result in complete financial chaos in this area.

Inasmuch as the Power plant proposed by the Idaho Power in connection with the new dam would result in producing approximately four times as much power and in view of the energy crisis which is said to exist it would appear that this should be a real plus factor in obtaining passage of legislation necessary to replace the dam with private funds.

If the proposal by Idaho Power would result in earlier replacement and less expense to the water users, the City strongly recommends passage of the necessary legislation for this to be accomplished.

Last, but not least, as a user of stored water in American Falls Reservoir, to the tune of parched lawns, parks and gardens within the City of Gooding.

The City urgently requests that that legislation be passed which will result in replacement of the dam at the earliest point in time and at the least cost to the irrigators.

Respectfully submitted,

CITY OF GOODING

By: Vaudaye Craig Jones

Mayor

STATEMENT OF CLIFFORD N. SCORESBY, IDAHO FALLS, IDAHO

Mr. Chairman and members of the committee:

My name is Clifford Scoresby. I have owned and operated an irrigated farm northeast of Idaho Falls, Idaho, for approximately fifty (50) years. Like most people in my area, I have raised primarily potatoes, sugar beets, grain and hay. My farming operation is wholely dependent for its success upon the availability of natural flow and storage water from the Snake River. For many years I have been interested in and involved in various water user organizations.

I am presently the Vice-Chairman of the Board of Directors of the Progressive Irrigation District. I was Chairman of the Board for approximately twenty (20) years. The Progressive Irrigation District comprises approximately 32,000 acres of land and serves some 1,400 water users which includes my own farm. The Progressive Irrigation District owns space in American Falls Reservoir. In the specific case of the Progressive Irrigation District, the storage water from the space in American Falls Reservoir is essential to the maturing of the crops of the water users in the district. Since the restrictions have been placed on the amount of storage in American Falls, a dry year could be disastrous to the maturing of crops in our district.

I am also a member of the Board of Directors of the Upper Snake River Water Users' Protective Union, and am Secretary of that board. The protective Union represents approximately fifty (50) canal companies, most of which own space in the American Falls Reservoir. I have also been a member of the Committee of Nine for approximately thirty (30) years and presently serve as the Secretary of that body. The Committee of Nine is an official advisory committee under the terms of the Palisades Contracts and has for many years been involved in and concerned with the orderly development and administration of the water storage and distribution system on the Upper Snake River from Milner Dam to the headwaters. In addition, I am presently serving my fourth term in the Idaho State Legislature as the Representative from District No. 31.

During the years that I have farmed and been involved with water affairs in southeastern Idaho, I have seen the serious problems which result to our community in the dry cycles and when there is insufficient storage. For this reason, I have always urged and worked to develop and preserve an adequate storage system to insure against the devastating losses which have occurred in the past. The American Falls Reservoir is one of the major facets of this storage system and the present restrictions on the storage capacity of that reservoir place nearly all of the water users in the Upper Snake River Valley in serious jeopardy. In fact, it would be fair to say that the decreased storage capacity in the American Falls Reservoir as a result of the deterioration of the American Falls Dam is crucial to the entire agricultural economy of southeastern Idaho.

For these reasons, on my own behalf and on behalf of all of the members of those organizations of which I am a member and which I have been asked to represent here today, I urge the earliest practicable replacement of the American Falls Dam to restore that reservoir to its former storage capacity.

Senator CHURCH. Our next witness is Mr. Alvin Hill, Teamsters.

STATEMENT OF ALVIN E. HILL, MEMBER OF THE WESTERN CONFERENCE OF TEAMSTERS POLICY COMMITTEE, PRESIDENT OF JOINT COUNCIL OF TEAMSTERS NO. 57 AND SECRETARY-TREASURER OF TEAMSTERS UNION LOCAL NUMBER 983

Mr. HILL. Mr. Chairman, Senator McClure, because of the time of day, and I am not one you have been looking for, I would like to have you submit my statement into the record and allow me to make a few additional comments.

Senator CHURCH. We will be happy to do that.

Mr. HILL. My union represents probably in excess of 1,000 people that utilize American Falls Crossing, the employees of Lamb-Weston

and other operations on both sides of the river. This becomes important to me when I see situations existing, loss of water, not a proper access, that may result in the loss of employment for many, many people, not only the members of my union, but other people as well. Labor, farm, and this has a snowballing effect, because as stated before, if there is a drop in employment or a drop in acreage or activities in the farm areas, then also we have a drop in almost every endeavor at Lamb or in that vicinity. Plus the fact that if the present conditions exist, I see no way in which it can grow on the west side of the river, because I believe there is still vast areas that could be cultivated in that area.

I think one of the factors that should be very seriously considered and that has been mentioned in previous testimony, is the safety factor. You gentlemen have observed it firsthand, you have commented on the big trucks going back and forth.

I represent several drivers that drive those trucks back and forth, and they are repeatedly expressing their concern for accidents and loss of lives in their daily routine of work. True, they are professional drivers, but 10-wheeler rigs or semis or a set of doubles in 17 feet, you haven't much room left. We are concerned about that and also looking into the future, into the two lane versus the four lane.

I think the equipment in the trucking industry is not going to get smaller, it is going to get larger, I think. If we were just to have two lanes of traffic on that access, bearing in mind that the farm machinery that has to go back and forth and maybe accidents and breakdowns, what could happen in an emergency situation if someone has to get to a hospital or many other reasons.

Therefore, we think it is very, very imperative that a four-lane system is developed across the river. Therefore, the people that I represent, I believe the general public, from the testimony previously, we are very much in favor of Senate bill 1529, as amended.

I thank you for the privilege of coming up and making the statements I have. If I can answer any questions I will be happy to.

Senator CHURCH. Thank you Al, not only for coming, but for your patience in waiting through the day. Your testimony has wrapped this up in good style, and I can understand your special interest in having an adequate roadway.

I have no questions.

Senator MCCLURE. I am sure your members are concerned about the jobs, they are interested in the water, interested in the fishing, and they enjoy the recreation, so your membership has a full range of interests.

Mr. HILL. Very definitely so, Senator. I might add in all of our meetings we hold with our people, this is a subject brought up at every meeting, what is going to happen, what would happen if the bridge was—if something happened to wipe it out.

They are concerned individuals and I think they have every right to be. They make their home and livelihood there and it is their children's home.

Senator MCCLURE. You made reference to the fact, in your opinion, the likelihood of transportation of equipment, the likelihood would be that it would grow larger and not smaller. I voted in favor of

the legislation which would authorize a six-inch increase in the width of buses on interstate and 6-inch increase in the width of trucks. I had to stop and think if we really got that passed, they could not meet on that bridge.

Mr. HILL. No, they couldn't. It is not only the width that is increasing, it is the length.

Senator MCCLURE. I appreciate your testimony, and I think, as Senator Church said, it is a good wrapup for our session today. Thank you very much.

Senator CHURCH. Thank you.

[The prepared statement of Mr. Hill follows:]

[illegible]
PRESIDENT

ALVIN E. HILL
SECRETARY-TREASURER

Teamsters, Chauffeurs, Warehousemen and Helpers

UNION NO 983

Pocatello and Idaho Falls, Idaho

[illegible]
[illegible]
[illegible]
[illegible]

[illegible]

BRANCH OFFICE
[illegible]
P. O. BOX 650
IDAHO FALLS, IDAHO
83401

MAIN OFFICE
[illegible]
P. O. BOX 1838
POCATELLO, IDAHO
83201

[illegible]
[illegible]

My name is Alvin E. Hill, member of the Western Conference of Teamsters Policy Committee, President of Joint Council of Teamsters #57 and Secretary-Treasurer of Teamsters Union Local #983, local jurisdiction covering 18 counties in Southeastern Idaho. We are the largest Local Union in Idaho, Western, Wyoming and Utah with an average membership of 3,800. Our members work in almost every industry including, but not limited to, construction, freight over-the-road drivers, potato processing plants, furniture moving and storage, etc.

A great portion of our members live in the Aberdeen-Pingree areas and commute from there to Pocatello and Idaho Falls via the roadway across the American Falls dam, both for employment purposes and other reasons. Our members in the freight industry make a minimum of 6 trips a day hauling a minimum of 72,000 pounds of L.T.L. freight to service Aberdeen and the surrounding areas; the back haul will in excess of 250,000 pounds of L.T.L. freight, the products produced by Lamb-Weston, Western Farmers, potato plants and numerous other companies. Any other access to service these areas would constitute an additional 167 miles per day from Pocatello or Idaho Falls, Idaho over and above the present routes across the American Falls dam. This alone represents only the union carriers and drivers that my Local Union represents and does not take into consideration all the other trucking of produce and commodities hauled by independent carriers.

I think I can speak in behalf of other labor organizations that have members living on each side of the dam that it is a necessity that they commute for employment and business purposes. Therefore in behalf of Teamsters Union Local #983 and members, and other unions and their members and the general public, we feel that it is of the utmost importance that proper access be expedited as soon as possible for a free flow of transportation back and forth across the American Falls dam. We would urge the Secretary to enter into negotiations for some type of private building program, preferably building of a bridge or adequate roadway as soon as possible. Because of the lack of the curtailed one-way traffic and deterioration of the dam, time is of the essence. It is my opinion that if we would be so unfortunate as to have a catastrophe happen such as the earthquake of approximately 1964, the general public would be forced to use some other access to carry on their business on the west side of the river. It would be a burden that they should not have to suffer.

Have It Delivered

Senator CHURCH. Is there anyone else in the room who wants to testify before this hearing is closed?

[No response.]

Senator CHURCH. The record on these proceedings will be held open for a week to enable the additional information that has been requested to be submitted and in the meanwhile I will ask Dan Dreyfus to commence the preparation of a report, that will accompany the bill as recommended by this subcommittee to the full committee.

Very well, if there is no further testimony, the hearing stands adjourned.

[Whereupon, at 4:45 p.m., the hearing was adjourned.]

○

Exhibit 19

S. Rep. No. 93-223 (1973)

Calendar No. 212

93D CONGRESS
1st Session

SENATE

REPORT
No. 93-223

AUTHORIZING THE REPLACEMENT OF THE EXISTING AMERICAN FALLS DAM

JUNE 15, 1973.—Ordered to be printed

Mr. CHURCH, from the Committe on Interior and Insular Affairs, submitted the following

REPORT

[To accompany S. 1529]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 1529) to authorize the Secretary of the Interior to enter into agreements with non-Federal agencies for the replacement of the existing American Falls Dam, Upper Snake River project, Idaho, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

(1) Change the reference to the "Upper Snake River project" to read "Minidoka project" wherever it appears.

(2) On page 1, line 6, delete the word "district" and insert instead the words "present spaceholders".

(3) On page 2, line 10, delete "project," and insert the following:

> project: *Provided*, That the design, construction and operation of the replacement dam shall not result in a maximum water surface elevation at the dam higher than El. 4354.5 feet, and: *Provided, further*, That the Secretary shall continue the program of prevention of and compensation for erosion related to the reservoir.

(4) On page 2, revise lines 23 through 25 to read as follows:

> * * * and the Secretary shall be a party to said contracts and the delivery of water to the spaceholders shall be contingent upon the execution of such contracts and the fulfillment of the obligations thereunder: *Provided*, That * * *

(5) On page 3, line 21, after the word "shall" insert the following phrase: "be approved by the Secretary so long as it does".

(6) On page 3, lines 23–25, amend Sec. 5 to read as follows:

> SEC. 5. Construction of the replacement dam shall not be initiated until the Secretary has approved the designs and specifications of the construction of the dam and of the proposed operation of the dam and reservoir. Preliminary design plans shall be submitted to the Secretary by the constructing agency. The Secretary shall approve said plans, or must promptly set forth specific objections to the preliminary design plans. If the parties cannot agree, said specific objections shall be submitted to binding arbitration by an engineering consulting board. The Secretary shall select one member of the board, the constructing agency shall select one member of the board, and the two members so selected shall select a third member. The consulting board's decisions on the specific engineering questions shall be binding on the Secretary and the constructing agency. The constructing agency shall then prepare final designs and specifications. Costs incurred heretofore and hereafter by the Secretary in reviewing such designs, specifications, plans and construction shall be nonreimbursible and such amounts as are required are authorized to be appropriated for this purpose. The Secretary is authorized to accept fund advances from the beneficiaries if necessary to avoid delays occasioned by appropriations and to make compensation by payment or credits.

(7) On page 4, lines 2 and 3, delete the word "conservation" and insert instead the word "enhancement"; and on page 4, line 6, add the following language:

> In addition, specific facilities for public recreation may also be provided in accordance with the Land and Water Conservation Fund Act of 1965 (78 Stat. 897), as amended (16 U.S.C. 460, *et seq.*).

(8) On page 4, lines 7 through 11, amend Sec. 7 to read as follows:

> SEC. 7. There is hereby authorized to be appropriated for construction of specific facilities for public recreation and fish and wildlife enhancement the sum of $400,000 (July 1972 prices) plus or minus such amounts, if any, as may be required by reason of the changes in the cost of construction work of the type involved therein as shown by engineering cost indices. There are also authorized to be appropriated such funds as may be necessary to meet the prorated construction cost apportionable to the irrigation storage rights of the Michaud Division of the Fort Hall Indian Reservation for space in the reservoir behind the American Falls Replacement Dam and such cost shall be subject to the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 368a). There are also authorized to be appropriated such funds as are required for the operation and maintenance of the dam and related facilities.

(9) On page 3, line 12, delete "defer" and insert "defray".

(10) On page 2, line 11, delete "Sec. 2" and insert "Sec. 2(a)", and on page 2, after line 16, insert the following language:

> (b) The constructing agency shall: (i) include as a part of the project, a river crossing meeting the then current Department of Transportation standards for Federal-Aid secondary highway two-lane traffic, which crossing shall be located on top of the replacement dam or immediately downstream from the dam, and which crossing shall be financed by State, Federal and private funds, or any combination thereof as the parties deem appropriate; and (ii) coordinate the design of project crossing to allow the inclusion of an additional two lanes, which additional two lanes shall be the responsibility of the Idaho Department of Highways and which may be funded with State or Federal funds.
>
> (c) The plans and specifications for the construction of the dam shall require that an adequate two-lane, two-way crossing shall be maintained at or near the site of the dam during construction.

(11) Amend the title of the bill to delete the phrase "Upper Snake River project" and insert instead the phrase "Minidoka project".

PURPOSE OF THE MEASURE

The purpose of this measure, which was introduced by the Senators from Idaho, is to authorize the Secretary of the Interior to enter into appropriate agreements to permit the water-users to arrange for the financing and construction of a replacement for the existing American Falls Dam, which has become unsafe as a result of deteriorating concrete. The replacement dam would be acquired by the Secretary and operated as a feature of the existing Minidoka Reclamation project.

BACKGROUND

The existing American Falls Dam is located on the Snake River in Southern Idaho. The dam was constructed by the Bureau of Reclamation in 1927 as a feature of the Minidoka project. Physical data on the existing project are as follows:

Existing dam

Type—composite, concrete gravity center section with earth-fill embankment wings
Height—94′
Crest length—5,227′

Reservoir

Active capacity (unrestricted)—1,700,000 acre feet
Surface area—56,100 acres
Shoreline—100 miles

Minidoka project

Irrigable area—1,149,000 acres
Number of irrigated farms—19,900

Gross crop value (1971)—$154 million
Total storage dams—5
Total storage capacity—2,784,600 acre feet.

A chemical reaction between the aggregate and the cement has led to gradual deterioration of the structure. The Bureau has determined that the dam is no longer structurally competent and has imposed restrictions upon the maximum water level in the reservoir.

Storage in the reservoir is presently limited to less than 65 percent of its usable capacity. Greater restrictions will be necessary as the deterioration of the dam advances. The reservoir contributes nearly half the usable storage capacity in the Upper Snake River System, and provides irrigation water supplies to about 900,000 acres of land. Constraints on operation will pose serious threats to the agricultural economy of the area and to the recreation, fish and wildlife, flood control, and hydroelectric power functions served by the reservoir system.

Furthermore, the roadway on the crest of the existing dam is the only crossing within an 80 mile reach of the river. The outdated, 17-foot roadway must carry over 3,000 cars per day including heavily loaded farm produce trucks and agricultural equipment.

The Bureau of Reclamation has conducted a study to investigate the possibilities for replacement and rehabilitation of the American Falls Dam. The Bureau's Special Report dated December 1972 found that the replacement of the dam in the proximity of the present site would be preferable to rehabilitation. The Secretary of the Interior has made no recommendations to the Congress pursuant to the report.

In the interest of expediting completion of a replacement dam and in recognition of Administration reluctance to recommend conventional construction under the reclamation program, the spaceholders (water-users entitled to storage space in the American Falls reservoir) have explored alternative means for financing and carrying out the replacement of the dam.

The Senators from Idaho introduced two alternative measures for the replacement of the dam. One measure, S. 1528, would authorize the Secretary of the Interior to construct, operate and maintain a replacement dam having the same capacity reservoir and operations as the existing American Falls Dam. The financing of the replacement would be in accordance with conventional reclamation policies. The other measure, S. 1529, which is reported on herein would authorize an alternative financing approach proposed by the water-users in the interest of expediting completion of a replacement dam. In this alternative, an appropriate water-users organization would be authorized to construct the dam, using private financing, and transfer ownership to the Secretary for operation and maintenance as a project feature. The water-users agency would be authorized to contract with an electric utility for the use of falling water at the dam for hydroelectric power generation to help defer the costs of constructing the dam. The Idaho Power Company, which is a spaceholder in the reservoir and which owns and operates a powerplant below the existing dam, has expressed its interest in such a contract.

The Subcommittee on Water and Power Resources held a hearing on both measures on May 10, 1973. The Department of the Interior recommended enactment of S. 1529, the measure reported on herein and did not support the enactment of S. 1528, the alternative measure.

The Department recommended a number of amendments to S. 1529, most of which were adopted by the Committee as explained below. The Subcommittee considered the measures in executive session on June 11 and recommended to the Full Committee that S. 1529 be reported favorably to the Senate with amendments.

SECTION-BY-SECTION ANALYSIS

The provisions of S. 1529 as reported to the Senate are as follows:

Section 1 authorizes the Secretary of the Interior to enter into agreements with the American Falls Reservoir District, or other appropriate entity representing the spaceholders (the constructing agency), to provide for the construction of a replacement for the American Falls Dam.

The District would contract with Bechtel Engineers-Constructors to design and construct a replacement dam utilizing portions of the existing structure and maintaining the maximum unrestricted reservoir capacity of the original dam. The cost of the replacement dam and highway crossing, estimated at $18,491,000 (1973 prices), would be financed by the District through bond issues. The Secretary would take title to the dam upon completion of construction and would operate and maintain it as a Federal dam and a feature of the existing Minidoka Reclamation project.

Section 2 provides for the protection of the existing rights to storage capacity in the American Falls Reservoir and reaffirms existing contract obligations of the spaceholders to the United States. Current erosion control programs on the reservoir banks would be continued by the Secretary. An adequate river crossing will be provided as a part of the project as discussed below.

Section 3 authorizes the constructing agency to enter into repayment contracts with the spaceholders as necessary to recapture the costs of the replacement. The Secretary is to be a party to these contracts and they shall be consistent with existing contracts. The Secretary is granted authority, however, to amend existing contracts, if necessary, to bring the total repayment obligation of a spaceholder within the spaceholder's repayment capacity.

Section 4 authorizes the constructing agency to enter into a contract to lease the falling water from the dam for hydroelectric power production. The Idaho Power Company has expressed a willingness to construct a 100-megawatt powerplant in conjunction with the replacement dam and to pay, through a "falling water" contract, up to $19,000,000, plus interest charges, to assist in retiring the bond issue.

The Secretary will review the "falling water" contract to insure that it will not impair the efficiency of the project to serve the other purposes of the Minidoka Reclamation project.

Section 5 provides that the Secretary must approve the designs and specifications of the dam. The costs of the review are made nonreimbursible; however, the Secretary is authorized to accept fund advances from the constructing agency if necessary to avoid delays in the review due to lack of appropriated funds for the purpose. The Secretary is authorized to reimburse the constructing agency for such advances by direct payment or credits against debts to the United States.

An arbitration procedure is established to resolve points of techni-

cal disagreement which may arise between the Secretary and the architect-engineer as a result of the review of designs and specifications.

Section 6 provides authority for the Secretary to provide specific public recreation and fish and wildlife enhancement facilities in connection with the replacement dam. A plan for such measures, including nesting islands for geese, fishery enhancement measures, reservoir access, and recreation areas was developed in connection with the Bureau of Reclamation's studies of a replacement dam. The costs of these measures will be shared by an appropriate local entity under the provisions of the Federal Water Project Recreation Act (79 Stat. 213).

Additional recreational development at the reservoir also might be accomplished by State and local entities under the provisions of the Land and Water Conservation Act (78 Stat. 897, as amended).

Section 7 authorizes appropriations in the amount of $400,000 to provide for the costs of public recreation and fish and wildlife facilities. Funds in the amount required are also authorized to be appropriated to finance the portion of the costs of the dam replacement associated with the share of reservoir storage space owned by the Fort Hall Indian Reservation.

COMMITTEE AMENDMENTS

The Committee amended the bill in a number of respects to reflect recommendations made by the Department of the Interior and points raised by local interests during the hearings. The texts of the amendments are set forth by number at the beginning of this report. The following explanations are numbered accordingly:

(1) The Department of the Interior recommended the retention of the name of the existng Minidoka project in place of the designation Upper Snake River project which has been used on recent Department reports.

(2) This amendment was recommended by the Department. It would providee latitude for the spaceholders, including those outside of the American Falls Reservoir District, to be represented by an appropriate entity of their choosing.

(3) The Department recommended language to specifically provide that the replacement dam would provide for a maximum reservoir level no higher than that provided for by the existing dam. There is no intention to increase the size of the reservoir, and the elevation of 4354.5 set forth in the amendment is the maximum water surface elevation wihch was provided by the existing dam.

The Department also recommended a proviso insuring the continuation of the existing program of prevention of damages from erosion along the shores of the reservoir or of compensation for losses of land because of erosion. That program is presently carried out as a regular operation and maintenance function. The replacement dam will not alter the conditions which create the erosion problem. The second proviso makes clear that the existing erosion programs are intended to continue after the replacement.

(4) This is clarifying language recommended by the Department.

(5) The Department recommended that the Secretary of the Interior

be given the power of approval of the falling-water contract between the spaceholders and the owner of the powerplant contemplated to be constructed in conjunction with the replacement dam. The Committee adopted language indicating that the power of approval is limited to the determination that the contract will not impair the efficiency of the dam to serve the other purposes of the Federal Minidoka project.

(6) Section 5 of the bill provides the Secretary with authority to approve the designs and specifications for the replacement dam. The Committee has amended the section to provide that in the event of disagreement between the Secretary and the constructing agency concerning the design, an arbitration board of consulting engineers will be chosen to provide a binding decision on the question.

The Department of the Interior recommended that the costs incurred by the Department in the review of designs, specifications, and construction of the dam be reimbursable. The Committee, however, observes that the spaceholders are assuming large costs of construction which, in the event of Federal replacement of the dam, would have been nonreimbursible. To avoid a further financial burden on the spaceholders, the Committee has adopted language which would make the review costs nonreimbursable. In the event that appropriations were not available to permit the review to proceed expeditiously, however, the Secretary would be authorized to accept an advance from the spaceholders and to compensate them by payment or credit against charges at a later time.

(7) This amendment is as recommended by the Department to clarify the intent that specific facilities for fish and wildlife conservation contemplated in conjunction with the replacement dam are for the enhancement of the values rather than to mitigate damages. Furthermore, the measure would not prohibit the provision of recreation facilities under the provisions of the Land and Water Conservation Fund Act.

(8) The Department recommended this amendment to Sec. 7 to incorporate a specific amount for the authorization of appropriations for public recreation and fish and wildlife enhancement, and to authorize appropriations of funds to contribute the share of the costs of the replacement dam associated with the Fort Hall Indian reservation's rights to reservoir storage space.

(9) This is a technical amendment to correct an archaic usage.

(10) This amendment adds language agreed upon among the spaceholders and the local interests who are primarily concerned with the provision of an adequate highway crossing to replace the road on the existing dam. From testimony presented at the hearing, the Committee understands the language of the new Subsection 2(b) to require (i) that, as a minimum, a river crossing meeting current two-lane secondary highway standards must be provided along with the replacement of the dam, and the constructing agency is obligated to finance such a crossing to any extent necessary beyond available State and Federal funding; and (ii) the constructing agency is obligated to cooperate with the Idaho Department of Highways in seeking the provision of a four-lane crossing. The constructing agency, however, will have no obligation to finance any part of the additional two lanes, and the construction of the replacement dam will not be contingent upon the provision of the additional two lanes.

(11) See amendment No. (1).

The Department also recommended the deletion of the second proviso in Sec. 3 of the bill which would authorize the Secretary to extend the terms of existing repayment contracts with the spaceholders. The Department commented that such extensions are not necessary. The Committee chose to retain the language and notes that the decision to extend any of the contracts would be made at the discretion of the Secretary based upon a determination of need. The provision, therefore, only provides latitude to adjust the contracts if presently unanticipated financial burdens make such relief necessary.

COMMITTEE COMMENT

The Committee expects that the Secretary of the Interior will make every effort to facilitate the negotiations and agreements necessary to carry out the purposes of this measure. The intent of the procedure adopted is to expedite the completion of a replacement dam to minimize the hardships imposed upon the local people both by curtailments of water supplies and the inadequacy of the existing river crossing.

The choice of this alternative to Federal construction of a replacement dam imposes a considerable additional financial burden upon the spaceholders. Successful achievement of the replacement will require the cooperation of all of the parties, particularly the Interior Department, in carrying out its responsibilities for review and approval of designs, contracts and agreements.

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, by unanimous vote of a quorum present at an open executive session on June 11, 1973, recommends that S. 1529, as amended, be enacted.

EXECUTIVE COMMUNICATIONS

The reports of the Office of Management and Budget, the Department of the Interior, and the Federal Power Commission on S. 1529 are set forth in full below.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., May 9, 1973.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your requests of April 13, 1973, for the views of the Office of Management and Budget on S. 1528, a bill "To authorize the Secretary of the Interior to construct, operate and maintain a replacement dam for the existing American Falls Dam of the Upper Snake River Basin project, Idaho, and for other purposes" and S. 1529, a bill "To authorize the Secretary of the Interior to enter into agreements with non-Federal agencies for the replacement of the existing American Falls Dam, Upper Snake River project, Idaho, and for other purposes."

In its report to your Committee on S. 1528 and S. 1529, the Department of the Interior recommends enactment of S. 1529 in lieu of S. 1528 subject to certain amendments. In its report, the Department supports the concept of replacing the existing American Falls Dam through private financing and states that Federal liability will be limited, as under existing law, to the proportioned share of costs assigned to the Fort Hall Indian Reservation and to specific public recreation and fish and wildlife facilities.

We concur in the position taken by the Department and, accordingly, subject to the suggested amendments, recommend enactment of S. 1529.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 9, 1973.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department concerning S. 1528 and S. 1529, similar bills to authorize replacement of the American Falls Dam in Idaho.

We recommend that S. 1529 be enacted with the amendments set forth below. Since we support enactment of S. 1529 and have not completed our review of the plan of replacing American Falls Dam specified in S. 1528, we cannot support its enactment at this time.

The bills.—S. 1529 would authorize the Secretary of the Interior to negotiate and enter into agreements with the American Falls Reservoir District or an appropriate agency representing the district which would authorize the agency to finance the major costs and provide for construction of a replacement dam for the existing American Falls Dam. Upon completion, the United States would take title to the dam and it would be a feature of the Upper Snake River reclamation project, operated and maintained by the Secretary. The dam would be considered a "government dam" as defined in the Federal Power Act. Holders of storage rights in the existing reservoir would not be affected by replacement of the dam and the existing contract rights of such spaceholders with the Secretary would be reaffirmed except as modified by the bill. The bill would authorize the constructing agency to enter into contracts with current spaceholders providing for repayment of the replacement dam's cost. The Secretary would be a party to such contracts and he would be authorized to amend existing contracts to extend the repayment periods as necessary to bring the combined repayment obligations within the spaceholders' repayment capacity. The constructing agency would be authorized to contract with a non-Federal entity for the use of falling water for power generation. The Secretary would be authorized to provide facilities for public recreation and fish and wildlife conservation in connection with the replacement dam and costs would be repaid in accordance with the Federal Water

Project Recreation Act. Construction of the replacement dam could not begin until the Secretary had approved the designs and specifications.

S. 1528 differs from S. 1529 in that it authorizes the Secretary of the Interior directly to construct, operate and maintain the replacement dam as part of the Upper Snake River project under the Federal Reclamation laws in accordance with the plan set forth in the Bureau of Reclamation's report dated December 1972 entitled "American Falls Dam Replacement". The dam would serve irrigation, flood control, electric power generation, fish and wildlife and recreation purposes, except that power generation facilities other than those necessary to accommodate the future addition of hydroelectric power would not be installed unless subsequently authorized by Congress. The bill authorizes appropriation of $29 million to construct the dam and provides that costs of improving the relocated highway across the top of the replacement dam to present day standards would be nonreimbursable to the Federal Government under the provisions of section 208 of the Flood Control Act of 1962. Public recreation and fish and wildlife conservation costs would be repaid in accordance with the Federal Water Project Recreation Act. Costs associated with the provisional features to accommodate future hydroelectric power would be deferred until power production is authorized. The interest rate applicable to the project for repayment purposes would be based on the long-term U.S. Governmental debt interest rate.

Background.—The Minidoka Project was authorized by the Secretary of the Interior on April 23, 1904, under the Reclamation Act of 1902.

American Falls Dam, a major feature of the Minidoka Project, was built by the Bureau of Reclamation in 1927. The dam is located on the Snake River in southeastern Idaho west of the town of Pocatello. American Falls Reservoir, with a capacity of 1.7 million acre-feet, is the largest storage reservoir in the Upper Snake River basin and contributes almost half the usable storage on the main stem of the Upper Snake River. Nearly 900,000 acres of land receive irrigation water from the reservoir and as of September 30, 1972, only $578,516.52 of irrigation costs remained unrepaid to the United States of the total Federal irrigation investment amounting to $7,511,087.11. There is an additional unpaid power obligation of $404,365. Abnormal cracking throughout the concrete dam was reported as early as 1929 and has become progressively more severe. The condition of the dam has been closely monitored through regular biennial inspections. As the result of a core-drilling program in the early 1960's it was discovered that the concrete in portions of the dam was in a relatively advanced stage of deterioration due to a chemical reaction between alkalis in the cement and the aggregate. This type of reaction was unknown at the time the dam was built and has resulted in a significant loss in its strength and durability. Incident to the deterioration of the dam is the deteriorating condition of the existing two-lane State Highway 39 on the dam. This hazardous condition has resulted in the application of stringent traffic control procedures by the Idaho Department of Highways.

Studies in 1968 by a private board of consultants, consisting of three nationally known civil engineers, confirmed the Bureau of Reclamation's findings concerning the safety of the dam. The board stated that replacement or rehabilitation of the dam is desirable and that the

choice between replacement and rehabilitation should be based on a comparison of detailed designs, cost estimates and useful life of the dam after such work had been completed.

The condition of the dam has necessitated careful regulation of reservoir storage to avoid harmful pressures on the thin upper portion of the structure. For a number of years, winter storage has been restricted to 8 feet below the maximum reservoir water surface elevation in order to prevent ice pressures on top of the dam. Maximum storage is now limited to 11.3 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.

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 20

Hearing before the House Subcommittee on Water and Power Resources on H.R. 6781, H.R. 6782, and S. 1529 to Authorize the Replacement of the American Falls Dam in Idaho, 93rd Cong. (1973)

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

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Committee on Interior and Insular Affairs



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NOTE.—The Chairman of the Full Committee is an ex officio voting member of this Subcommittee. The first listed minority member is counterpart to the Subcommittee chairman.

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REPLACEMENT OF THE AMERICAN FALLS DAM IN IDAHO

SATURDAY, OCTOBER 6, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WATER AND POWER RESOURCES
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Burley, Idaho.

The subcommittee met, pursuant to notice, at 10 a.m., in Burley, Idaho, the Honorable Harold T. Johnson presiding.

Mr. JOHNSON. The Subcommittee on Water and Power Resources will come to order.

The purpose of our hearing today is to take testimony on the American Falls Dam problem. Measures pending are H.R. 6781 by Congressmen Hansen and Symms and H.R. 6782 also by Congressmen Hansen and Symms. Likewise pending before the committee is S. 1529, originally introduced by Senators Church and McClure.

The legislation is to authorize the Secretary of the Interior to enter into agreements with non-Federal agencies for the replacement of the existing American Falls Dam, Upper Snake River project, Idaho, and for other purposes.

The pattern that is followed by the Water and Power Resources Subcommittee of the House is, prior to holding hearings in Washington, we always come to the field for a hearing that allows all local interests to testify. We have an opportunity to look at the area that is going to be affected by the project. In this instance we will look at the reservoir, dam, and powerplant that are now in place, and see some of the area of service.

This morning we had a good opportunity to view from the air the dam, powerplant, the adjacent community, the reservoir, and also a good portion of the lands that are being served by this facility at the present time.

I am Congressman Johnson from California, the chairman of this subcommittee. I have with me Mr. Don Clausen from California, a member of the subcommittee, Mr. Ketchum from California, a member of the subcommittee, and Mr. Towell from the State of Nevada, a member of the subcommittee. We are very fortunate this morning to have with us the entire Idaho delegation.

I want to say that we are very happy to be here in Burley. Through the activities of this subcommittee and its performance, we have never failed to pass a bill when we have held a hearing and visited an area. So the field hearings have been well accepted by the balance of the subcommittee in Washington and by the full committee and by the House of Representatives. The Senators can speak for themselves.

I would ask unanimous consent that the three bills mentioned be printed in the Record, and that the favorable report from the Department of the Interior, signed by the Assistant Secretary, Mr. Jack O. Horton, which was received just prior to leaving Washington, be made a part of the record at this point. I also ask then proper reference be made to the environmental statement on the American Falls replacement powerplant, Minidoka plant, Idaho, and that this draft be made a part of the file for reference.

[The documents referred to follow:]

[H.R. 6781, 93d Cong., 1st sess.]

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 out in the report of the Bureau of Reclamation dated December 1972 entitled "American Falls Dam Replacement", with such modification of, omissions from, or additions to the works as the Secretary may find proper and necessary for the purposes of irrigation, flood control, generation of electric power, fish and wildlife and recreation: *Provided*, That facilities for the generation of electric power other than those necessary to accommodate the future addition of hydroelectric power as a project function shall not be installed unless specifically authorized by the Congress.

SEC. 2. Replacement of the existing dam and reservoir as authorized in section 1 hereof 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 rights under the contracts between the Secretary and the spaceholders except as otherwise provided in this Act.

SEC. 3. That portion of the construction costs of the replacement dam allocated to the irrigation purpose shall be repaid in accordance with the irrigators' ability to pay but within a period not to exceed forty years in accordance with the provisions of reclamation law: *Provided*, That the Secretary is authorized to execute repayment contracts in excess of forty years with those spaceholders who have not yet completed repaying their obligations on the existing American Falls Dam if he determines that repayment within forty years of their obligations under both existing and new repayment contracts would exceed their repayment capacity.

SEC. 4. The development of public recreation and fish and wildlife conservation undertaken in connection with the replacement dam and the repayment of costs associated with those purposes shall be in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213).

SEC. 5. The costs associated with improving the relocated highway to meet current standards shall be non-reimbursable under the provisions of section 208 of the Flood Control Act of 1962 (76 Stat. 1196).

SEC. 6. Repayment of the costs associated with the provision of features to accommodate future hydroelectric power production shall be deferred and shall be reimbursable with interest upon the addition of said hydroelectric power production as a project purpose.

SEC. 7. The interest rate used for computing interest during construction and interest on the unpaid balance of the capital costs allocated to interest-bearing features of the project shall be determined by the Secretary of the Treasury as of the beginning of the fiscal year in which construction on replacement of the dam commences on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from date of issue.

SEC. 8. There is hereby authorized to be appropriated for the construction of the American Falls Dam replacement the sum of $29,000,000 (based upon

July 1972 price levels) plus or minus such amounts as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved. There are also authorized to be appropriated such additional sums as are required for operation and maintenance of the project.

[H.R. 6782, 93d Cong., 1st sess.]

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

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 (hereinafter called the Secretary) is authorized to negotiate and enter into agreements with the American Falls Reservoir district or other appropriate agency representing the district (hereinafter called the constructing agency), which agreements shall authorize the constructing agency to finance and provide for the construction of a dam to replace the existing American Falls Dam of the Upper Snake River project, Idaho-Wyoming. The United States shall take title to the dam upon a determination by the Secretary that construction of the dam is substantially completed, and the dam shall be a feature of the Upper Snake River reclamation project and shall be considered to be a "Government dam" as defined by the Federal Power Act (Act of June 10, 1920, 41 Stat. 1063, as amended). The Secretary shall operate and maintain the replacement dam as a feature of the Upper Snake River project.

SEC. 2. Replacement of the existing dam as authorized in section 1 hereof 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.

SEC. 3. The constructing agency may enter into repayment contracts with the spaceholders in the existing American Falls Reservoir providing for the repayment by the spaceholders of proportionate shares of the total project costs incurred by the constructing agency for engineering, financing, designing, and constructing the replacement dam, and the Secretary shall be a party to said contracts and shall require delivery of water to the spaceholders to be continent upon fulfilling of the contract obligations: *Provided*, That said contracts shall be consistent with the terms of existing contracts between the Secretary and the spaceholders for repayment of the costs of the existing American Falls Dam: *And provided further*, That the Secretary is authorized to amend said existing contracts to extend the repayment periods as necessary to bring the combined repayment obligations within the spaceholders' repayment capacity.

SEC. 4. The constructing agency may contract with an appropriate non-Federal entity for the use of the falling water leaving the dam for power generation, which contract shall provide for a monetary return to the constructing agency to defer the costs of construction of the replacement dam. The constructing agency may enter into agreements with an appropriate non-Federal entity to coordinate the construction of hydroelectric power facilities with the construction of the replacement dam. The contract and agreements for use of the falling water shall not be subject to the limitations of section 9(c) of the Reclamation Project Act of 1939 (53 Stat. 1194), or any similar limitations in any other applicable Acts of Congress: *Provided*, That said contract for falling water shall not impair the efficiency of the project to serve the other purposes of the Upper Snake River project.

SEC. 5. Construction of the replacement dam shall not be initiated until the Secretary has approved the designs and specifications.

SEC. 6. The Secretary is authorized to provide specific facilities for public recreation and fish and wildlife conservation in connection with the replacement dam, and the costs of such facilities shall be repaid in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213).

SEC. 7. There are authorized to be appropriated such sums as may be necessary for the construction of specific facilities for public recreation and fish and wildlife conservation and for the operation and maintenance of the American Falls replacement dam.

[S. 1529, 93d Cong., 1st sess.]

AN ACT 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

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 (hereinafter called the Secretary) is authorized to negotiate and enter into agreements with the American Falls Reservoir District or other appropriate agency representing the present spaceholders (hereinafter called the constructing agency), which agreements shall authorize the constructing agency to finance and provide for the construction of a dam to replace the existing American Falls Dam of the Minidoka project, Idaho-Wyoming. The United States shall take title to the dam upon a determination by the Secretary that construction of the dam is substantially completed, and the dam shall be a feature of the Minidoka reclamation project and shall be considered to be a "Government dam" as defined by the Federal Power Act (Act of June 10, 1920, 41 Stat. 1063, as amended). The Secretary shall operate and maintain the replacement dam as a feature of the Minidoka 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 elevation 4,354.5 feet: *And provided further*, That the Secretary shall continue the program of prevention of and compensation for erosion related to the reservoir.

SEC. 2. (a) Replacement o fthe existing dam as authorized in section 1 hereof 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.

(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.

SEC. 3. The constructing agency may enter into repayment contracts with the spaceholders in the existing American Falls Reservoir providing for the repayment by the spaceholders of proportionate shares of the total project costs incurred by the constructing agency for engineering, financing, designing, and constructing the replacement dam, 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 said contracts shall be consistent with the terms of existing contracts between the Secretary and the spaceholders for repayment of the costs of the existing American Falls Dam: *And provided further*, That the Secretary is authorized to amend said existing contracts to extend the repayment periods as necessary to bring the combined repayment obligations within the spaceholders' repayment capacity.

SEC. 4. The constructing agency may contract with an appropriate non-Federal entity for the use of the falling water leaving the dam for power generation, which contract shall provide for a monetary return to the constructing agency to defray the costs of construction of the replacement dam. The constructing agency may enter into agreements with an appropriate non-Federal entity to coordinate the construction of hydroelectric power facilities with the construction of the replacement dam. The contract and agreements for use of the falling water shall not be subject to the limitations of section 9(c) of the Reclamation Project Act of 1939 (53 Stat. 1194), or any similar limitations in any other applicable Acts of Congress: *Provided*, That said contract for falling water shall be approved by the Secretary so long as it does not impair the efficiency of the project to serve the other purposes of the Minidoka project.

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 nonreimbursable 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.

SEC. 6. The Secretary is authorized to provide specific facilities for public recreation and fish and wildlife enhancement in connection with the replacement dam, and the costs of such facilities shall be repaid in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213). In addition, specific facilities for public reaction 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.)

SEC. 7. There is hereby authorized to be approriated 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 in 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.

Passed the Senate June 19 (legislative day, June 18), 1973.

Attest.

FRANCIS R. VALEO,
Secretary.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., October 5, 1973.

Hon. JAMES A. HALEY,
Chairman, Committee on Insular Affairs,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department concerning H.R. 6781, H.R. 6782 and S. 1529 similar bills to authorize replacement of the American Falls Dam in Idaho.

We recommend that H.R. 6782 be enacted with the amendments set forth below. In the alternative, we recommend enactment of S. 1529 as passed by the Senate if modified to conform with the views set forth below. Since we support enactment of H.R. 6782 and have not completed our review of the plan of replacing American Falls Dam specified in H.R. 6781, we cannot support enactment at this time of H.R. 6781.

The Bills.—H.R. 6782 would authorize the Secretary of the Interior to negotiate and enter into agreements with the American Falls Reservoir District or an appropriate agency representing the district which would authorize the agency to finance the major costs and provide for construction of a replacement dam for the existing American Falls Dam. Upon completion, the United States would take title to the dam and it would be a feature of the Upper Snake River reclamation project, operated and maintained by the Secretary. The dam would be considered a "government dam" as defined in the Federal Power Act. Holders of storage

rights in the existing reservoir would not be affected by replacement of the dam and the existing contract rights of such spaceholders with the Secretary would be reaffirmed except as modified by the bill. The bill would authorize the constructing agency to enter into contracts with current spaceholders providing for repayment of the replacement dam's cost. The Secretary would be a party to such contracts and he would be authorized to amend existing contracts to extend the repayment periods as necessary to bring the combined repayment obligations within the spaceholders' repayment capacity. The constructing agency would be authorized to contract with a non-Federal entity for the use of falling water for power generation. The Secretary would be authorized to provide facilities for public recreation and fish and wildlife conservation in connection with the replacement dam and costs would be repaid in accordance with the Federal Water Project Recreation Act. Construction of the replacement dam could not begin until the Secretary had approved the designs and specifications.

S. 1529 in the Senate was identical to H.R. 6782 and passed the Senate with several amendments which are discussed below in connection with the amendments we recommend be made to H.R. 6782.

H.R. 6781 differs from H.R. 6782 in that it authorizes the Secretary of the Interior directly to construct, operate and maintain the replacement dam as part of the Upper Snake River project under the Federal Reclamation laws in accordance with the plan set forth in the Bureau of Reclamation's report dated December 1972 entitled "American Falls Dam Replacement". The dam would serve irrigation, flood control, electric power generation, fish and wildlife and recreation purposes, except that power generation facilities other than those necessary to accommodate the future addition of hydroelectric power would not be installed unless subsequently authorized by Congress. The bill authorizes appropriation of $29 million to construct the dam and provides that costs of improving the relocated highway across the top of the replacement dam to present day standards would be nonreimbursable to the Federal Government under the provisions of section 208 of the Flood Control Act of 1962. Public recreation and fish and wildlife conservation costs would be repaid in accordance with the Federal Water Project Recreation Act. Costs associated with the provisional features to accommodate future hydroelectric power would be deferred until power production is authorized. The interest rate applicable to the project for repayment purposes would be based on the long-term U.S. Governmental debt interest rate.

Background.—The Minidoka Project was authorized by the Secretary of the Interior on April 23, 1904, under the Reclamation Act of 1902. American Falls Dam, a major feature of the Minidoka Project, was built by the Bureau of Reclamation in 1927. The dam is located on the Snake River in southeastern Idaho west of the town of Pocatello. American Falls Reservoir, with a capacity of 1.7 million acre-feet, is the largest storage reservoir in the Upper Snake River basin and contributes almost half the usable storage on the main stem of the Upper Snake River. Nearly 900,000 acres of land receive irrigation water from the reservoir and as of September 30, 1972, only $578,516.52 of irrigation costs remained unrepaid to the United States of the total Federal irrigation investment amounting to $7,511,087.11. There is an additional unpaid power obligation of $404,365. Abnormal cracking throughout the concrete dam was reported as early as 1929 and has become progressively more severe. The condition of the dam has been closely monitored through regular biennial inspections. As the result of a core-drilling program in the early 1960's it was discovered that the concrete in portions of the dam was in a relatively advanced stage of deterioration due to a chemical reaction between alkalis in the cement and the aggregate. This type of reaction was unknown at the time the dam was built and has resulted in a significant loss in its strength and durability. Incident to the deterioration of the dam is the deteriorating condition of the existing two-lane State Highway 39 on the dam. This hazardous condition has resulted in the application of stringent traffic control procedures by the Idaho Department of Highways.

Studies in 1968 by a private board of consultants, consisting of three nationally known civil engineers, confirmed the Bureau of Reclamation's findings concerning the safety of the dam. The board stated that replacement or rehabilitation of the dam is desirable and that the choice between replacement and rehabilitation should be based on a comparison of detailed designs, cost estimates and useful life of the dam after such work had been completed.

The condition of the dam has necessitated careful regulation of reservoir storage to avoid harmful pressures on the thin upper portion of the structure. For a number of years, winter storage has been restricted to 8 feet below the

maximum reservoir water surface elevation in order to prevent ice pressures on top of the dam. Maximum storage is now limited to 11.3 feet below full pool which reduces the reservoir storage capacity to 1,125,000 acre-feet or approximately 66 percent of maximum design capacity.

In December 1972, the Bureau of Reclamation's Regional Director completed a preliminary special report which identifies a plan for replacing the dam and developing related multipurpose features. The report has not been fully reviewed by this Department or other appropriate agencies and does not necessarily reflect the views of the Secretary of the Interior. A copy of the report entitled "American Falls Dam Replacement" is enclosed.

More recently the reservoir spaceholders and the Idaho Power Company have proposed a plan to replace the existing American Falls Dam through non-Federal financing. A formal report has not been prepared on their plan, but we understand its general approach is that the spaceholders would obtain the right to replace the dam and to enter into a 50 year falling water contract for power with a right of renewal. The spaceholders would obtain financing for the new dam by the sale of tax exempt bonds and would assist Idaho Power Company in obtaining a Federal Power Commission license for construction of a powerplant at the dam. The Idaho Power Company would pay to the spaceholders an amount of money equal to the annual requirements for interest and amortization of the spaceholders bonds over a 40 year period, up to the actual cost of the dam but not more than $19 million plus interest. The spaceholders would pay any additional cost over the $19 million plus interest and the costs of replacing the existing highway river crossing and facilities for recreation, fish and wildlife and public health and safety.

Discussion.—In order to retain the full benefits of the American Falls Reservoir, it is apparent that the present dam must be replaced. The regional economy is dependent to a significant degree on the dam and reservoir and would benefit from the proposed replacement, both in terms of additional direct utility from the project and elimination of future uncertainty. We note that non-Federal hydroelectric power would be included as part of the project, helping to meet regional energy requirements without adverse thermal power production impacts. Because plans for the replacement dam will be subject to approval by and execution of an agreement with the Secretary, we see no need for licensing the dam under the Federal Power Act. The bill obviates the licensing requirement by making the dam a "government dam" within the meaning of the Federal Power Act. The proposed powerplant would, however, require a license.

H.R. 6782 adopts a plan which permits the substantial benefits described above to be obtained without cost to the Federal Government except for public, recreational, and fish and wildlife conservation costs which would be shared with non-Federal interests in accordance with the Federal Water Project Recreation Act. By amendment suggested below, relatively small Federal appropriations would also be sought for the proportionate share of costs assigned to the Fort Hall Indian Reservation. The plan thus calls for only minimal Federal expenditures and we believe the Federal cost is well worthwhile in view of the substantial benefits to the local economy.

Amendments.—Sections 1 and 4 of H.R. 6782 refer to the American Falls Dam and Reservoir being a part of the Upper Snake River Project. The existing American Falls Dam was authorized as a part of the Minidoka Project. The many water service and repayment contracts associated with American Falls Dam are identified as Minidoka Project contracts. The proposal is to replace a Minidoka Project feature without changing its size or water customers. Any new authorizations should continue to identify American Falls Dam as a part of the Minidoka Project and appropriate changes should therefore be made in the bill title and in sections 1 and 3 of the bill (page 2, lines 1, 5 and 9 and page 3, line 23) substituting "Minidoka Project" for "Upper Snake River Project". In addition, we recommend that the word "district" be deleted in line 6, section 1 and the words "present spaceholders" be substituted therefor. This change (which was adopted by the Senate in S. 1529) will provide greater flexibility in making final arrangements for replacement of the dam and will permit representation of spaceholders not now included in the American Falls Reservoir District.

With particular reference to protection of the Indian tribal interests of the Fort Hall Reservation we recommend that the bill be amended to assure that the level of the American Falls Reservoir not be raised and that appropriate action be taken to control any erosion which could adversely affect Indian lands.

To accomplish this the following should be added at the end of section 1 of the bill:

"The construction and operation of the replacement dam shall not result in an increase in the elevation of the reservoir water surface above that maintained for the original dam. Such construction and operation shall include provision for the correction and prevention of erosion related to the reservoir or for the full and adequate compensation of adjacent land owners (including owners of land subject to a flowage easement for the reservoir) if such erosion cannot be corrected or prevented."

In our view, this language is preferable to the roughly equivalent amendment of S. 1529 adopted by the Senate.

The last proviso in section 3 authorizes the Secretary to extend the repayment periods for existing repayment contracts so that the combined repayment obligation for the existing dam and the replacement dam are within the spaceholders' repayment capacity. We are not aware of the need for this provision and believe it is inappropriate that the United States bear costs that might result from deferment of existing obligations. We therefore recommend deletion of this proviso (lines 4 through 8 on page 3).

If an existing spaceholder is satisfied with the partial water supply that he now receives with limited operations of American Falls Dam and Reservoir and prefers not to sign a new contract, the bill leaves the position of the United States unclear. It is not desirable to provide that construction will not be started until contracts are obtained from all spaceholders, since this would mean that any spaceholder would have veto power over the entire arrangement. Delivery of water should, however, be made contingent upon execution of such contracts. Therefore we recommend that section 3 be modified by striking on, page 2, line 24 the words "shall require" and by inserting in place thereof the word "the" and in line 25, following the word "spaceholders" by deleting "to" and inserting the word "shall". On line 25 and 26 the words "upon fulfillment of the contract obligation" should be deleted and in lieu thereof the words "the execution of such contracts and the fulfillment of the obligation thereunder" should be inserted. S. 1529 includes this amendment.

In order to provide the Secretary with a means of reviewing the falling water contract provided for in section 4 of the bill in advance, we recommend that the proviso set forth in that section be modified to read as follows:

"*Provided*, That said contract for falling water shall be approved by the Secretary and shall not impair the efficiency of the project to serve the other purposes of the Minidoka Project."

This language is preferable to the similar amendment to S. 1529 adopted by the Senate. We note that H.R. 6782 does not make specific reference to purposes to be served by the dam. We understand that those purposes are the same as those of the existing dam.

Prior to approval of the plans for the dam and reservoir, the Secretary would review among other matters the facilities planned for mitigation of any loss or damage to recreational fish and wildlife values the minimum facilities necessary for health and safety of reservoir users and others and the plans for any river highway crossing affecting project facilities. To make clear that the Secretary has authority to approve all such facilities associated with the replacement dam and the plan of construction and to make clear that the cost of Secretarial review of the designs specifications plans and construction would be borne by the project beneficiaries we recommend that section 5 of the bill be amended to read as follows:

"SEC. 5. Construction of the replacement dam shall not be initiated until the Secretary has approved the designs and specifications of the dam and related facilities and the plan of construction of the dam and of the proposed operation of the dam and reservoir. Costs incurred by the Secretary in reviewing such designs specifications plans and construction shall be included as project costs allocated to beneficiaries of the replacement dam and shall be reimbursable to the Secretary."

In this connection we object seriously to the provision adopted by the Senate in S. 1529 which subjects the Secretary's determination concerning design specifications and plan of operations to the possibility of an arbitration procedure with the constructing agency. Our support of the plan for replacing the American Falls Dam through financing and Federal government which ultimately will own and operate the dam will make the final determination as to its characteristics.

The Senate passed S. 1529 is not acceptable unless section 5 is changed and we recommend that the section 5 set forth above be inserted for the bill's present provisions.

Sections 6 and 7 of the bill should be modified to make clear that the specific public recreation and fish and wildlife facilities referred to are for enhancement, rather than mitigation purposes, and to specify the costs involved. In addition, certain provisions need to be included in H.R. 6782 to take into account the fact that the Fort Hall Indian Agency is one of the spaceholders in American Falls Reservoir under an agreement with the Bureau of Reclamation for about 2.8 percent of the reservoir storage. To facilitate the future participation of the Fort Hall Indian Reservation in the replacement storage, appropriations should be authorized to pay the prorated construction costs apportionable to irrigation storage rights (costs of the replacement dam not otherwise paid for by the United States or the Idaho Power Company) of the Indian Reservation.

To accomplish these matters, in section 6 (lines 4 and 5, page 4) the word "enhancement", should be substituted for "conservation", and the following sentence added at the end:

Specific facilities for public recreation may also be provided in accordance with the Land and Water Conservation Fund Act of 1965, (78 Stat. 897), as amended (16 U.S.C. 460) et. seq.).

Section 7 should be revised to read:

SEC. 7. There is hereby authorized to be appropriated for construction of specific facilities for public recreation and fish and wildlife enhancement the sum of $400,000 (July 1972 prices) plus or minus such amounts, if any, as may be required by reason of the changes in the cost of construction work of the type involved therein as shown by engineering cost indices. There are also authorized to be appropriated such funds as may be necessary to meet the prorated construction cost apportionable to the irrigation storage rights of the Michaud Division of the Fort Hall Indian Reservation for space in the reservoir behind the American Falls Replacement Dam and such cost shall be subject to the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 368a). There are also authorized to be appropriated such funds as are required for the operation and maintenance of the dam and related facilities.

Environmental.—Enclosed is a draft environmental impact statement concerning the American Falls Dam replacement as contemplated by H.R. 6782, prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969. The final environmental impact statement will be prepared and fully considered in determining whether to enter the agreements authorized by the bill and to approve plans for the replacement of the American Falls Dam.

The Office of Management and Budget has no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

JACK O. HORTON,
Assistant Secretary of the Interior.

Mr. JOHNSON. Our first witness this morning is the Honorable Frank Church, the senior Senator from the State of Idaho.

We will be pleased to hear your testimony in support of the project.

STATEMENT OF HON. FRANK CHURCH, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator CHURCH. Mr. Chairman, members of the committee, my colleague, Senator McClure, and Congressman Hansen, Congressman Symms, I appreciate very much this opportunity, Mr. Chairman, to testify on behalf of these bills of great importance to this region of Idaho. I appreciate the fact that you are accommodating me as the first witness because of obligations I have in Pocatello, and I am sorry it won't be possible for me to remain for the balance of the hearing today owing to those commitments.

I want to thank you, Mr. Chairman, for the expeditious way that you have arranged to bring the committee to Idaho. As you know, there

is a very large element of urgency involved in this project, owing to the present condition of the American Falls Dam. Having visited the site, you have already witnessed how low the reservoir is and the fact that it is operating at only about two-thirds or less of its capacity. A very real hazard does exist, and for that reason I want to express my own appreciation for the expeditious way that you have moved on this legislation bringing the committee here to Idaho for these hearings.

The importance of this measure, Mr. Chairman, can hardly be overstated. The existing dam, constructed by the Bureau of Reclamation and completed in 1927, has been determined to be unsafe. The capacity of the reservoir is now severely restricted. This reservoir 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 system. 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. Constraints on operation will pose serious threats to the agricultural economy of southern Idaho, and also 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 is an essential link with necessary public services for many residents north of the river, and it is an important artery for agricultural produce and equipment.

I need not elaborate on the urgency of the situation. You will have the opportunity throughout the day to hear from those people directly involved and they will be the best witnesses to the impact of these problems upon their lives.

S. 1529 is one of two alternatives measures which were considered by the Senate. As introduced, it was identical to H.R. 6782. Essentially, the other measure, S. 1528, a companion bill to H.R. 6781, would have authorized replacement of the dam by the Bureau of Reclamation with conventional Federal financing and repayment in accordance with reclamaition policy. The administration did not support this option. In view of the position taken by the administration there appears to be little hope that the Secretary of the Interior would expeditiously proceed with the replacement of the dam if Federal construction were authorized.

Accordingly, the measure passed by the Senate, E. 1529, would authorize an alternative to reclamation financing which was 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 would transfer ownership to the Federal Government for operation and maintenance as a project feature. The American Falls Reservoir District has provided the leadership in the negotiations leading to this singular proposal.

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 defray the costs of constructing the dam. The Idaho Power Co., 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 replacement dam would not result in any increase in the capacity of the existing reservoir and it would not affect existing water rights.

The Senate Interior Committee amended S. 1529 to adopt a number of amendments proposed by the Department of the Interior and to give effect to some negotiations among the local interests concerning the provision of an adequate river crossing. The measure, as passed by the Senate, has the full support of the water users who are dependent upon the existing reservoir, as well as that of Governor Andrus and the State of Idaho. It also has the support of the Department of the Interior and the Office of Management and Budget.

The people most directly affected, Mr. Chairman, deserve great credit. They have shown initiative and a willingness to accept the responsibilities and the financial burdens involved in this proposal. The successful completion of the project now depends, in large measure, upon expeditious congressional action.

Mr. Chairman, you and the members of your subcommittee have had long experience with the reclamation program, and I know that you fully appreciate that this proposal is a departure from the usual approach to reclamation construction. I also know that you are cognizant of the very negative attitude which the Office of Management and Budget has taken toward reclamation projects. You will understand, therefore, the motivation which has led the spaceholders in the American Falls Reservoir to this unique proposal for an early resolution of their dilemma.

I join them today in expressing our appreciation for your interest and cooperation in holding this hearing. And I join them in urging your support for the early approval of this measure by the House of Representatives.

That concludes my statement, Mr. Chairman. Thank you for this opportunity to present it.

Mr. JOHNSON. We want to thank you, Senator Church, for being with us here this morning as the first witness and coauthor of the bill that passed the Senate and is now before us. It is a matter that you are vitally interested in and so are we.

There is only one question that I want to ask you about the measure that comes to us from the Senate, and which question was again raised in the report that we received from the Interior Department. This is the provision that would set up a board of arbitration. Could you give us your sentiments in regards to the objections that were raised by the Department of the Interior?

Senator CHURCH. I would be glad to, Mr. Chairman.

We inserted the arbitration provision in the bill following our own hearings on the measure before my Subcommittee on Water and Power Resources, because we felt that there ought to be some mechanism for resolving any possible dispute that might arise between the engineers designing the dam and the engineers of the Bureau of Reclamation.

We appreciate the fact that since this dam is going to be conveyed to the Government, and since it is going to constitute an integral part

of the reclamation system in southern Idaho, that the Government needs to be satisfied that the design of the dam is proper and sound. We feel that Government approval of that design is necessary.

On the other hand, we have confidence in the engineering company that has thus far worked on the preliminary designs. We think this is a company of great experience. So we have no great fears on this subject.

But it is possible that some argument may develop, some disagreement may develop between the Bureau of Reclamation engineers and the Bechtel Co. with respect to certain aspects of the design. We thought if that happened, because of the urgency of the situation, because time is of the essence, we did not want a deadlock to develop that would prolong the start of construction on the dam for an unseemly period. For that reason we thought there should be an arbitration mechanism in the event some argument would develop that was sufficiently serious that would prolong the construction of the dam. That is why we included it.

This is the normal arbitration arrangement. The Government would have its arbitrator on the board, the Bechtel Co. would have its representative through the company, and a third man if necessary would be engaged by the other two in order to resolve any question. This is the normal arbitration practice. We think that has been proven by experience to be a sound practice and that it would adequately protect the interests of the Government and the other parties as well. That is why we included it in the bill.

I am sorry the Bureau of Reclamation has taken exception to this provision, because I think it is a reasonable one.

Mr. JOHNSON. Before you leave, Senator, I want to allow Mr. Casey, who is consultant to the committee here, to maybe ask a further question on this provision. As you know, he is very much of an expert himself, having dealt with reclamation matters for 30 years prior to his coming with the committee and being totally familiar with the reclamation program and their operations.

Senator CHURCH. Yes. I know that.

Mr. JOHNSON. Mr. Casey, would you have any further question on this matter from Senator Church?

Mr. CASEY. No, really not, Mr. Chairman.

The Department has taken a fairly adamant position on this and expressed their position in rather strong terms. They say support of the plant is premised on the principle that the Federal Government will ultimately own and operate the dam and make the final determination as to its characteristics.

My question is I suppose, Senator, would you construe that statement to mean that if the arbitration language is left in that the Administration would not endorse this bill?

Senator CHURCH. Well, that has that ring to it, doesn't it, Mr. Casey?

I would hope that this committee in its wisdom would consider the reasons why the Senate included this arbitration in the bill. It is simply a safety hatch in case a serious argument were to develop, and keep in mind that the original Bureau of Reclamation program envisioned a $30 million dam, $30 million plus. The Bechtel Co. believes that a completely adequate and safe new dam could be constructed for much less money, something in the neighborhood of $20 million.

I think we all are familiar with the fact that some purely Federal dams have had certain monumental characteristics that add considerably to the cost, but not particularly to the function. It is that kind of argument that might develop between the Bureau and the private construction firm.

We just want to be sure that if that happens there is a mechanism for resolving it that does not hold us up for a year or two while a serious water shortage could develop that could be disastrous to the agricultural economy of southern Idaho.

Mr. JOHNSON. The gentleman from California, Mr. Clausen.

Mr. CLAUSEN. I don't believe I have any questions. I talked to the gentleman on the way out on the flight as to your testimony.

Mr. JOHNSON. The gentleman from California, Mr. Ketchum.

Mr. KETCHUM. No questions.

Mr. JOHNSON. The gentleman from Nevada.

Mr. TOWELL. No questions.

Mr. JOHNSON. We want to thank you. We know this is a real serious problem as far as the administration is concerned. Certainly we would not want to move forward with this matter in disagreement, and I don't know how serious they are in their statement. There are other costs that go with this dam as far as the Federal Government is concerned. In order to get started you would have to have all those other things worked out. There will be Federal expenditures involved with the dam itself and with the new powerhouse. This is a matter we must look into very carefully as we move ahead with the project.

The design or inspection of materials or something else failed in the existing dam. That is why we are here today, so we have to be very careful that the new dam will not meet the same fate along the line.

Senator CHURCH. Yes, I think one experience of this kind is enough, Mr. Chairman.

Mr. JOHNSON. Thank you for coming.

Senator CHURCH. Thank you very much.

Mr. JOHNSON. Our next witness will be the U.S. Senator from Idaho, Mr. McClure.

STATEMENT OF HON. JAMES A. McCLURE, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator MCCLURE. Let me start out by expressing my thanks to you, Mr. Chairman, and the members of your committee who have come to Idaho to help us out on a problem that is of great importance to us and much lesser importance to you. I am sure you could use the time in your own districts on your own work without spending the time in Idaho with us, so I do deeply appreciate the fact you are here.

Mr. JOHNSON. I want to say you people in Idaho have imposed upon us three different times now. When we come we have looked over the project, and so far we have authorized the projects, as you know.

Senator MCCLURE. Yes, sir.

Mr. JOHNSON. We are trying to get this in one to give you the same type of attention.

I want to say to you people from Idaho you have a very active delegation. In each Congress we have another project.

Senator MCCLURE. You noticed.

Mr. Chairman, I have a statement which I want to submit for the record and I would like to paraphrase from that statement. There is a long list of witnesses and I know you will have a long day of hearings.

Mr. JOHNSON. Your statement will appear in the record in full and you can summarize.

Senator MCCLURE. Thank you very much.

[The prepared statement of Senator McClure follows:]

STATEMENT OF HON. JAMES A. MCCLURE, A UNITED STATES SENATOR FROM THE STATE OF IDAHO

Mr. Chairman, thank you for permitting me to address this House field hearing on the vital subject of the present American Falls Dam, its condition, present operating restrictions, and proposals for its replacement.

The dam was completed in 1927 and this original structure has deteriorated considerably since then due to the chemical reaction between the aggregate 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. Abnormal cracking throughout the concrete dam was reported as early as 1929.

Of equal importance, in my opinion, is the change in operation because of new upstream facilities. Instead of late spring filling, the American Falls Reservoir is now filled early enough that the dam must bear ice loads for which it was not designed. In addition, engineering practices and safety margins have been revised since the dam was designed and built. Although the chemical reaction has slowed and probably stabilized to a great degree, these various factors have led to restrictions.

The first storage restriction on American Falls Dam was in September 1964. An additional restriction was placed on the structure in September 1972. Maximum storage is now restricted to an elevation of 4343.2 feet, the elevation of the spillway crest, which is 11.3 feet below full pool. This restriction limits storage to 1,125,000 acre-feet, thus precluding the use of 575,000 acre-feet (34 per cent) of the 1,700,000 acre-foot reservoir capacity. In a series of dry years, such as the record-breaker we have just witnessed, this restriction will cause significant water shortages on many of the lands served from the reservoir. As of the first of October, 1973, the water storage inventory of the Upper Snake, which in addition to American Falls, includes Palisades, Jackson Lake, and Island Park, took on a gloomy look in relation to total capacity and also in relation to last year's figures.

Total Upper Snake Capacity=4,875,265 acre-feet.

Water inventory October 1, 1972=2,722,693 acre-feet.

Water inventory October 1, 1973=1,287,945 acre-feet.

My crystal ball doesn't tell me what this winter's snow pack is going to be, but if it isn't a lot better than we had last year, the outlook for water for agriculture and all other uses in this area is bleak. The above figures indicate we are going into the fall and winter with little more than one-third of our total capacity for water storage and the Upper Snake System. This underscores the urgency to correct the American Falls Dam so it can contribute a full share of its storage capacity for future short water years.

Studies by the private board of consultants have confirmed that American Falls Dam no longer meets safety standards. In its findings reported to the Bureau of Reclamation in September 1968, the board agreed that replacement or major rehabilitation of the dam is essential.

In addition to the restrictions on the dam is the inadequacy of the existing two-lane State Highway 39 on American Falls Dam. The roadway is far below current standards for safety and is structurally inadequate to carry modern loads. The Department of Highways has pointed out there have been numerous accidents on the bridge during the past few years and that one-way traffic at certain times has been necessary to reduce the hazard.

The early bridge design for Model T traffic won't do the job today, as the rapid growth of irrigated farming and its related industries has caused heavy use, especially by the many trucks hauling farm produce and supplies. The value of potatoes alone, at the grower level, which must be transported across the dam is $10 million. This bridge bottleneck is a major factor in the growing and market-

ing of vast acres of potatoes, sugar beets, wheat, hay, cattle and other farm commodities grown in the area that utilized this crossing. Total agricultural commodities being transported across the bridge is an estimated $25 million. This is a breakdown of commodities which have to cross this bridge annually:

2½-3 million sacks of potatoes.
125-150 thousand tons of sugar beets.
$1½ million of hay and livestock.
2½ million bushels of grain.
4,000 semi-truck loads of finished potato products.

In addition, there are several million dollars in fertilizer, petroleum products, machinery, labor force, and other supportive traffic.

The Bureau of Reclamation reports a total of 892,650 acres from the irrigation space in American Falls Reservoir. These lands receive about one-fourth of their total irrigation supply from American Falls storage. Supplies to specific lands vary from less than 1 per cent to 90 per cent to their diversion requirements. It is my understanding that there was enough water to go around in this area this summer, but as previously noted, we need a good snow pack to avoid serious trouble in 1974. The lands served from American Falls Reservoir make up one of the most productive irrigation sections in Idaho. In 1969 the value of farm products produced in the nine counties containing most of these lands was almost one-half of the value of all farm products sold in Idaho. The thriving towns in the area depend almost exclusively upon local farms for their economic well-being. Any severe loss to them (and they could suffer losses in excess of $100 million) would cripple the state.

This spring the Senate passed, as amended S. 1529, a bill to replace American Falls Dam by permitting negotiations and agreement between the Secretary of Interior and non-Federal agencies. The unique approach to financing this replacement provides an opportunity for early implementation, particularly in view of our present national situation with respect to other budget priorities. Federal replacement would take several years, at best, and the danger is too great, the urgency too real, to take that chance—even if this proposal were inferior, which it is not.

One of the helpful amendments included in the final Senate passage of S. 1529 provided for creation of an engineering board to hear specific objections that might arise between the Secretary and the constructing agency. If the parties cannot agree, specific objections shall be submitted to binding arbitration by the board, consisting of one member selected by the Secretary, one by the constructing agency, and those two members selecting a third. The consulting board's decision shall be binding on the Secretary and the constructing agency. This provision will be helpful in avoiding delays that might arise out of a possible impasse caused by an honest difference of opinion between the two parties. Again, urgency requires this provision.

Other key provisions call for construction of specific facilities for public recreation and fish and wildlife enhancement in the amount of $400,000, to be adjusted as necessary through engineering cost indices. These amenities demonstrate the concern of those involved toward providing adequate facilities in this direction.

The constructing agency, under provisions of the Senate-passed bill, shall include as part of the project, a river crossing meeting the then-current Department of Transportation Standards for Federal-Aid secondary highway two-lane traffic. It is my understanding that all of those taking part in the planning are making good progress in this self-help project. During construction, provision will be made for an adequate two-lane, two-way crossing at or near the site of the dam construction.

Since this legislation passed the Senate, it has been suggested that the language be changed to make clear that the project will qualify for public highway bridge funds under 23 USC 320. I suggest the following change to accomplish this purpose:

Sec. 2(b) (I) and (II):

(I) strike "private"—add "constructing agency"

(II) strike (all)

Add: Design and construct an additional two lanes on top of replacement dam—which additional two lanes may be funded with State, Federal, or construction agency funds, or any combination thereof. For purposes of subpart (II) of this section the constructing agency shall be considered an agency within the meaning of 23 USC 320(a).

It isn't often that we can present a project with no significant opposition. The fact that we can do so not only signifies the merit of the proposal, but it must most certainly prove the urgency with which we view it.

Thank you very much for your help in its speedy consideration.

Senator McCLURE. First of all, this has been pointed out and will be pointed out throughout the hearing, the dam was built a number of years ago and because of things not anticipated at that time, the dam has now been found to be in an unsafe condition for present operating conditions.

There was an alkali-aggregate chemical reaction which has caused some deterioration of the structure. In addition, the operation of the river has changed because of subsequent projects which were built upstream that dictates or mandates the filling of this reservoir early in the spring. This allows ice to freeze on the surface, imposing an iceland on the dam for which the dam was never designed.

In addition, we have changed engineering standards and increased safety margins that were not in effect when this dam was originally designed, and the result is, that it has been found it is unsafe to operate under present conditions with a completely full reservoir.

This is a massive reservoir, as you noticed crossing this morning. When it is full, it has a capacity of 1,700,000 acre-feet under storage, and under present limitations, one-third of that storage is lost, not only lost to the spaceholders here, I might point out, but to the entire river system. While we are experiencing a nationwide energy shortage, those of us from the West and particularly from the Northwest, recognize we have a very serious energy shortage in the Northwest because of the decreased streamflow and the loss of generating capacity.

So for a number of reasons, this loss of storage capacity is extremely important to us. I put some figures in my statement, which describe a rather critical situation which is existing at the present time with the drought conditions that have afflicted the Northwest. Just in rough terms, the storage carryover as of October 1 was less than half of what the storage carryover in the Snake River system of last year. Between October 1 and yesterday, we have gained over 100,000 acre-feet of storage in the Upper Snake. We are still critically short of stored water, and the 900,000 acres of land that are served by this reservoir could be in a very serious condition next year.

As will be pointed out by a number of other witnesses, we will talk about the importance of agricultural production to the economy of our State; and of course, the area of concerns we have here are not simply local concerns, because food production is a critical matter and we are trying to expand food production nationwide and worldwide. If there is an interruption of service to these 900,000 acres of land, the growers of southern Idaho could sustain a loss of $100 million in income. This is a matter of extreme urgency.

Senator Church pointed out in his statement, and rightfully, that the Idaho delegation proposes two alternatives, one for Federal construction and one for the alternative that did pass the Senate.

While the administration did support the alternative which has passed the Senate, the second of the two bills pending before the House, the second in number, there were urgent and strong requests on our part that they do so, not solely because of budgetary restric-

tions, although I am sure the fact it c[illegible] the Federal Government relatively nothing and saved the taxpayers in your districts $10 million nationwide, may have also impelled it. But the real reason is the time saving. You and I know the problems of getting money through Congress because of the tremendous backing of authorizations that are already there. It would take substantially longer with a Federal project than by this rather unusual method we have outlined here.

There is another reason we are anxious to have the dam replaced. That is because of the inadequacy of the road that crosses the dam and of the very serious hazard to the industry and the lives and property of the people who live in that area. I have detailed in my statement some figures of the agricultural production that is dependent upon that river crossing for the flow of goods and commerce. They have no alternative, because in the 80-mile stretch of the river, this is the only crossing. This road may have been adequate for Model T's and horse and buggies, but not for the trucks that haul heavy produce across that bridge.

So we do have very great reasons for the urgency and the critical need for the replacement of this dam.

Let me support what Senator Church has said and will be supported by other witnesses. The provision for arbitration, and again it comes back to this question of urgency. As will be detailed in other statements, there is a very tight time schedule that is involved. If there is any slippage of that time schedule, a matter of weeks or even a month or two would cause us to lose 1 full year of storage capacity in this reservoir. That is a hazard that we are very reluctant to allow to occur. I can understand the Federal Government would like to maintain absolute control over design and construction techniques, because the dam will be theirs when it is completed and paid for. But I think the urgency of the time frame is so absolutely important here that it dictates that we take every possible measure that is prudent to make sure that the time frame is not interrupted and we do get this storage back into operation at the earliest possible time. That is the real reason for the arbitration procedure. I think otherwise we can work it out over a more relaxed time schedule, but we can't afford that luxury, in my estimation.

In addition, there are a couple of things I would like to suggest——

Mr. JOHNSON. Senator, I think maybe you had better talk up just a little. I don't think the people can hear you in the back.

Senator MCCLURE (continuing). There is one other suggestion that has come up since this measure passed the Senate, and that is to change the language, as I have suggested in my statement, to make certain that the constructing entity can qualify for funds under 23 U.S.C. 320 to aid in the construction of the roadway across the top of the dam. It is a very simple language change. I don't think there is any controversy over it. I think the Governor and others from the State will also support this language change so that we make certain that the Federal funds which are available under the other statute will be available to us in rebuilding here.

Mr. Chairman, with that, I will not burden you further with my statement, but will respond to questions if you have any.

Mr. JOHNSON. I want to thank you for your prepared statement here, a very good paper, and for your summary, because I think you spoke to the important points.

There is one matter that concerns me, and I presume others on the committee, and even the Bureau of Reclamation and the Department of the Interior. That is the new approach to cost sharing. Some of us who have authorizations that have been passed by Congress some of which are under construction and some are under design. We want to make certain that we have not been forgotten in the shuffle and that the newer cost sharing programs do not come in ahead and take what few Federal dollars that are available to round out a project. Certainly I have no objections to this project moving forward, but we have others that are in all stages of consideration at this time, as you know. We are troubled with the funding of these projects, the starting, the final design and other aspects of the projects that are solely Federal projects. As the Department brings up a new approach to cost sharing there is a little bit of concern. I want to make it clear as far as I am concerned I intend to take just a little more time in the oversight on this particular issue. I realize the importance of time in this project, but I also realize that we have time considerations in the other projects, and some of those are just as important to the areas that they are supposed to serve as this one here.

Senator MCCLURE. Mr. Chairman, might I comment on that, because I think the point you make, of course, is perfectly appropriate and I understand the concern. But I think the importance of this reservoir to the operation of the Snake and Columbia chain is so great that even if we did not adopt this approach there would still be on the part of the administration an urgency for the replacement of this dam. Rather than posing an added burden, I think this formula will relieve that, because instead of a $20 or $30 million input into this, it is a half a million dollars in planning funds. So I think we probably, by this unique approach, are relieved of the likelihood of funds being diverted from other projects.

But certainly, you above all people in the Congress are aware of the $5 billion backlog and the fact we can't get enough money out of the budget to maintain a reasonable reclamation program, so I understand your concern.

Mr. JOHNSON. The gentleman from California, Mr. Clausen.

Mr. CLAUSEN. Thank you, Mr. Chairman.

I am delighted to have an opportunity once again to come to Idaho with a colleague and former seatmate. I served with you on this committee, Senator McClure, and to expand just briefly on what Congressman Johnson had just stated, he and I have come to Idaho with such regularity that to the people in California, it would appear, we are the third or fourth Member of Congress from Idaho.

Senator MCCLURE. We appreciate your help.

Mr. CLAUSEN. I had a couple of questions I hoped you could have answered when Senator Church was here.

I will state to the people of Idaho something I said to Senator Church last night and I will say to you, I think you people have an extraordinary delegation from Idaho. I think it can be said that the two Senators and your two House Members genuinely not only reflect,

but represent the broad spectrum of political philosophy. It is rather interesting, and I think very appropriate that these gentlemen are working with the people of Idaho in a united manner to advance a project that is very, very important.

I think that you are all to be commended for sending these kinds of people to Washington to represent you, because while you have been very gracious in commending us for coming here, I can state in all candor that these gentlemen, Senator McClure, Senator Church, Congressman Hansen and Congressman Symms are equally willing to come to our area when we have a problem. We will take their weekends. So while you are very gracious to us, I want to reciprocate, Senator McClure, to the people of Idaho for sending these people to Congress to represent their State in the Congress.

There has been great emphasis made on the matter of the provision relating to the arbitration board. Now, calling upon your own experience, is this unique in legislative history?

Senator McCLURE. It is unique for projects of this kind, but I think this whole proposal is rather unique. Some people have wondered if this were precedent setting. I think it rather unusual circumstances that confront us and the opportunity for time savings will probably not be duplicated in very many other specific situations. So I am not certain that we can look to this as a pattern for others. However, this is not an unusual means in legislative language for resolving technical disputes. I think arbitration language is found in several other Federal statutes.

Mr. CLAUSEN. If I gather, and I think I would like to leave your testimony on the record at this point, you are in total accord with the comments of Senator Church as it related to this provision as to the need for it and the urgency for it?

Senator McCLURE. Absolutely.

And I might also indicate in response to the question the chairman asked of Senator Church as to whether or not the administration's feeling on this point would perhaps jeopardize the passage of the legislation, I think not. I think we can persuade them that the need for the provision is so great that it is justified in this instance and they will accept it.

Mr. CLAUSEN. Well, as most of the members of the committee and I am sure yours can recall, in areas that deal with agencies of the Federal Government there is one thing that has always been a concern to me. I am very much interested in this provision, because the one thing I have noticed, oftentimes, there are people that have an expertise that are down in the bowels of the bureaucracy that are never put in a position where they have to appear with or in front of a peer group evaluation team. Oftentimes, review is just postponed because time is on their side. I think peer groups reviewed would challenge their own abilities and make them more responsive. I am very concerned with this, and also in water pollution legislation. When we get into the very technical areas of nuclear energy, thermal pollution issues and all of these things, I think it is necessary not only to have the private sector but the public sector challenged and brought into position where their point of view has to be brought to some arbitration and hopefully some results.

You have stated this is a unique proposal and that it is possibly precedent setting. What sort of impact do you believe this might have on the entire program? I am talking now in terms of the water resources programs. What do you believe the impact will be? Certainly it will help your area, but what will be the situation as far as the balance of the Nation is concerned?

Senator McCLURE. I can best respond to that by again stating I think this is not necessarily the formula by which other projects are tested. I think it can only be helpful in terms of the overall mass program by relieving the budget. It has an urgency that would perhaps put it ahead of others that have been waiting longer that are fully justified.

I just might point out to those that may be hearing us this morning that we should thank the chairman for his leadership in calling the meeting recently held in Washington for people who are interested in reclamation projects. We are familiar with the attitudes that have been developing, assigning higher priority to programs other than reclamation. We are aware, too, of the National Water Commission's report that would drastically change the criteria for national priority selection that would very seriously hurt the water projects. I want to publicly as well as personally say thank you, Mr. Chairman, for that leadership.

We are at a point of critical reevaluation of national policies for a number of reasons. As a result reclamation projects, as we know so well, are very difficult to get through the budgetary processes in the executive as well as in Congress. I just don't think you can judge the future programs on the basis of where we have been. I think we are falling in the cracks right now and our urgency says we can't afford to sit down while the Nation debates its priorities over something like this.

Mr. CLAUSEN. I think the observations that we have made here this morning, and I asked some of the Bureau of Reclamation people as we rode down here to the motel for the purposes of this hearing what would this area be like if you had not had this reclamation project. I recall the response was we would see a lot of sagebrush. I asked next concerning the economy of Burley as an economic growth center, what percentage of the economy is related directly to the fact that the irrigation project went forward in 1927. They said it was 95 percent. Would you agree this is an accurate statement?

Senator McCLURE. I think it is low.

Mr. CLAUSEN. I guess this would lead me to the next question. In addition to sustaining the economy and the water resource requirements for irrigation and power do you expect there will be an opportunity to expand on agricultural production in order to provide the kind of relief that is desperately needed as far as our farm produce supply and so forth for the balance of the Nation? Will it have a significant increase as a result of this or remain about the same?

Senator McCLURE. Congressman, we have in our area, of course, a great deal of opportunity for expansion of production. It is interesting to note how rapidly press comments nationwide have changed on the subject of food supply. Less than 9 months ago the largest newspaper in our State was editorializing about the fact that there was a surplus of food production and that we ought not to be talking about bringing

more land into production. How rapidly that has changed as we ran into a marginal shortage worldwide of food and prices went up and housewives started screaming. Now they want more production and that is the touchstone of so many statements being made today.

We have a rather unique capacity to expand because we have the combination of available land and available water along with some willing hands and some people who are willing to take the risk of putting new land into production which, as you know, is a very risky thing for them. We can put millions of acres of land into production as it is economically feasible to do so. That will be a partnership of public and private risk taking. There will be also a partnership between the Federal and State governments in providing the public input into the expansion of agricultural production. We have a tremendous capacity to increase production if we are permitted to do so.

Mr. CLAUSEN. This will be my final point.

You serve on the Public Works Committee of the Senate, as do Congressman Johnson and I serve on the Public Works Committee of the House. We are in the process now of advancing the omnibus bill through the House dealing with the flood control, and navigation projects of the Nation. We are attempting in our committee report to focus attention on what we describe as a pending water crisis. Everyone talks about the energy crisis, but I am of the opinion that there is a water crisis in this Nation that has not been considered and addressed in the same way the energy crisis was not recognized a few years ago. Would you concur with this view?

Senator MCCLURE. Absolutely. As a matter of fact, the Water Commission came into being as a result of a similar water crisis a number of years ago. After a long period of prolonged drought in the East and Northeast people back there got concerned about the water crisis and they talked about the water crisis approaching this Nation and they did something about it. That is the facts of life we deal with, until you get masses of people in the Eastern United States to understand the problem it is very difficult to get a policy formulated. This is the problem with the national report and also the budgetary process. That is why I made the suggestion a few moments ago how rapidly attitudes change when prices start going up and when it impacts on the urban center of our Nation it gets things moving.

We have been suffering an energy shortage in rural America because supplies have gone where the votes are and I think we have to take some action, but that is another subject.

Mr. CLAUSEN. Thank you very much.

Mr. JOHNSON. The gentleman from California, Mr. Ketchum.

Mr. KETCHUM. Thank you.

I want to comment on we might be considered to be the fifth and sixth representatives of Idaho. The way reapportionment is going in California one never knows.

I would like to address a question either to you, Mr. Chairman, or to Mr. Clausen as members of the Public Works Committee. Both Mr. Towell and myself were discussing this just a moment ago. If this amendment which appears on the last page of the gentleman's testimony were to be adopted, will we find ourselves possibly at odds with the Public Works Committee as we are now involved in the Land Use Policy Act?

Senator McCLURE. I don't believe that amendment really changes policy in any way. It just is to define the entity in a way which makes it clear that it falls within the purview of existing statute. It does not change any existing law, so I don't believe there is any conflict as far as I am aware.

Mr. KETCHUM. I have no objection to the amendment. I just merely raise the question because I don't want to get tangled up between two committees.

Senator McCLURE. There is a provision in the existing law within the jurisdiction of the Public Works Committee that established the Federal program for building roads on top of dams through the bridge construction funds, and that is the reference which is made here, to that existing statute.

Mr. KETCHUM. Thank you.

I have no further questions.

Mr. JOHNSON. The gentleman from Nevada, Mr. Towell.

Mr. TOWELL. I have one question I would like to ask the Senator.

I have referred to the urgency of this project in getting it done, and in the testimony by the previous witness and yours we talked about when the project was started, 1927. What timeframe are we looking about in the future, for the record, what are we aiming for?

Senator McCLURE. You mean on this particular project?

Mr. TOWELL. Yes.

Senator McCLURE. The timelag on planning it is about 9 months. The construction framework that will minimize the hazard to the irrigators is triggered by a January 1 date. So we need to have the decision made so contracts can be let by March 1. If we go beyond that date then we lose another year. That is the kind of thing we are dealing with.

Mr. TOWELL. That was my main concern, so we could have that in the record and know the urgency and know what we are working toward.

Thank you very much.

Mr. JOHNSON. Mr. Casey, do you have any questions of the witness?

Mr. CASEY. No, thank you, Mr. Chairman.

Mr. JOHNSON. We want to thank you, Senator McClure, for appearing here as a former colleague from the Interior Committee on the House side. You were very, very helpful when you served there and we hope you will continue to be a reclamationist and water resource man in the Senate as time goes on.

Senator McCLURE. Thank you, Mr. Chairman, you know me well enough——

Mr. JOHNSON. The latest recommendations in the National Water Commission's report and the Water Resources Council's statement of criteria as published in the Federal Register of September 10 make us wonder if we are ever going to have any Federal projects, as such, developed by the Corps of Engineers or the Bureau of Reclamation.

Senator McCLURE. Mr. Chairman, they say it is an ill-wind that blows no good, and maybe the agricultural shortage of this year, the crop shortage, and the attendant price rises have so focused the attention on the need for production of food we can get a better look at the value of these water resource projects.

Mr. JOHNSON. I have always said I have never seen a bad one. Some are better than others, but without them we would be in a bad, bad fix.

Senator MCCLURE. I agree.

Thank you, Mr. Chairman.

Mr. JOHNSON. Our next witness will be the local Congressman, the Honorable Orval Hansen, coauthor of the two House bills.

We are glad to have you here.

STATEMENT OF HON. ORVAL HANSEN, A U.S. CONGRESSMAN FROM THE STATE OF IDAHO

Mr. HANSEN. Thank you, Mr. Chairman.

I have a short prepared statement, if I may submit it for the record.

Mr. JOHNSON. It will be placed in the record as presented in full and you may summarize.

[Mr. Hansen's prepared statement follows:]

STATEMENT OF HON. ORVAL HANSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mr. Chairman and members of the subcommittee, first, I want to extend to you a warm welcome to Idaho and to express my own sincere appreciation for scheduling these field hearings and a visit to the site of the American Falls Dam which this legislation authorizes to be replaced.

I also want to commend you, Mr. Chairman, and the other Members and staff of the Subcommittee for expediting the consideration of this legislation. It is evident that you recognize the importance of a prompt decision on the authorizing legislation so that steps can be taken to replace the Dam at the earliest possible date.

I am the principal sponsor, together with my colleague, Congressman Steve Symms, of H.R. 6782, which would authorize the Secretary of the Interior to enter into agreements with non-Federal agencies for the replacement of the American Falls Dam. As you know, a similar bill, S. 1529, cosponsored by Senators Church and McClure, has passed the Senate and is pending before the Subcommittee. Both bills are under consideration in these hearings.

I want to commend this Subcommittee for the policy it has followed in holding field hearings before approving legislation authorizing Reclamation projects. There is no substitute for seeing the project first-hand and for hearing the views of those who are most directly affected.

As you are aware, because of the weakened condition of the Dam, the storage level has been reduced to less than 65 percent of the reservoir capacity. This level will be further reduced as the Dam continues to deteriorate. Nearly 900,000 acres of productive agricultural land is dependent on water stored in the reservoir. The combination of reduced storage capacity and one or more water-short seasons could result in serious crop losses. This would obviously inflict severe economic injury on the farming industry in the area as well as the communities that depend on and serve the agricultural economy.

In addition to its effect on the local and State economy, the entire nation has a stake in the passage of this legislation. Because of the importance of expanding food production, to meet our need and for export, we cannot run the risk of the crop losses that could result if the construction of the replacement Dam is long delayed.

Another major consideration that lends a note of real urgency in acting on this legislation, as other witnesses will tell you, is the need to provide a safe and adequate road across the top of the Dam. The inadequacy of the present highway crossing has resulted in restrictions on the traffic. This means a serious inconvenience to the travelling public as well as an adverse impact on the economy of the area which is dependent on truck traffic on the highway across the dam.

The two bills before us in these hearings, H.R. 6782 and S. 1529, are the result of the cooperative efforts of all Members of Idaho's Congressional Delegation, water users, State and community leaders, representatives of the Idaho Power

Company and the Bureau of Reclamation and others. Among the most appealing features of these bills is that they provide for the construction of a replacement Dam without the outlay of any Federal funds. The cost would be paid out of revenues from the sale of the electric power that would be generated. The Dam could also be built in a shorter period of time than would be required if this were authorized as a Federally-financed Reclamation project. And, as I have noted, time is of the essence.

The legislation before the Subcommittee enjoys broad and strong support. Representatives of the water users, the State of Idaho, communities in the area directly affected and other organizations came to Washington earlier this year to testify in support of this legislation. To the best of my knowledge, there is no opposition. If there are any who are opposed, these hearings will provide an opportunity for their views to be heard and considered.

Mr. Chairman, I will conclude my remarks at this point in order that the time can be devoted to hearing other witnesses. Many have travelled long distances and can furnish the Subcommittee a great deal of information and expert knowledge that will be helpful to the Members in their consideration of this legislation.

I want to thank you again, for the prompt and continuing attention you have given to this legislation and for taking the time from busy demanding schedules to come to Idaho to conduct these hearings.

Mr. HANSEN. I will summarize very briefly.

I want first of all to express my own sincere appreciation for the committee taking the time to come to Idaho and see Idaho and listen to witnesses from Idaho. I am also very grateful for the expeditious handling of this bill which has almost set a record in the Congress in the way it has been treated by this subcommittee and by the Senate.

Let me touch for one moment on the three reasons that seem to me compelling for prompt action and favorable action on this legislation. Most have been touched on and will be by other witnesses, so that I won't dwell at any great length.

One that has not been mentioned so far, but I am sure will be, is the construction of this dam will also contribute to the alleviation of the energy crisis to which reference has been made. The new dam will produce about 2½ times the electrical energy and will have about 3¾ times the installed capacity. So it will make a contribution in an area where we need some additional generating capacity.

Another reason that you will hear a great deal about which the Senators have made reference is the dangerous condition of the road across the dam. We can talk about it for a long time and reemphasize, but one ride across the top of that dam, which I assume we will have the opportunity to take this afternoon, will speak volumes as far as helping all of you get an understanding of what we are talking about.

Mr. CLAUSEN. I think we will take your word for it.

Mr. HANSEN. I don't think we can get off the hook that easy.

The third reason, obviously, and this is the one that is the most compelling, and that is the need not only in this area but in the country for the additional productive capacity and the assured productive capacity of one of the main agricultural areas of the State and of the Nation. Now, we flew over part of it this morning. We will see other parts of it later in the day. But this emphasizes the importance of agriculture and agricultural production to this area. It is the heart of the economy. But we are realizing more and more as Senator McClure, I think, eloquently pointed out—and the country is coming to recognize that the productive capacity of the American farms as an asset of great national value. And now we are beginning to see it as an important diplomatic and economic tool as we attempt to achieve our objectives

within the world. So the farmer is coming into his own much more. It is important, therefore, that we take this step to help assure the continued production of our farms so that we will have enough food at stable prices within the country and we will have the additional capacity to develop the export markets that mean so much to this country.

I think it would be proper to acknowledge at this point and before this audience the contribution that this subcommittee has made. I expect you will never be thanked for it across the country, but the contribution this subcommittee has made over the years through its authorization of reclamation projects to the expansion of the production of American agriculture is enormous. I would also acknowledge my own personal appreication and pride before this audience the leadership that the chairman of this subcommittee has contributed to drawing the attention of the administration. We may need a two by four yet, Mr. Chairman, but I felt that the initiative that you took in calling a meeting which I was privileged to attend of all the Members of the Senate and the House from Western States who know and understand reclamation was an important step in calling the attention of the administration in the country and of our colleagues in the Congress to the fact that reclamation is not over. Reclamation now offers one of the most promising means of tapping the enormous capacity we have in this country to increase production and at the same time enhance the environment and make this a better country to live in.

We are grateful for the effort and leadership that you have contributed to this important mission, Mr. Chairman.

With that, I will conclude my statement and be happy to respond to any questions.

Mr. JOHNSON. We want to thank you for the very fine summary of your written statement on the project, and then for your added remarks there concerning the need for further water resource development. We have tried everyway possible to make a case. Somewhere along the line we have failed. We have not had too much in the way of recognition. We have, in my own area, two very fine large projects that are tied up for one reason or another, and in them there is a very large power potential. All we can get built there are the bridges.

You talked about your bridge going across the dam. We had to relocate the highways in the area. We got the bridges, but whether we will ever get a dam built or not and a powerhouse and reservoir created is something I could not say. The amount is about a billion dollars in the way of Federal expenditures. They are both very large multipurpose Federal projects.

When you talk about small amounts of money that are needed to make this modification or improvement on this facility here we can't even get that much on a building program that is under construction at the present time. It is hard to understand just where we are going. I have no objections to the proper improvement here, taking care of the water matters and safety of the dam and its operation, as well as the increased power generation facility that will be built. But we need everyone to help us bring back a little better picture as far as the Federal people are concerned. I think the Bureau of Reclamation and the Secretary of the Interior are pretty much in sympathy with our

position. But somewhere along the line, the proper priorities have not been established for financing. We hope to overcome this.

Thank you for your remarks.

The gentleman from California, Mr. Clausen.

Mr. CLAUSEN. Mr. Hansen, I am more than delighted to have you express to your friends in your own congressional district my personal admiration and respect for our chairman. I would add, as a Republican, and Mr. Johnson, being the chairman of the committee, a Democrat, I think if anyone has earned the title of "Mr. Irrigation and Reclamation" it is Mr. Johnson. I hope someday the Department will recognize him for this.

The thrust of your statement is certainly consistent in what I have observed, at least at this point. There is an opportunity to bring into production additional land to meet the other major crises that are evolving as a result of the changes we are going through. I would only agree with you to this extent, and possibly amplify on this.

Years ago at a 4–H club leadership conference out in California I made this observation, that if we could ever put together the aviation and agricultural genius of the United States that we very well may be able to beat the Soviets and our major ideological adversaries at their own game. I went on to say whoever controls the breadbasket of the world has the potential of directing and controlling the destiny of man. I think here is a living example of what we can do to enhance the economics and a tax base to meet the challenges and dangers of this nuclear Earth we are in. I would hope you would agree with this. I am sure you do.

Mr. HANSEN. I do.

Mr. JOHNSON. The gentleman from California, Mr. Ketchum.

Mr. KETCHUM. Thank you, Mr. Chairman.

I have no questions. I would like to congratulate the gentleman from Idaho for the vigor with which he has pursued this project, as I do all the gentleman from the State. When this team gets going it is kind of hard to stop them.

Mr. HANSEN. Thank you very much.

Mr. JOHNSON. Mr. Casey, any questions? I forgot Mr. Luken over there.

Mr. LUKEN. No, thank you, Mr. Chairman.

Mr. JOHNSON. Our next witness will be Hon. Steven Symms, Congressman from the State of Idaho and also coauthor of the new legislation.

Mr. Symms, we are glad to have you.

STATEMENT OF HON. STEVEN D. SYMMS, A U.S. REPRESENTATIVE FROM THE STATE OF IDAHO

Mr. SYMMS. Thank you, Mr. Chairman.

I would like to express my thanks to you and members of the committee for being out here. As you know, this is not in my congressional district, it is just up the river. We are all concerned about this and the portentious crop loss of $100 million we could suffer in case we would have a short snowfall in one of the winters that lie ahead.

I think the time element is urgent and is an important aspect of the legislation we are interested in.

I think that Congressman Clausen touched upon the investment in the future, and it is well known in Idaho that I am a conservative philosophical politician, but I think our investment in our State in the Nation has been something sadly neglected in the matter of water resources. For this reason I think you will see so many of us from different sectors of the political spectrum supporting this project because we are getting an infusion of private capital coming in to solve this problem. If we have Bob McFarland and Steve Symms on the same side everything can't be bad about the project. So I think it is an opportunity here for a group of people in America to get together and solve their own problems.

What we are asking the committee for is permission to go ahead with this project. This would be the best way I could capsulate it.

I will be very brief because you will have very many witnesses who will be able to tell you and you will be able to see the town.

Mr. Ketchum, they tell me they have a town named after you, so if you get voted out of California you can come to Ketchum.

Mr. KETCHUM. You might have something there.

Mr. SYMMS. I will be happy to answer questions at this time if there are any.

Mr. JOHNSON. We want to thank you for your summary here.

This committee and the Congress for the most part, since I have attended hearings in the past 15 years, has been very favorable to water resource development. I think the record of the Congress in authorizing projects for the Corps of Engineers, the Bureau of Reclamation, and the small watershed proposals has been very beneficial.

It has taken some broad economic support to put these projects through. It was necessary for the Federal Government to get into them because they are multipurpose projects. Without the help of the Federal Government and because of the long repayment period and complex organization they just could not have been put together.

Certainly I have no objections. We have many good examples in California where private enterprise, local governments, State and Federal Government have all participated in water resource development. As we see here today, without this development in place you people would not be where you are.

The gentleman from California, Mr. Clausen.

Mr. CLAUSEN. I have no statement.

Thank you for your supportive statements.

Mr. KETCHUM. No questions.

Mr. TOWELL. No questions.

Mr. CASEY. No questions.

Mr. LUKEN. No questions.

Mr. JOHNSON. Thank you very much.

Mr. SYMMS. Thank you very much, Mr. Chairman.

Mr. JOHNSON. Our next witness will be the new Assistant Commissioner of Reclamation, E. F. Sullivan. He was out with us in California in region 2. Since that time he has gone on to Boise and now he is headed for Washington, D.C., and a big contract there.

Ed, I want to say to you I think you are a very fine person to become the Assistant Commissioner of Reclamation dealing with those big problems that happen in Washington, D.C. We need the strongest people we can find.

STATEMENT OF E. F. SULLIVAN, ASSISTANT COMMISSIONER, BUREAU OF RECLAMATION

Mr. SULLIVAN. Thank you.

Mr. JOHNSON. Mr. Sullivan will give us a summary of the project in detail. You may proceed.

Mr. SULLIVAN. Thank you very much, Mr. Chairman and members of the committee and the Idaho delegation that is here.

I am pleased to be able to be here to represent the Bureau of Reclamation and the Interior Department and to appear in support of legislation to authorize the Secretary of the Interior to enter into agreements with non-Federal agencies for the replacement of the existing American Falls Dam.

The Department's letter of October 5, 1973, to the chairman of the Committee presents our views on the proposed legislation and recommends H.R. 6782 be enacted, with certain amendments; or in the alternative that S. 1529 be enacted if modified in certain respects. The Department has not completed its review of the plan specified in H.R. 6781 and cannot support its enactment at this time.

American Falls Dam on the Snake River in southeastern Idaho west of Pocatello was completed by the Bureau of Reclamation in 1927. The reservoir with a capacity of 1.7 million acre-feet contributes almost half of the usable storage on the main stem of the upper Snake River. Approximately 900,000 acres of land receive irrigation water from the reservoir.

American Falls Dam no longer meets Bureau of Reclamation safety standards. The dam has deteriorated structurally to the point where it must be replaced or extensively rehabilitated to assure continued operation and to permit storage to full reservoir capacity. The deterioration is due to a chemical reaction between alkalis in the cement and the aggregate. This process, known as "alkali-aggregate reaction," caused disintegration and cracking in the dam's concrete resulting in significant loss of strength and durability. The cause of this type of reaction was unknown at the time the dam was built in 1927. It has been necessary to carefully regulate storage in the reservoir to avoid harmful pressures on this 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 4,346.5 feet in order to prevent ice pressures on the upper portion of the dam. Maximum storage is now restricted to 11.3 feet below full pool which reduces the reservoir capacity to 1,125,000 acre-feet or approximately 66 percent of maximum capacity. If the dam is not replaced in the near future, additional operating restrictions probably will be required.

In dry years, such restrictions would cause severe water shortages in much of the American Falls Reservoir service area. An estimated half million acres would be returned to a dry or very water-short status causing financial failure for many farm operators and severe economic hardship for others including those dependent upon a thriving agricultural economy.

Incidental to the deterioration of the dam is the deterioration of the existing two-lane State Highway 39 on American Falls Dam. The roadway is far below current safety standards and is structurally inadequate to carry present-day loads. Because of width restrictions,

numerous accidents have occurred on the bridge over the past several years. These conditions have resulted in the application of stringent traffic control procedures by the Idaho Department of Highways. The roadway should be replaced in connection with replacement of the dam. Current plans of the Idaho Department of Highways call for construction to begin in December 1973 on a two-lane bridge crossing just below the existing dam.

Thirty-five water user organizations now subscribe to the 1,700,000 acre-feet of space in the reservoir under contracts with the United States. Thirty-four of these subscribers are irrigation water users who hold 1,655,000 acre-feet of space. The Idaho Power Co., under a contract executed in 1923, has been utilizing 45,000 acre-feet of space for use in its powerplants located downstream from American Falls Dam.

On September 7, 1966, Congress passed Public Law 89-561 authorizing the Bureau to conduct a feasibility investigation on the replacement of the dam. The results of that study culminated in a special report entitled "American Falls Dam Replacement, Upper Snake River Project, Idaho-Wyoming," December 1972. That report discusses a plan for replacing the dam, developing related multipurpose features, and restoring the reservoir to its original capacity.

Subsequent to release of the Bureau special report, the reservoir spaceholders and the Idaho Power Co. proposed a plan to replace the existing American Falls Dam, largely through non-Federal financing. We understand the spaceholders' plan includes the following general approach: If S. 1529 is enacted, the spaceholders would obtain by legislation the right to replace the dam and to enter into a contract for the lease of falling water for power for a 50-year period, with the right for renewal. The spaceholders would obtain financing for the new dam by the sale of bonds and would assist Idaho Power Co. in obtaining a Federal Power Commission license for construction of a powerplant at the dam. The Idaho Power Co. would contribute not to exceed $19 million toward the cost of the dam. Except for the costs (approximately 2.8 percent) allocated to reservoir storage to serve the Fort Hall Indian Tribe, the remaining spaceholders would pay any additional cost over the $19 million. The dam and the powerplant would be constructed by the Idaho Power Co.

If the existing dam is replaced, the reservoir would continue to be operated in coordination with the other reservoirs of the upper Snake River system.

Mr. Chairman, that completes my statement. I think I have covered the main points, but I will be prepared to answer any questions.

Mr. JOHNSON. We want to thank you, Mr. Commissioner, for appearing here and giving us the report of the Department of Interior concerning this project.

I would like to have you give us an evaluation of the amendments referred to in the departmental report and which now appear in the Senate bill. What is the position of the Commissioner of the Bureau of Reclamation?

Mr. SULLIVAN. I think our view on this would be that it is really not appropriate or necessary to have the arbitration board that has been proposed. I think it is not appropriate to have one because as has been mentioned, the dam will be owned and maintained and operated by the Federal Government, and therefore approval should not be sub-

ject to the determination of an arbitration board which in a sense would be a third party determination.

I think probably it is not necessary to have this, because we believe an agreement can be reached expeditiously on the plans for the dam.

As we see it, the engineers representing the spaceholders are professionals, and we would view them as that. In the Bureau of Reclamation we consider ourselves to be professionals, and I believe professional people on a matter like this can get together.

It is true, of course, that there can on occasions be a difference of opinion, even among professionals, but as long as we approach the problem mutually with a desire to solve it, and I can assure you from the standpoint of the Bureau of Reclamation we want to, I think it can be worked out.

Let me outline what I think the procedure will be here and then you can evaluate for yourselves what will be involved.

I think it is quite clear that the discussion of the approval of the plans would go on and would occur between the engineers representing the spaceholders and the engineers representing the Bureau of Reclamation, and I think there is a very high degree of probability that agreement would be reached expeditiously in that manner. If it were not, for some reason, the next step would be, of course, to refer the matter to the Secretary of the Interior, because from the standpoint of the Federal Government, the decision would be up to the Secretary of the Interior.

Now, the proposal to have a board of arbitration would in effect add a third step to the process, and I think the thing to do, then, is for each person to speculate on whether this would move effectively and more expeditiously with a two-step process or a three-step process.

Mr. JOHNSON. What financial obligations does the Government have in this particular project if it were authorized as called for in S. 1529.

Mr. SULLIVAN. As I recall it, in S. 1529 there are four different items. One, there would be money authorized for construction of recreation, fish and wildlife enhancement facilities. The figure is $400,000.

Another thing in the bill is that the activities of the Federal Government in reviewing the plans in S. 1529 be on a nonreimbursable basis. That would be if the bill is passed in that way. The Department has stated that it feels that this should be on a reimbursable basis.

The third item is the share of the cost of the dam on behalf of the Indian reservation and the fourth is the continuing operation and maintenance expense which is already being borne—initially by the Federal Government but repaid by the water users so the effect is handled by the spaceholders.

Mr. JOHNSON. Could you give us a general comment on the road as the Bureau of Reclamation and Secretary of Interior see it?

Mr. SULLIVAN. We believe the proposals made in the bill are satisfactory in terms of financing. This would be handled by the local people and the State highway and Federal funds other than those by the Bureau of Reclamation. We do believe that road replacement is essential and we think the plans for that can be worked out.

Mr. JOHNSON. The gentleman from California, Mr. Clausen.

Mr. CLAUSEN. Just a couple of brief questions.

In your testimony you made reference to the fact that a dam had deteriorated structurally, and you go on to suggest it ought to be re-

placed or intensively rehabilitated. Now, it appears, though, there is a common position that it should be replaced rather than rehabilitated, taking into consideration the money factor. Is it possible for it to be rehabilitated? I think it might be helpful to have this sort of thing on the record, and in short, will we get the job done and what will be the costs as you give them?

Mr. SULLIVAN. The Bureau of Reclamation made several studies years ago on the alternative of rehabilitation and replacement. We found the costs were almost the same on the two methods. But continued assurance for a long period of time was much greater with a replacement plan, and therefore we concluded that a replacement approach should be used rather than rehabilitation.

Mr. CLAUSEN. I think that is very helpful to have that specific point on the record.

Finally, have you had an opportunity to evaluate the environmental statement provided by the Department of the Interior? Of course, this was the Bureau of Reclamation and you probably had something to do with the preparation of it. Are you really satisfied that the job has been done so that once this project does go forward it will not be subject to further litigation and again delays in the courts such as Mr. Johnson has referred to. In California there are a couple of projects that he has been principally responsible for advancing where you get the project authorized, funds appropriated, and then the first thing you know you are in court based upon some environmental consideration that was, in the view of the environmental organization, not adequately considered. Are you sure the environmental statement will address itself to the fact that there will not be an adverse environmental impact?

Mr. SULLIVAN. The statement furnished to the committee is one we prepared in connection with the legislative report several months ago. It was based on the best data we had available as to the plans for the project. However, at that time we did not have all the details of the project. In fact, some of them are still being developed.

I believe it is our view it will be necessary to modify that statement further before it meets the requirements of the Environmental Protection Act.

Mr. CLAUSEN. I realize this is just a draft and has apparently not been finalized, but I think it is important for us to realize in this day and age that we are going to have to have the economic benefits, and also be solid on the balance of the economics and environmental protection.

Mr. SULLIVAN. There are some environmental impacts from the project and the matter of taking care of those is still under discussion by the various agencies as the plans are finalized.

Mr. CLAUSEN. So, in other words, you do not believe there will be any problems?

Mr. SULLIVAN. I believe they can be worked out, but it will take some more effort.

Mr. JOHNSON. The gentleman from California, Mr. Ketchum.

Mr. KETCHUM. Thank you.

Commissioner, I wanted to get back to this arbitration thing. You mentioned a two- or three-step operation. I am looking at the amendment as it was placed in the Senate bill, and it said "preliminary

design plans shall be submitted to the Secretary by the constructing agency and the Secretary shall approve such plans," et cetera. Where does the third step come in if we indeed went to arbitration?

Mr. SULLIVAN. I suppose maybe I interpolated the three steps. There would be only the two steps if you read the words of the bill itself. Procedurally within our organization discussions would go on between the Bureau of Reclamation and the spaceholders. But the actual responsibility is with the Secretary of the Interior.

Based on my experience I would say we would have a two-step process before it got to arbitration. This is not a major point, but I wanted to lay it out procedurally as I saw it.

Mr. KETCHUM. One other question for curiosity more than anything else.

I am looking at the plan for the dam in the environmental statement. Are we proposing building another powerplant so there will be two powerplants? Will the old powerplant still remain?

Mr. SULLIVAN. The construction of the powerplant will be, of course, be the responsibility of the power company, but it is my understanding they will abandon the present powerplant and have a new one.

Mr. KETCHUM. Will this result in any new power over and above what they are now generating?

Mr. SULLIVAN. It will definitely be more because the capacity of the plant will be larger, and using the entire head of the reservoir instead of just below the dam, as now, so they will have the ability to put more water through and have a higher head.

Mr. JOHNSON. The gentleman from Nevada, Mr. Towell.

Mr. TOWELL. It is obvious today the reservoir is not holding full capacity, operating somewhere around 65 percent.

How many years ago did the cutback in full capacity occur? Was the dam ever used at full capacity?

Mr. SULLIVAN. Oh, yes, for many years. I believe it was 6 or 8 years ago we put a winter restriction on it because of the danger of ice loads. The limit of one-third that you just referred to occurred about a year ago. This past year was the first year we had that restriction.

Mr. TOWELL. Is that due to further deterioration or due to further study and maybe new safety factors?

Mr. SULLIVAN. We had evidence of further deterioration. We had been observing water pressure inside the concrete structure over a period of years, and about a year and a half ago we observed an increase of pressures occurring as a result of further deterioration. It was that event that led to the imposition of the restrictions that are now on.

Mr. TOWELL. And we have all been concerned, and I am sure you are, about the time factor involved in this project. I see in your testimony that the Congress in 1966 passed Public Law 89-561, authorizing the Bureau to conduct an investigation. For one reason or another that took 6 years to conduct that investigation. I for one certainly hope we can proceed a little faster than that. With this hearing I am sure we will, and I hope the Bureau will proceed at a little quicker pace than that.

Is there any reason for that delay and that timelag in that study?

Mr. SULLIVAN. I guess the pressure was not so great at that time while we had a restriction during the wintertime. The impact on water supply was not so great. It was when the further restrictions were added just a year ago it became evident that further action had to be taken. I certainly agree with you that things should move more expeditiously than the timeframe you mentioned there, and we in the Bureau are dedicated to that objective, also.

Mr. TOWELL. That is nice to have that on the record, too.

Mr. JOHNSON. Mr. Casey, do you have a question of your witness?

Mr. CASEY. I have a technical question relating to the fish and wildlife enhancement recreation. The bill does contemplate conventional cost-sharing arrangements?

Mr. SULLIVAN. Yes; it does.

Mr. CASEY. Do you have a non-Federal public entity in mind to assume that obligation?

Mr. SULLIVAN. In the development of the Federal plan there were discussions held with several different local entities, and they indicated they would be willing to participate on a conventional basis. So the proposal contemplates that and involves two or three different agencies.

Mr. CASEY. On the Federal dam the cost-sharing agreement is a prerequisite to the start of construction on the project? I assume in this case it would be a prerequisite to the fish and wildlife facilities, and failing to get it, that all that would happen is you would not build the fish and wildlife and recreation facilities?

Mr. SULLIVAN. Yes.

We want to thank you, Mr. Sullivan, for giving us the benefit of your testimony. There is just one matter of concern.

If the matter of the arbitration language is to remain in the bill and the Bureau of Reclamation and Department of the Interior would take a stand against it, would that position of the Interior Department jeopardize the President's signature?

Mr. SULLIVAN. You are asking me to speculate on something that is very difficult for me to know how to answer.

Mr. JOHNSON. I am merely wanting to know if it is going to be a point of disagreement as far as the Congress and the Department is concerned. I presume they would recommend against the legislation.

Mr. SULLIVAN. I am not sure whether the feeling is so strong that we would recommend against approval of the bill. I think maybe the urgency of the project is such that it might be able to go ahead. We have expressed our view as to what we think should be in the bill.

Mr. JOHNSON. Very good. We will have to face that when the time comes.

No further questions.

We thank you, Mr. Sullivan.

I understand you are going to have to leave us, too.

Mr. SULLIVAN. Not until tomorrow morning.

Mr. JOHNSON. Fine.

Our next witness will be the Honorable Cecil D. Andrus, Governor of the great State of Idaho, who is a very familiar with all its problems and this one is no exception.

STATEMENT OF HON. CECIL D. ANDRUS, GOVERNOR OF THE STATE OF IDAHO

Mr. ANDRUS. That is correct, Mr. Chairman.

Senator MCCLURE. I would like to add my note of appreciation to you and the chairman, for being here this morning and giving the citizens of Idaho the opportunity to testify before you without having the time consuming necessity of going to Washington to have their views known.

I, too, have a time problem today, Mr. Chairman. Long before this commitment was set up I had a commitment at the University of Idaho which I must attend. I hope you excuse me that I must depart. Keith Higginson, who is the director of Water Administration and my appointee, my personal representative, will be with you the balance of the time you are here, and if he can be of assistance to you and the members I hope you will call upon him.

Mr. JOHNSON. We understand the demands upon the Governor, and we put this together rather hurriedly, figuring out a time when most people would not be going to another hearing.

Mr. ANDRUS. When they contacted me, Mr. Chairman, I was quick to say you get them here and I will be there.

Mr. JOHNSON. Your statement will appear in the record in full and if you would like to summarize it it is up to you.

Mr. ANDRUS. Thank you, sir.

[The prepared statement of Governor Andrus follows:]

STATEMENT OF HON. CECIL D. ANDRUS, GOVERNOR, STATE OF IDAHO

Seldom can a Governor support a project with as much enthusiasm. The replacement of the American Falls Dam and River Crossing is as necessary today as it was at the Senate Committee Hearings earlier this year. Only our sense of urgency has changed. For, we know in fact what we feared in the spring. Idaho has experienced an unusually dry year.

Traditionally, reclamation dams have been able to carry forward a reserve of water to maintain stability in a low water cycle; but this year, reserves were tapped more substantially than ever before. Should we experience another dry year, the cumulative effect could reduce Idaho's agricultural bread basket to agricultural desolation.

Although we seek Congressional approval to rebuild a major dam on the Snake River, 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 for Congressional endorsement, through S.B. 1529 as amended by the Senate, which will allow spaceholders and private industry to rebuild the failing structure themselves.

I can speak for all of Idaho in saying that the replacement of the American Falls Dam and River Crossing is more than a regional or sectional priority. It is an Idaho necessity.

The impact from American Falls is statewide because the structure is an integral part of vital irrigation and transportation systems which are closely tied to the stability of Idaho's overall economy.

Agriculture is Idaho's number one industry. Each of the Snake River projects is necessary for maintaining the strength of the agricultural community.

I can vigorously support S.B. 1529 and the amendment for bridge funding before you today because it offers the speediest and most reasonable method for replacement of the structure.

I believe it important that you clearly understand the relationship of this project to other proposals which might be pending in Congress. 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.

The replacement project has received widespread support in Idaho. Even traditional adversaries have joined together for the undertaking.

Aside from the economic dependence on early replacement of the dam, the safety of the structure itself must be assessed by this committee.

The reduced holding capacity of the reservoir points to the concern of the Bureau of Reclamation in this regard.

Attached to my testimony is the written testimony of five state agencies: Fish and Game, Highways, Water Administration, Water Resource Board and Parks and Recreation. All support the earliest possible replacement of the dam and river crossing. I ask that their testimony be included in the hearing record.

In summary, I am here today as the Governor of a state where thousands of small family farms and family businesses are dependent on an adequate supply of irrigation water. On their behalf, I respectfully request your favorable reaction to our proposal for the earliest possible replacement of the American Falls Dam and River Crossing.

Thank you.

CECIL D. ANDRUS,
Governor of Idaho.

STATEMENT OF JOSEPH C. GREENLEY, DIRECTOR, IDAHO FISH AND GAME DEPARTMENT

The Idaho Fish and Game Department recognizes and appreciates the need for the replacement of the American Falls Dam due to its deteriorated condition.

The American Falls Dam and Reservoir, though initially destroying some fisheries and wildlife habitat, has subsequently resulted in a substantial increase in upland game and migratory waterfowl habitat in Idaho. The dam created a unique but highly productive fishery in the forebay and replaced a stream fishery with a reservoir fishery in the afterbay. There may be some question as to whether the latter trade off in the type of fishery was a gain or a loss: however, it is our opinion that the wildlife benefits resulting have outweighed its losses. We believe that this is the way it should be and pledge our support to any project using the water resources of this State that assures a benefit to the wildlife resources of the State.

The relocation of the American Falls Dam will substantially reduce the forebay fishery as it presently exists. This unique fishery cannot be replaced in kind under the present project plans. Several mitigation alternatives are being considered by the parties involved and, hopefully, adequate measures can be incorporated into the project so that the fish and wildlife benefits will not be lessened.

STATEMENT OF IDAHO DEPARTMENT OF PARKS AND RECREATION

We appreciate the opportunity of expressing our support for replacement, at the earliest possible date, of the existing American Falls Dam.

Our interest, of course, is in the recreational values provided by the reservoir. Considering the large size of the reservoir and its proximity to several Idaho population centers and Inter-State Highway 15, the potential for water-based recreation use is substantial. The potential has never been realized because funds have been lacking to develop the rather elaborate and expensive facilities required for full season utilization on a reservoir with a significant irrigation draw-down.

The recently imposed restriction on capacity of the reservoir has substantially decreased the aesthetic and recreational values of the area. Unsightly stretches of shoreline surround the reservoir the entire year, and access to the water for all water activities has been made more difficult. The two existing public boat ramps are in poor condition and will be rendered unusable earlier in the season than previously because of the reduction in capacity of the reservoir.

Our major concern at this time, however, centers on two proposals to, finally, develop outstanding and badly needed recreation facilities on the shores of the reservoir. The proposed projects have been approved for funding from the Land and Water Conservation Fund by the Idaho Park and Recreation Board. The total combined cost of the two projects, which are scheduled for completion by 1976, exceeds $60,000. The water-related portions of the projects are designed

so as to permit use nearly the entire summer season even during low water years. The current reservoir capacity restriction will reduce the period of use of these two recreation areas. We are very much in favor of an early replacement of the American Falls Dam in order that maximum use of the existing and proposed recreation facilities can be realized.

We feel that the proposal for replacement of the dam by non-federal agencies has considerable merit, and since it appears to present an opportunity for construction of the dam at an earlier date than other alternatives, we strongly endorse it.

STATE OF IDAHO,
DEPARTMENT OF WATER ADMINISTRATION,
Boise, October 3, 1973.

Hon. CECIL D. ANDRUS,
Governor, State of Idaho,
State Capitol, Boise, Idaho.

DEAR GOVERNOR: Because of our responsibility for the safety of all dams and reservoirs in Idaho, we are greatly interested in the present condition and possible early replacement of American Falls Dam.

The technical information gathered by the U.S. Bureau of Reclamation in their study of this dam over the past several years has been furnished this office for our review and information. We concur in the conclusions of the Bureau and its consultants, that the dam is in advanced stages of alkali-aggregate reaction. This has greatly weakened the internal integrity of the structure and gives us cause to believe that a failure of the structure is possible, particularly at high storage levels or during periods when ice is present on the reservoir. We therefore favor any steps that can be taken to replace this structure at an early date.

As you well know, the water stored in this reservoir serves a large portion of Southern Idaho and loss of the storage capacity because of the restriction necessary due to the dam's condition would have a serious impact on the economy of Southern Idaho in a dry water year.

I would be pleased to have you convey my concern to Representative Harold T. "Buzz" Johnson and to urge his Committee to take the earliest possible favorable action on Senate Bill Nos. 1528 and 1529, so that the water users have the alternative of replacing the structure with private funding or through the program of the U.S. Bureau of Reclamation.

Very truly yours,

R. KEITH HIGGINSON, *Director.*

STATE OF IDAHO,
IDAHO WATER RESOURCE BOARD,
Boise, October 1, 1973.

Hon. CECIL D. ANDRUS,
Governor State of Idaho,
Statehouse,
Boise, Idaho.

DEAR GOVERNOR ANDRUS: As you are aware, the Idaho Water Resource Board has continually supported the early replacement of American Falls Dam. The Board adopted a resolution to that effect in November 29, 1972, and again expressed its support through your combined statement to the Senate Subcommittee on Water and Power Resources at their hearing on May 10, 1973.

We would appreciate your inclusion of a statement expressing our support for early replacement of the dam when you appear before the House Committee on October 6.

The economic, social, and environmental consequences of continued restrictions on reservoir operations could assume disaster proportions during a series below normal water years. Such conditions could affect over a quarter of the irrigated lands within the state. Since the replacement project will for all practical purposes maintain the status quo, we feel that there will be no significant detrimental effects. Instead the project has presented an issue where all of the concerned citizens are working closely together to solve a common problem using their own resources.

If we can be of assistance, please feel free to contact us.

Sincerely,

C. STEPHEN ALLRED, *Director.*

STATEMENT OF IDAHO BOARD OF HIGHWAY DIRECTORS

The Idaho Board of Highway Directors and the Idaho Department of Highways recognize the economic necessity of improved public highway service across the Snake River during replacement construction of American Falls Dam and after completion.

State Highway 39

Idaho State Highway 39 now crosses the Snake River on American Falls Dam at the City of American Falls, county seat of Power County, Idaho. Northern terminus of State Highway 39 is at Blackfoot, Idaho, the Bingham County Seat. The route is 55 miles long and interconnects Interstate Highway 15W at American Falls with Interstate Highway 15 at Blackfoot. A rural principal collector route, it also ties into an extensive network of local roads serving farms, ranches, an agricultural experiment station, and a vast recreation area. Land use in the locale is essentially irrigated crop and grazing lands. In the last decade, State Highway 39 has been extensively improved for almost its entire length to serve mounting traffic volumes.

The Department and the Federal Highway Administrator certified to the U.S. Bureau of Reclamation in February, 1972, regarding the need for replacing the Idaho State Highway 39 bridge on American Falls Dam across the Snake River in Power County, Idaho.

The State of Idaho is now proposing: (1) construction first of a two-lane crossing downstream from the existing dam—to be funded by the State and the reservoir spaceholders on a 50–50 basis—with the approach roadways "benched" into the earthfill embankment portion of the proposed dam; and (2) a second two-lane crossing atop the new dam when it is built. Upon completion, the second crossing would carry westbound traffic and the first crossing would revert to one-way operation eastbound. Early completion of the initial crossing would result in lower cost for dam replacement because the present roadway could then be closed to traffic during construction. Further, it is my understanding that approximately $500,000 in "Bridge Across Federal Dam" funds are available to help finance the second crossing across the masonry portion of the dam. Any Federal funds which might be available for the crossing on top of the replacement dam would be matched equally by the State and spaceholders.

Design of Phase 1 for the construction of the American Falls Bridge Replacement is essentially complete. Phase 1, the construction of Bridge Piers and Cofferdam is scheduled to begin the latter part of November or first part of December when water flows are at a minimum.

An Agreement between the State Highway Department and the U.S. Bureau of Reclamation covering rights of way, regulation of flows and sequence of construction, etc., is required. The local regional office of the Bureau is urged to issue a permit to construct Phase 1 as soon as possible. Such action would eliminate much red tape and expedite bridge replacement. Cooperation of the State Fish and Game Department, State Department of Water Administration and the U.S. Fish and Wildlife Service is also essential.

Heavy traffic, including many trucks hauling farm produce, has created hazardous conditions since the existing two lane crossing (18–21 feet wide) is far below acceptable standards for safety. Since December, 1972, the highway crossing has been restricted to alternating one-way traffic, controlled by signals and "short arm" gates. The gates were hit repeatedly, thereby requiring their removal.

In spite of the above highway deficiencies, the expediency for construction of the bridge replacement appears insignificant to the primary concern.

Lands served from the American Falls Reservoir make up one of the most productive irrigated areas in Idaho. The approximately 900,000 acres of land served represent about one-half of the acreage irrigated from surface water supplies in the entire upper Snake River Basin. The reservoir is currently restricted to 66% of capacity (1.125 million acre-feet).

Unless the dam is replaced as quickly as possible, its weakened condition could result in further reduction of reservoir capacity. A dry year would cause serious water shortages. An estimated half-million acres would be returned to a dry or very water-short basis causing financial failure for hundreds of farm operations and economic hardship for others.

Recognizing that replacement of the Dam requires a temporary river crossing, the Department of Highways is cooperating with the spaceholder to save as much

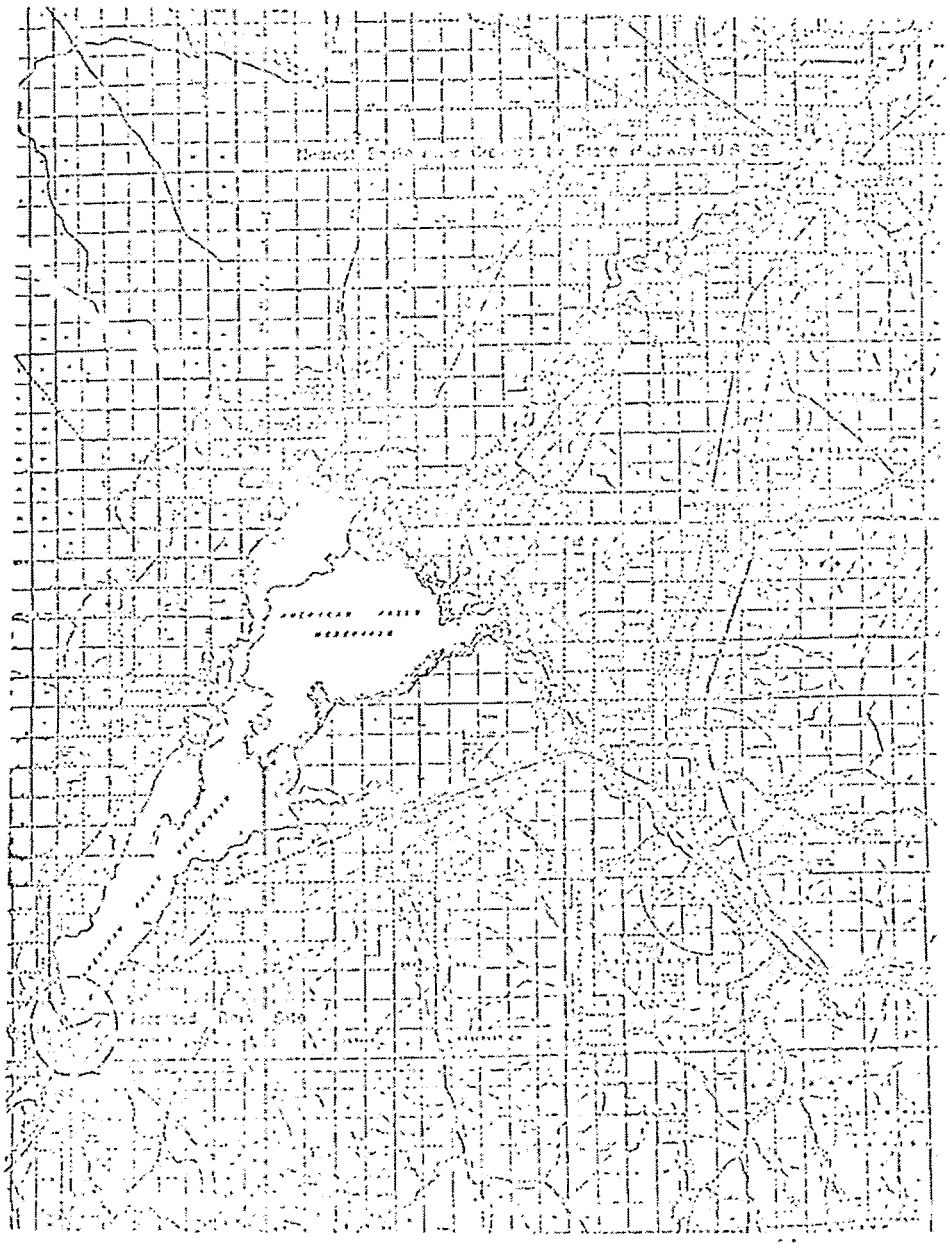
of the critical time as possible. If the construction schedule proposed cannot be met, another, and perhaps a most critical year, could be lost.

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.

BEST COPY AVAILABLE

Seldom can a Governor of any State support a project as enthusiastically as I can support this project today. The replacement of the American Falls Dam and the river crossing is as necessary as it was when we traveled to Washington earlier this year. The only change is the sense of urgency.

It has been brought up—Mr. Towell from Nevada spoke to this point, and I would like to make further summary of this in that regard, that we at the State level are hoping, as Mr. Sullivan pointed out, to start our proceedings with a portion of the river crossing in December. Congressmen, we just simply can't wait.

Traditionally reclamation dams have been able to carry some water over from one year to another. We had the restriction last year for the first time.

You flew over it. I think you saw very vividly the problems we face. The sense of urgency has been increased because this year we have had a dry year. If we have another year next year with the carryover in reduced capacity we have very serious problems.

Mr. Clausen's question pertained to who will this project serve, and Senator McClure responded to it. I am confident he answered it fully, but just so there will be no misunderstanding on anyone's part, this water storage in American Falls is not for new development or new land coming in. It is for existing land that has been under crop for many, many years. We are not asking you to put any funds into projects so we can develop new land that might be in competition to those of you that travel here from other States.

We do not ask for millions of Federal tax dollars to do for Idaho what Idahoans can and will do for themselves. Rather, we ask of you gentlemen to give us, the people of the State of Idaho, the spaceholders, and the private industry the permission to rebuild the structure ourselves. I do speak for all the people in the State of Idaho in saying that the reconstruction of the Idaho River crossing is not a regional or sectional type need. It is for the entire State of Idaho, because as it has been pointed out, this river flows through our entire State and the water is not only used there but it is used over and over again as it goes through.

Agriculture is our No. 1 industry, and each of these projects throughout the Snake River and then through the Columbia River network are tied together.

I vigorously support S. 1529 and the amendment for the bridge fund that is before you today because it offers, I believe, the speediest solution to our dilemma.

It is important you understand the relationship of this proposal to other legislation that might be pending in Congress. We seek replacement of a weakened structure that holds only a portion of the water it used to hold so to provide existing irrigation to farmlands, not new development. What we seek is a replacement for a weakened structure which now holds only a portion of the water it once held. What we seek is a facility to provide irrigation water to existing farmlands, not a new development. What we seek is the continuation of crops, livelihoods, and homes for thousands of people who are victims of an untimely chemical reaction in the concrete of the American Falls Dam.

This project has received widespread support from all groups. It has been pointed out here that diverse political factions exist in my

State and your individual States. But, if you will take the time, I will make available to you from the Senate hearings, written testimony on S. 1529 from environmental groups in this State supporting this project. I have in my possession, which I will return to you, the original testimony from the Idaho Fish and Game Department supporting the construction of this dam as soon as possible. Also, from the highway department, the department of water administration, water resource board and the parks and recreation departments of this State.

I submit to you gentlemen that the State of Idaho is indeed together in the need for expeditiously redoing this structure.

I think in summary I would say that I am here today as Governor of the State for thousands of small family farms and family businesses which are dependent upon an adequate water supply for irrigation. On their behalf, I respectfully request that you do in fact give us the necessary relief that we need in order to do it ourselves.

That is the end of the statement. I think I could sum up, Mr. Chairman, by saying, as has been asked in several questions here this morning, yes, there is not a person seated in this room behind me that if they could have it done immediately, would not like to see Uncle Sam come in and pay the bill. But we are practical people out here. We need that dam, and the fastest way to do it is for us to do it ourselves, and we are willing to do it. We just hope to God you give us the capability of doing it.

Mr. Chairman, I will respond to any questions you might have.

Mr. JOHNSON. Thank you, Mr. Governor.

It seems you have lined up everybody in the State of Idaho. You have done your homework well. We hope there is nothing that creeps into this that might disturb your timetable as it has in other types of projects in other States.

We are quite familiar with some of those delays. It hurts us as bad as this one hurts you here.

Your full statement will appear in the record, and your statements from other organizations will also be made a part of the record.

You stated you have to leave. Is there anyone who has to go with you who is a witness?

Mr. ANDRUS. I think Mr. Bob Hogg of the Idaho Power Co. had desired to go so he can make an airline connection. If I would not be presumptuous, I would certainly appreciate him having the opportunity to testify.

Mr. JOHNSON. Well, maybe we had better put him on, since this has run a little longer than we thought it would up to now.

The gentleman from California, Mr. Clausen.

Mr. CLAUSEN. I certainly appreciate your statement.

I just wanted to add in reading the Idaho Fish and Game Department statement on the American Falls replacement signed by Mr. Greenley, October 3, 1973, he does corroborate what you said, the American Falls Dam Reservoir, though initially destroying some fish and wildlife, has resulted in increases in upland game and migratory water fowl in Idaho. It goes on to say, it is our opinion that the wildlife resulting have outweighed its losses.

I think this is a very significant point that I want in the record following your statement.

Mr. ANDRUS. Thank you very much, Mr. Clausen.

Mr. KETCHUM. Mr. Chairman, I would just like to congratulate the Governor on his statement and recall attention to the third paragraph of his statement, which I think is the most powerful statement by any official that I have ever heard before a committee of the Congress or during my days in the California Legislature. Coming as we do from Congress, that is a most refreshing statement, that Idahoans want to to something for themselves rather than depend on the Federal Government to get it done for them. I congratulate you on the statement, and the State of Idaho.

Mr. ANDRUS. Thank you, Mr. Ketchum.

If you will permit me a little bit of levity, if you will just get out of our way and let us do it, we will get it done.

Mr. KETCHUM. Believe me, there are those in Congress who are wholeheartedly in favor of that in the State of California.

Mr. JOHNSON. Mr. Towell.

Mr. TOWELL. One quick question. Of the acreage being irrigated from the American Falls Dam, have you had any water actually cut off in this past year? Did you have a loss of acreage?

Mr. ANDRUS. I could refer that to Ted Diehl and a lot of water managers from irrigation districts here, but I say we got through, to my knowledge, this year all right. We were bothered some and worried at times, but we made it. I asked you to look at the reservoirs that exist today and think about next year.

Mr. TOWELL. I understand that, we have to look ahead. I just want to know what has happened to date.

Mr. ANDRUS. No, we have had a very successful agricultural crop year in the great State of Idaho. The reason we did is because we did have sufficient water to get us by. But that reservoir and others, Arrowrock, Anderson Ranch Dam, and others, don't have any carryover that we would like to see for next year.

Mr. TOWELL. I fully understand the problem you are looking for.

Mr. ANDRUS. A direct answer, Congressman, to your question would be no, we got through this year fine.

Mr. TOWELL. Mr. Chairman, no further questions.

Mr. JOHNSON. Mr. Casey? Mr. Luken?

Thank you, Governor Andrus, for your appearance here.

Mr. ANDRUS. Thank you. The original copies of the attached statements are with Mr. Luken.

Mr. JOHNSON. Yes.

Our next witness, then, will be Mr. Bob Hogg, representative from the Idaho Power Co.

STATEMENT OF ROBERT A. HOGG, PROFESSIONAL CIVIL ENGINEER. IDAHO POWER CO.

Mr. HOGG. Mr. Chairman, I was vice president of the Idaho Power Co., until I retired in 1972. I have a six-page prepared statement along with an atttachment which I would like to appear in the record.

Mr. JOHNSON. Your statement and attachment will appear in the record as presented in full. You may summarize your statement, and we will ask questions.

Mr. HOGG. Thank you, sir, I will be happy to do that.

[Mr. Hogg's prepared statement follows:]

STATEMENT OF IDAHO POWER CO., SUBMITTED BY ROBERT A. HOGG

My name is Robert A. Hogg, Boise, Idaho, a registered Professional Civil Engineer. I was Vice President of Idaho Power Company at the time of my retirement at the end of 1972. Prior to my retirement, it was my responsibility to develop the Idaho Power Company's proposal to assist the American Falls Spaceholders to finance the replacement dam at American Falls. I have been retained in a consulting capacity for the Company in the following through the implementation of the proposal.

American Falls Dam must be replaced at the earliest possible date to insure the safety of the Dam and to restore the reservoir operation to provide the irrigators with the full reservoir capacity of 1,700,000 acre-feet of water.

On January 6, 1973, the Spaceholders adopted a resolution requesting the Idaho Power Company to evaluate the extent to which the Company might be willing to be involved in assisting to finance the American Falls replacement dam. A copy of the proposal submitted to the Executive Committee of the Spaceholders, February 27, 1973, is attached hereto.

While the Company is a spaceholder in the American Falls reservoir, its primary concern in the immediate replacement of American Falls Dam is that the future economic stability of a major segment of Idaho's agriculture and business communities serving this area in southern Idaho is in jeopardy. This area includes some 900,000 acres of land dependent on the American Falls stored water to finish the yearly crops. The crops are severely exposed to reduced production as long as the American Falls storage limitation is in effect.

The Idaho Power Company is a hydroelectric generating system and is keenly aware of factors which affect water conditions, including storage of water. Furthermore, Idaho Power Company's peak load is established by irrigation pumping, which also is dependent upon water conditions. The water conditions have opposite effects on the system, since with low water conditions the generation is low; however, at the same time, the electric load is high because the irrigators use more electricity to lift water from wells and streams to make up the irrigation water deficiency. The American Falls storage limitation is contributing to this adverse effect, because 600,000 acre-feet of reservoir space cannot be used to store either winter or flood flows for later release.

The Company's service area includes most of the 900,000 acres of irrigated land depending on a full capacity of 1,700,000 acre-feet of water in the American Falls Reservoir being available for the final and finishing irrigation. Over 25 percent of the highly productive irrigated land in the Company's service area is exposed to reduced production under adverse water conditions as a result of the storage limitation.

An indication of the seriousness of the change in irrigation water supply as a result of the restriction is illustrated by comparison of the number of years over a 40-year period of study the American Falls reservoir would be emptied at the end of the irrigation season without the limitation and with the limitation. The reservoir would be emptied at the end of the irrigation season about 16 times without the storage limitation. With the storage limitation, the number of years the reservoir would be empty is 26. Since the reservoirs on the Upper Snake are operated on a coordinated basis, the Jackson Lake Reservoir in the Grand Teton National Park would be emptied 4 years out of 40 without the limitation but with the storage limitation on American Falls, operational studies indicate the Jackson Lake would be emptied 9 years out of 40 years.

The degree of economic loss will vary with the severity of water shortage, but there is no question that there will be an adverse economic loss in some amount before the American Falls Dam can be replaced and operated to its full capacity. Water conditions this year, 1973, are poor and some irrigators will experience either reduced production or increased costs this year because of storage reduction.

The Idaho Power Company presently owns and operates a 27,000 KW power plant below the present American Falls Dam. The power plant does not utilize the full head available at the site or all of the irrigation water released. The Company's proposal includes the necessity of building a new power plant under a 50-year FPC license to develop the full energy potential of the site. This, in no way, would affect the water release nor water rights of the irrigators as they now exist.

The present plant produces on the average about 146 million KWH and the new plant is expected to generate on an average 370 million KWH, or about 2½ times as much energy. The installed capacity of the plant will be 100,000 KW, about 3¾ times the present plant.

The Company's proposal to the irrigators is only made possible by the increased energy generation and installed capacity of a new plant built under the 50-year FPC license. The Company is able to utilize the type of power available from this project, and such power is not available from another source at a lower cost; consequently, the resulting high cost is justified.

The Company's interest as a spaceholder is very modest in contrast to the irrigators' interest; however, the Company's 45,000 acre-feet of storage capacity is important in meeting the Company's power supply requirements during the irrigation season.

The Company's proposed plant and use of the Company's storage rights through the Company's downstream plants will generate on the average about 420 million kilowatt-hours per year. This is equivalent to about 210,000 tons of coal per year, or 28 million gallons of oil per year, or 3¾ billion cubic feet of natural gas. The hydroelectric plant will be a source of clean electric energy without some of the environmental problems associated with coal, oil or gas.

The below normal water conditions this year are serving to emphasize the urgent necessity of restoring American Falls to its full operation capability. In the event the 1973–74 winter and spring precipitation is below normal, the 1974 year could be a very poor agricultural production year; this at a time when full food production is urgently needed. In the event the proposed bill, S. 1529, is approved this year, and other necessary approvals are obtained at an early date, the reservoir would be ready for full irrigation use at the beginning of 1976.

In Idaho Power Company's opinion, an early approval of S. 1529:

1. Will minimize the adverse economic effects of the American Falls storage limitation on the economy of southern Idaho because of early completion;
2. Will make significant addition to the energy supply in southern Idaho at a time when energy is critically needed;
3. Will be a significant benefit to the irrigators, since the replacement dam would provide for a continuation of historic water releases and water rights;
4. Will be a benefit to the business community in southern Idaho and the nation's taxpayers, since no money is requested for the dam construction;
5. Will maintain the productivity of irrigated lands served by American Falls for the benefit of the nation's food supplies.

I urge your favorable decision on S. 1529.

PROPOSED AMERICAN FALLS DAM REPLACEMENT PLAN

The American Falls dam was constructed in the mid-1920's and first stored water in the 1926–27 period. The irrigators paid about half of the cost of the dam in cash and the balance has been or is being paid for by the irrigators. The Idaho Power Company acquired 45,000 acre-feet of primary storage and 255,000 acre-feet of secondary storage in the reservoir.

In 1929 a chemical reaction in the concrete of the dam was discovered, which has caused the concrete to swell or expand; however, the strength of the structure has declined at a very slow rate. Recently the strength of the structure has been seriously questioned. The relatively small columns supporting the bearings of the spillway gates are showing advanced effects of the chemical reaction. Reservoir operations are now different than planned in the 1920's by the addition of Palisades (1956), Island Park (1938) and Teton (under construction) and ice loading on the dam is an important consideration now, while it was not considered necessary when American Falls dam was designed. The result of these changes as well as data obtained from core drilling is the imposition of a storage limitation by the Bureau of Reclamation in the interest of safety, which limits the storage to about 1,100,000 acre-feet in the reservoir with a capacity when full of 1,700,000 acre-feet.

The storage limitation is an extreme hazard and exposure to the irrigators since about 900,000 acres of land are dependent on American Falls storage for late season irrigation. Historically, with present storage capacity (including full capacity at American Falls), July and August have been below full require-

ments in 4 years out of 40 years, or on average, 1 year out of 10. With reduced storage capacity this exposure will be increased.

The storage limitation may be corrected by replacing the present dam with a new dam or rehabilitating (repairing) the present dam. The USBR have concluded that the right and proper thing is to replace the dam with a new dam, and have made the following estimated construction cost (July 1972 prices), and have allocated the costs to various functions, as follows:

Construction cost (July 1972)

	In thousands
Dam and reservoir	$22,906
Penstock future power	1,454
Highway improvement	1,861
Remove old dam	2,160
Permanent operating facilities	143
General service equipment	43
Basic health and safety	88
Fishing mitigation	546
Fish and wildlife enhancement	196
Flood forecasting	131
Total	29,468
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	96	1,322
Highway improvement	1,861	145	2,006
Future power	1,454	113	1,567
Basic health and safety	88	7	95
Total	29,468	2,293	31,761

Repayment planned as follows:	*In thousands*
Irrigation by water users	$18,659.0
Fish and wildlife enhancement—non-Federal body	101.5
Power (deferred)	1,543.0
Total reimbursable	20,303.5

The probable schedule which might be followed with USBR construction has been estimated to require 8–10 years before the new dam could be completed. Presumably the storage limitation would prevail during this period; however, it might be relaxed slightly one or two years before completion as the elevation of the new dam was raised during construction.

The Idaho Power Company has several interests in the American Falls dam problem, as follows:

1. As a spaceholder—the Company has primary storage in the amount of 45,000 acre-feet.

2. As owner of a power plant downstream from the dam—the Company owns the 27,000 KW power plant below American Falls and has generation from the water entitlement of both the Company and the USBR. The annual energy potential at American Falls site averages about 370 million KWH's; however, a new power plant is required to generate the potential. The Company's present plant and water entitlement would generate only about 55 million KWH which would not be a feasible operation.

3. As the power supplier to practically the entire area depending on American Falls storage in the full amount for late season irrigation—the Company would be adversely affected in the event a crop failure resulted from the storage limita-

tion 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 $51,051,000. The cost of the replacement dam is about $20,700,000.

The estimated time schedule developed by Bechtel engineers is the same for either a new dam or rehabilitation of the present dam. The closely coordinated time schedule contemplates that a contractor would be selected and would move on the job no later than about January 1 of the year following execution of a contract, and would be able to complete all preliminary diversion work necessary to begin construction of the new concrete dam section at the end of the irrigation season about October 15 of the same calendar year with the reservoir level about October 15 of the same calendar year with the reservoir level down to elevation 4310 feet (about 150,000 acre-feet). The construction would progress to the point so that the reservoir could begin to fill the following February 1.

The water records indicate that there would be a 30% chance of filling the American Falls reservoir to capacity (1,700,000 acre-feet) after February 1 in the flood period and a 68% 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 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 1,350,000 less than it was a year ago. It was because we had hold over storage from better water years this past summer that we were able to have a very successful crop this year.

Another point I would like to mention is the inter-relationship and the timing of the project and its design and cost. There is one time during the year when this particular design of dam, along with its costs can be done. We have a very close schedule upon which to go now in order to start this bridge construction in December and also to start the dam construction a year from January 1.

I might add that, Mr. Chairman, at the moment we are impinging on that time schedule. The engineer told me this morning that we should have ordered the water wheels for our powerplant 6 weeks ago, but we have not done it yet. So time is of the essence.

My prepared statement indicates what the powerplant will contribute in terms of energy. It will also indicate how many tons of coal and oil and so forth will be saved. I will not go into that detail. I think, Mr. Chairman, time will be saved if I can submit myself for any questions anybody has.

Mr. JOHNSON. As I understand it, your company anticipates building a new powerplant and taking water through the dam by your Penstock thus utilizing the head on the reservoir as well as the additional amounts of water that will flow through the reservoir?

Mr. HOGG. That is correct. We will install special water turbines to give effect to the varying heads that occur on an irrigation dam.

Mr. JOHNSON. You quote a figure of $19 million that you are willing to participate up to. Due to today's costs and inflation, what is your breaking point, what can you afford to pay for power?

Mr. HOGG. That is the top level. When we developed that figure we anticipated a certain amount of inflation. We hope it is within the ball park.

Mr. CLAUSEN. Will the gentleman yield?

Mr. JOHNSON. Yes.

Mr. CLAUSEN. What is the percentage of inflation that you have allowed for in that figure?

Mr. HOGG. About 6 percent.

Mr. CLAUSEN. Per annum?

Mr. HOGG. Per year, yes, sir.

Mr. JOHNSON. Now, what effect did this have on your other facilities which are downstream?

Mr. HOGG. The storage, of course, the water going through American Falls Dam, of course, is first used for irrigation service. We have a right to utilize only 45,000 acre-feet upon our demand. So the only control we have is on its use in the downstream powerplant.

The reservoir, however, does save some flood water. It is diverted out and used for irrigation and the excesss water percolates underground and returns downstream at Thousand Streams, for example. This is beneficial to our downstream powerplant.

Mr. JOHNSON. Then there are benefits that will accrue to the Idaho Power Co. in the downstream facilities.

Mr. HOGG. Yes, sir. The amount of that is also indicated in my testimony.

Mr. JOHNSON. The gentleman from California, Mr. Clausen.

Mr. CLAUSEN. I have no questions.

Mr. JOHNSON. The gentleman from Nevada, Mr. Towell.

Mr. TOWELL. No further questions, Mr. Chairman.

Mr. JOHNSON. Mr. Casey, do you have a question of the witness?

Mr. CASEY. No, sir. I have read his statement and I don't have any questions.

Mr. JOHNSON. The gentleman from the minority, Mr. Luken. Do you have any questions?

Mr. LUKEN. No, thank you, Mr. Chairman.

Mr. JOHNSON. Actually you people will be present when the hearings are held before the full subcommittee. At that time we can get into other questions. I know you are pressed for time and you do want to accompany the Governor back to wherever he is going today.

Mr. Ketchum, any questions?

Mr. KETCHUM. No questions.

Mr. JOHNSON. We thank you for coming here. We have your statement. We had it previously. We have looked it over. There are some other questions we want to get into when the hearings are held in Washington. This relates to the Bureau of Reclamation and the Department of the Interior's testimony, and that of your company and the Idaho spaceholders.

We will take a 5-minute break and come back and start with the State legislators who are the next witnesses, and then get into all of them before we close.

[Short recess.]

Mr. JOHNSON. Our next witness as we resume our hearing will be Mr. John M. Barker, the State senator, president of the American Falls Reservoir District.

Mr. Barker.

STATEMENT OF JOHN M. BARKER, PRESIDENT, AMERICAN FALLS RESERVOIR DISTRICT

Mr. BARKER. Mr. Chairman, members of the committee, distinguished guests, ladies and gentlemen. I have prepared detailed remarks but will paraphrase them in the interest of time.

My name is John M. Barker. I operate an insurance agency in Buhl, Idaho. I am a farm owner and manager in Twin Falls County, Idaho. I have served as a director of the American Falls Reservoir District for 16 years, and for the past 6 years have served as president of the board. Since 1967 I have served as the chairman of that board. I have also served in the Idaho Legislature as a senator from Twin Falls County.

It is a great pleasure for me to represent the American Falls Reservoir District.

Our district was formed in 1923 when it became the consensus that the original American Falls Dam should be constructed. Because of the then unavailability of Federal moneys, our district bonded themselves for $2.7 million in general obligation bonds at 6 percent interest. The bond election was approved by a vote of 6 to 1. The lands in the American Falls Reservoir District were pledged to repayment of the then obligation. This money was used in the construction of the dam. The district now owns approximately 400,000 acre-feet of storage space in the reservoir, when the reservoir is operated at a full capacity of 1.7 million. Our district encompasses approximately 450,000 acres of land and represents five irrigation operating companies. They are the Twin Falls Canal Co., the North Side Canal Co., the Aberdeen-Spring-

field 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 C. 1529 for passage upon your return.

Our congressional delegation was receptive to proposals set out in Senate bill 1529; 96 percent of the spaceholders in American Falls are also in accord. The proposal of Senate bill 1529 is not unlike the situation that occurred in 1923 when the American Falls Reservoir District was formed. At that point Federal funds were not available for a much needed dam at American Falls and the 400,000 acres in the American Falls Reservoir District funded themselves for $2.7 million at 6 percent interest by a vote of 6 to 1 majority.

I call attention in my written testimony on page 3 next to the last paragraph concerning amendment to the bill concerning construction of a highway on the dam of Federal funds.

I want to thank you for the opportunity to appear here today. We are grateful to this committee for scheduling this field hearing to investigate the American Falls Dam matter.

We urge your continuing consideration of Senate bill S. 1529.

Mr. JOHNSON. We thank you for your summary.

I might say as far as the highway relocation, I think Congress is very receptive to that proposal. We don't have so much trouble building bridges as we do dams.

The gentleman from California, Mr. Ketchum.

Mr. KETCHUM. No questions.

Mr. JOHNSON. The gentleman from Nevada, Mr. Towell.

Mr. TOWELL. No questions, Mr. Chairman.

Mr. JOHNSON. Mr. Casey?

Mr. CASEY. No.

Mr. JOHNSON. Mr. Clausen is not here.

We want to thank you for coming here. You have certainly had long experience with this, you have been a legislator, businessman, farmer, and member of the organization that represents one of the spaceholders. This is the kind of testimony we like to get from local interests.

Mr. BARKER. Thank you.

Mr. JOHNSON. The next witness will be Mr. Bob Saxvik, State senator.

STATEMENT OF HON. ROBERT W. SAXVIK, STATE SENATOR FROM THE STATE OF IDAHO

Senator SAXVIK. Chairman Johnson, members of the committee, as a member of the Idaho Senate and a member of its Agricultural Affairs Committee and representing a constituency that is greatly affected by the sustaining water supply of American Falls, I feel it is of great importance to testify before you today.

I feel dwarfed a bit because of the great wealth of the witnesses that have appeared so far and will appear later. There is a great wealth of witnesses here today that have great expertise on water needs, contractual arrangements, power requirements, and historic background. But in my function I deal with somewhat of a cross-section of the people in my district. I am as interested in how it affects that woman working on the food processing line and her economic outlook and her economic well-being and security as the farmer who grows the product. I think they are all of equal importance. In other words, what I am talking about is the overall economic picture.

The failure to replace American Falls Dam in the near future could bode for an economic hardship that would perpetrate a "domino effect" on the entire area. The loss of water output as we have known in the past years will not only affect those farmers who are first—the raw producer—but it extends on to the processing plant—to the implement dealer—to the process worker—to the retailer in downtown areas—right on to the man on the street.

In other words, it will not only affect those farmers who are the No. 1 raw product producer, but it extends right on to the production, the banker, the process worker, and the retailer.

For those Congressmen not familiar with southern Idaho's economy, a decreasing percentage of our raw agricultural products are shipped out of the area. Since the mid-fifties, the Burley-Rupert area has had a tremendous growth in agricultural food processing, especially in potatoes. Add to that, the third largest sugar beet processing plant, a malt barley processing plant and a corn and pea canning plant plus all the other related service industries and you start to get a clear picture of our overall economic dependence on agriculture. For example, that same processing growth has converted Burley from the rather stable and staid community of 5,000 in the early fifties to a busy, ever-growing community of nearly 10,000 people, providing jobs for thousands of people and created a greater tax base that has the spinoff effect of new hospitals, schools, new recreation facilities, new construction in housing, added retail businesses, and increased demand for professional service.

This brings us to the old adage, "Which came first, the chicken or the egg?" In the case of American Falls Dam, the lines are clear—the water supply comes first, with the farmers' ability to produce, then the finished products—now much needed in tenuous world food supply.

It has been gratifying to see the cooperation between the many parties in seeing this project through. Governor Andrus, the Bureau of Reclamation, the Idaho Power Co., our congressional delegation, the Idaho Legislature, irrigation districts and many others.

With respect to the legislature, I along with Senator Barker, have always mentioned the fact we stand ready to serve and implement those needed pieces of State legislation and will support such.

I speak for the people of all walks of my legislative district 26. In ending my statement I would ask on their behalf for your support in seeing the enabling legislation passed.

Thank you very much.

Mr. JOHNSON. We thank you for your complete statement. If anything is left out it will be made a part of the record. We appreciate your summary. You should have been a prime witness before the Water Resources Council when they held their hearings on criteria and administrative practices. We tried to sell regional benefits, but the task force finding was set aside. Instead, we came out with a criteria we don't like. We think there is more to it than meets the eye. You have just brought to light here in your testimony, the things that are happening locally, the benefits that should be considered that will not be considered.

Senator SAXVIK. I can add to that, Mr. Chairman. There is often the bone of contention among business people and farmers that should never exist, especially in regions such as this.

Mr. JOHNSON. I am sure that farmers agree with us that there should be taken into consideration, all regional benefits as well as direct national benefits.

The gentleman from California, Mr. Ketchum.

Mr. KETCHUM. No questions, Mr. Chairman.

Mr. JOHNSON. The gentleman from Nevada.

Mr. TOWELL. No questions.

Mr. JOHNSON. Mr. Casey.

Mr. CASEY. No.

Mr. LUKEN. No.

Mr. JOHNSON. Our next witness will be Mr. Ralph Wheeler, State representative, member, city of American Falls Bridge Committee.

STATEMENT OF HON. RALPH WHEELER, STATE REPRESENTATIVE FROM DISTRICT 35, STATE OF IDAHO

Mr. WHEELER. Mr. Chairman and members of the committee, welcome to Idaho. I appreciate your efforts to come out here to get the grassroot feelings. I appreciate the opportunity of being able to testify before you today.

I have been a city councilman and mayor of American Falls for the past 15 years and as of the first of this year, a State representative from district 35, which includes the site of the American Falls Dam.

The residents of my legislative district have long noted the steady deterioration of the dam as well as the increasing inadequacy of the highway atop the structure. Until recently, their complaints have fallen on deaf ears.

The decreased storage behind the dam and the restrictions to one-way traffic on the highway have shown that the problem is at long last receiving the attention it deserves.

First, I would like to discuss the impact of the traffic restrictions. As the only crossing of the Snake River in an 80-mile reach, the American Falls Dam supports the road over which not only all the marketable farm produce from some 90,000 acres must travel, but also the route over which all the fuel, food, machinery, fertilizer, and other necessities of the agricultural community must pass. It also provides access to the closest hospital and medical care for some 5,000 people.

The road on the dam also serves a major potato processor for the potatoes, the 850 employees at the plant, and the market route for the finished product.

Most, but not all of the water users, are not residents of my legislative district. But I, like you gentlemen, cannot be narrowminded in my representation, I must be concerned about the well-being of the Magic Valley area and the State of Idaho as well.

As you have heard, the water stored behind the dam provides the life or death fate for nearly 900,000 acres which provides nearly 25 percent of the income for Idaho's largest industry—agriculture.

I am sure you are all aware of the vast amounts of borrowed capital that are necessary to operate today's farming operations. The 34-percent reduction in water storage could very easily result in near or complete crop failure, bankruptcy for many farmers and a domino effect carried through to food processors, suppliers and retailers touching the lives of tens, if not hundreds, of thousands of Idaho residents.

Should such a disaster occur, I would actually fear for the solvency of the State of Idaho itself. I don't think I am exaggerating in that fear.

The reservoir impounded behind the American Falls Dam is emerging as a major summer water-sport recreation area. The city of American Falls has had under planning for 3½ years now and has received

State approval and is awaiting Federal approval (which in turn awaits the fate of the legislation being discussed today) of a $528,000 marina on the lakeshore. At this point I would like to elaborate, this is a group effort. The city of American Falls has a sponsoring agency, the neighboring county, are all supplying local effort. The State of Idaho is supplying $200,000 and all of these efforts are being matched by the Federal Government through the Bureau of Outdoor Recreation for a facility that is long past due on this reservoir. The 120,000 residents within a 50-mile radius rely heavily on this reservoir and the surroundings for summer and fall recreation.

The downstream area has been, for over 40 years, a major trout fishery with some 16,000 being taken annually—some in the 15 to 20 pound class. Less than normal flows in the Snake River due to shortage restrictions may expose the natural spawning grounds and curtail normal propagation of German Brown and Rainbow Trout.

The exact plan to mitigate the loss of fish which will result from alterations of the downstream area due to construction has not been formulated, but obviously some acceptable replacement will be required. Two forums to discuss this—the Department of Interior's approval of construction and the Federal Power Commission's issuance of a license to generate electricity at the site—will provide ample opportunity for these issues to be resolved, and should not delay the adoption of H.R. 6782.

The executive summary report on the replacement of the American Falls Dam published by the Bureau of Reclamation in December 1972, is certainly a complete and comprehensive plan in that it speaks to water storage, flood control, fish and wildlife enhancement, recreation, highway improvement, and future power production. But it contains one very serious fault. When could that plan become a reality? The water users and the State of Idaho cannot wait. The need is immediate and critical.

My mission here today is to encourage, through this committee, the Congress of the United States to authorize the Secretary of the Interior to enter into agreements with non-Federal agencies for the replacement of the American Falls Dam.

As a Republican I take pride in quoting from John F. Kennedy, "Ask not what your country can do for you, but what you can do for your country." These words from the late John F. Kennedy epitomize the spirit of the free enterprise system in the United States and are certainly apropo here today. We are not asking for a Federal handout. Only a grant of authority for private enterprise, free from the burden of excessive redtape, to replace the dam and to construct an adequate highway crossing of the Snake River as soon as possible.

I, too, cannot overemphasize the emergency nature of this request. The earliest date construction could commence is January 1975, which means at least 2 crop years will pass before full storage can return.

Your cooperation in the passage of H.R. 6782, with the amendments as recommended, is vital to my district and the State of Idaho.

I appreciate your help and ask your cooperation.

I stand ready to answer any questions the committee may have.

Mr. JOHNSON. Thank you for your statement.

With your past experience you certainly know the local area, being in the highest local office. I presume when you are mayor you have more problems with constituency than in the State legislature.

Mr. WHEELER. At least I don't have to worry about the dogs running loose any more.

Mr. JOHNSON. I happen to have had that same experience.

The gentleman from California, Mr. Ketchum.

Mr. KETCHUM. No questions.

Mr. JOHNSON. Mr. Towell.

Mr. TOWELL. No questions.

Mr. JOHNSON. We want to thank you for giving us the benefit of your testimony. I think you pointed out a good many things to us. It wasn't quite as urgent to anybody's needs until you were cut back on the water. Water is a big thing.

Mr. WHEELER. It certainly is.

Thank you, Mr. Chairman.

Mr. JOHNSON. Our next witness will be Mr. Steven Antone, the State legislature, Minidoka County.

STATEMENT OF HON. STEVEN ANTONE, STATE REPRESENTATIVE FROM DISTRICT 21, STATE OF IDAHO

Mr. ANTONE. Mr. Chairman and honorable members of the committee, Senator McClure, Congressman Hansen, and Congressman Symms, it is indeed a pleasure to testify before you today. I appreciate your having traveled to Idaho to hear today on this and see conditions at the local level.

My name is Steven Antone and I reside at Rupert, Idaho. I am a lifetime resident of Minidoka County which is located in the south-central part of the State of Idaho and in the heart of the Snake River Plain. I am, by occupation, a farmer and State legislator and it is in each of these capacities that I appear before you. As the manager of an irrigated farm, I am perhaps more aware of the necessity of having an ample water supply to complete to maturity the crops planted and nurtured during the long summer. My present farm for some 20-odd years has been converted from dry desert land to a highly productive irrigated farm.

All of Idaho, I think, at one time was all arid. When the pioneers came to this country they found nothing but sage-brush. For many years cattle flourished in this country but no farming except around a few streams. When the dams were put in, the irrigation projects developed, it changed; it went from a dry climate to an irrigated climate. I don't think Idaho would be known today if we had not had those dams to produce those potatoes. I don't think anybody in the East would have known Idaho was here if we did not have the potatoes.

Within Minidoka County there are approximately 150,000 irrigated acres upon which the entire economy of our communities rely.

Within Minidoka County, which is a part of my legislative district, is located Minidoka Irrigation District consisting of 1,690 farm units and containing 72,370 acres of irrigable land. Crops grown upon these lands within Minidoka Irrigation District are barley, oats, wheats, mixed grains, alfalfa, pasture, sugar beets, potatoes, beans, sweet corn, silage and alfalfa, and clover seed. These lands depend upon water from the Snake River for irrigation and primarily from winter water stored in several reservoirs on the upper Snake River. It is absolutely necessary that these lands in Minidoka County and other lands

dependent upon water stored in the Snake River be assured of an adequate water supply. It is my considered opinion that the most prudent method of obtaining full storage behind American Falls Dam is to proceed as soon as possible with the rebuilding of American Falls Dam. It is also my considered opinion that this can be accomplished most readily by the passage of S. 1529, authorizing the spaceholders to proceed with the construction of a new dam with private financing. This dam can be on the line much quicker, I believe, going this route than it can by waiting for Federal legislation and congressional approval of funds.

I think that previous testimony has brought out that the people of Idaho are behind construction of this dam. This is very true. Perhaps this can be best illustrated by the passage of House Joint Memorial No. 3–F which there is a copy enclosed on the back of my statement which passed both the Idaho House and Senate unanimously.

Speaking on behalf of my constituents, I respectfully urge that S. 1529 be reported out favorably so construction of the dam may start as soon as possible.

I would be glad to answer any questions if there are any.

Mr. JOHNSON. Thank you for your statement. The full statement will be placed in the record as if presented in full, and also the House Joint Memorial No. 3 as you related to being passed by both houses of the Idaho Legislature unanimously.

Mr. ANTONE. I am sure copies were sent to the Speaker.

Mr. JOHNSON. We will have them.

Mr. Ketchum.

Mr. KETCHUM. No questions. I would like to inform the gentleman as a farmer myself I will send you some potatoes.

Mr. ANTONE. Mr. Ketchum, I think it was a great mistake to have apples here. We should have had potatoes for you to munch on while you were listening to this.

Mr. JOHNSON. These apples are going to be very helpful to us because they will carry us through lunch and we will continue. If we had potatoes it would be a little rough eating as some of your other crops.

Mr. ANTONE. Mr. Chairman, you have to bake them first.

Mr. JOHNSON. I noticed out of the motel window the bean crops and the sugar beet crop. So we are in farming country. I will be able to sleep tonight.

Mr. Towell.

Mr. TOWELL. No, thank you.

Mr. KETCHUM. No, thank you.

Mr. JOHNSON. We are not snubbing your local people. Senators Hansen and McClure know all your people. We support the project and we are trying to get the record in a minimal amount of time and go right through the witnesses and give everyone an opportunity to be heard. If you gentlemen want to ask or refer to a question why feel free to just ask for time and we will grant it.

Mr. ANTONE. Mr. Chairman, I attempted to just brush through this more rapidly. There are more things in the testimony.

Mr. JOHNSON. Oh, yes. It will appear in the record as presented in full. The purposes of these field hearings is to have the hearing that is taken in the field available to the members of the full committee when

we meet in Washington. If there is any opposition carried in that particular field hearing the other people who come to testify in Washington, unless you are terribly aggrieved, are those in support of the project or the Department itself. That is why we take the hearings in the field. Everyone has been so unanimous here I don't know whether we will have any opposition or not. We will find that out when we get through with all the witnesses.

[Mr. Antone's statement and House Joint Memorial No. 3 follow:]

STATEMENT OF HON. STEVEN ANTONE, STATE REPRESENTATIVE, LEGISLATIVE DISTRICT 21, IDAHO

My name is Steven Antone and I reside at Rupert, Idaho. I am a lifetime resident of Minidoka County which is located in the southcentral part of the State of Idaho and in the heart of the Snake River Plain. I am by occupation a farmer and state legislater and it is in each of these capacities that I appear before you. As the manager of an irrigated farm, I am perhaps more aware of the necessity of having an ample water supply to complete to maturity the crops planted and nurtured during the long summer. My present farm for some twenty odd years has been converted from dry desert land to a highly productive irrigated farm. The lands upon which you are presently situated during this hearing in North Burley, Idaho were at one time dry desert lands as well. Within Minidoka County of which north Burley, Idaho, is a part as well as the land which I farm, there are approximately 150,000 irrigated acres upon which the entire economy of our communities rely. In fact, it is clear to the people living in Southern Idaho that the irrigated farms are the life blood of our economy and dams such as the one located at American Falls are an essential part of this overall industry.

Within Minidoka County, which is a part of my legislative district, is located Minidoka Irrigation District consisting of 1,690 farm units and containing 72,370 acres of irrigable land. Crops grown upon these lands within Minidoka Irrigation District are barley, oats, wheats, mixed grains, alfalfa, pasture, sugar beets, potatoes, beans, sweet corn, silage and alfalfa and clover seed. These lands depend upon wate from the Snake River for irrigation and primarily from winter water stored in several reservoirs on the upper Snake River. It is absolutely necessary that these lands in Minidoka County and other lands dependent upon water stored in the Snake River be assured of an adequate water supply. It is my considered opinion that the most prudent method of obtaining full storage behind American Falls Dam is to proceed as soon as possible with the rebuilding of American Falls Dam. It is also my considered opinion that this can be accomplished most readily by the passage of S. 1529, authorizing the spaceholders to proceed with the construction of a new dam with private financing. With the present restriction on American Falls Dam, a severe drought in our region could cause citizens in the State of Idaho to lose more in one year than the entire cost of rebuilding American Falls Dam. This storage of water is too vital to Southern Idaho to allow avoidable delays.

The cities of Rupert, Heyburn, Paul and Acequia, each of which are located within my legislative district, are dependent upon the agricultural economy which is in turn dependent upon American Falls Dam. I sincerely believe that if each citizen of our State could have the opportunity to direct their remarks to you as I am doing, they would join in one single accord for the prompt rebuilding of American Falls Dam. This perhaps is best illustrated by House Joint Memorial 3 urging the construction of a replacement dam at American Falls within the earliest possible time, which was unanimously adopted by the Senate and House of Representatives of the State of Idaho during the Forty-second session in 1973. Speaking on behalf of my constituents, I respectfully urge that S. 1529 be reported favorably from this subcommittee. It is only by the passage of this most important legislation that we can be assured that a disastrous crop year can be avoided. The spaceholders of American Falls reservoir are willing to assume a very large indebtedness to obtain a new dam at American Falls which is consistent with the pioneer spirit of the people of this state. With the passage of S. 1529, they will be able to proceed to obtain this most needed insurance, that is, full storage of irrigation water behind American Falls Dam.

HOUSE JOINT MEMORIAL NO. 3, BY ANTONE, A JOINT MEMORIAL

To the President of the United States, the honorable Senate and House of Representatives of the United States in Congress assembled, the Secretary of the Interior and the Idaho Congressional Delegation representing this State in the Congress of the United States.

We, your Memorialists, the House of Representatives and Senate of the State of Idaho assembled in the First Regular Session of the Forty-second Idaho Legislature do respectfully represent that:

Whereas, the American Falls Dam, Upper Snake River Basin, Idaho is the foundation of the existing irrigation development in the Upper Snake River Basin, and contributes almost one-half of the usable storage on the main stem of the Upper Snake River; and

Whereas, cracking throughout the dam has required restrictions on storage equal to one-third of its capacity and the continually deteriorating structure, if not replaced, will require further storage restrictions; and

Whereas, the Bureau of Reclamation, of the United States Department of Interior, has recommended that the structure be replaced; and

Whereas, if the structure is not replaced financial failure for hundreds of farmers and severe economic loss is predicted, as well as danger to human life; and

Whereas, alternatives exist to replace the dam with a structure downstream from the existing structure which would remedy the problems currently encountered.

Now, therefore, be it

Resolved, By the First Regular Session of the Forty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that the Legislature respectfully requests that the Congress take whatever action is necessary to replace the existing structure and to insure that the new dam is completed without delay.

Be it further resolved, That the Clerk of the House of Representatives be, and she is hereby authorized and directed to forward copies of this Memorial to the President of the United States, the Vice-President of the United States, the Speaker of the House of Representatives of Congress, the Secretary of the Interior, and the members of the Idaho Congressional Delegation representing this state in the Congress of the United States.

HJM 3 was introduced, read the first time at length and referred to the Printing and Legislative Expense Committee.

Mr. ANTONE. Thank you, Mr. Chairman.

Mr. JOHNSON. Our next witness will be Mr. Clifford Scoresby.

STATEMENT OF CLIFFORD SCORESBY, REPRESENTING UPPER VALLEY SPACEHOLDERS

Mr. SCORESBY. Mr. Chairman, members of the committee, and Senator McClure and Representative Hansen, I appreciate the opportunity that has been given me to testify here a few moments this afternoon.

I have a prepared statement that I would hope to be put in the record.

Mr. JOHNSON. Your prepared statement will appear in the record and you may summarize it.

[Mr. Scoresby's prepared statement follows:]

OCTOBER 3, 1973.

HON. HAROLD T. JOHNSON,
Subcommittee Chairman, Water and Power Resources Subcommittee, Interior and Insular Affairs Committee, U.S. House of Representatives, Washington, D.C.

Mr. Chairman and members of this subcommittee, my name is Clifford N. Scoresby. I have owned and operated an irrigated farm Northeast of Idaho Falls, Idaho, for approximately 50 years. Like most people in my area, I have primarily raised potatoes, sugar beets, grain and hay. My farming operation is wholly dependent for its success upon the availability of natural flow and storage water from the Snake River.

For many years I have been interested and involved in various water user organizations. I am presently the vice chairman of the Board of Directors of the Progressive Irrigation District. I was chairman of the board for approximately 20 years. The Progressive Irrigation District comprises approximately 32,000 acres of land and serves some 1400 water users which includes my own farm. The Progressive Irrigation District owns space in American Falls Reservoir, the storage water from the space in American Falls Reservoir is essential to the maturing of the crops of the water users in the district. Since the restrictions have been placed on the amount of storage in American Falls, a dry year could be disastrous to the maturing of crops in our district.

I am also a member of the Board of Directors of the Upper Snake River Water Users Protective Union, and am Secretary of that board. The Protective Union represents approximately 50 canal companies, most of which own space in the American Falls Reservoir. I have also been a member of the committee of nine for approximately 30 years and presently serve as the secretary of that body. The committee of nine is an official advisory committee under the terms of the Palisades contract and has for many years been involved in and concerned with the orderly development and administration of the water storage and distribution system of the Upper Snake River from Milner Dam to the head waters. In addition, I am presently serving my fourth term in the Idaho State Legislature as the representative from District Number 31.

During the years that I have farmed and been involved with water affairs in Southeastern Idaho, I have seen the serious problems which result to our community in the dry cycles and when there is insufficient storage. For this reason I have always urged and worked to develop and preserve an adequate storage system to insure against the devastating losses which have occurred in the past. The American Falls Reservoir is one of the major parts of this storage system and the present restrictions on the storage capacity of that reservoir place nearly all of the water users in the Upper Snake River Valley in serious jeopardy. In fact, it would be fair to say that the decreased storage capacity in the American Falls Reservoir as a result of the deterioration of the American Falls Dam is crucial to the entire agricultural economy of Southeastern Idaho.

For these reasons, on my own behalf and on behalf of all the members of those organizations of which I am a member and which I have been asked to represent, I urge this committee to give a favorable report on senate bill number 1529 to facilitate its early passage and the earliest practicable replacement of the American Falls Dam to restore that reservoir to its former storage capacity.

CLIFFORD N. SCORESBY.

Mr. SCORESBY. I am here today, Mr. Chairman, primarily to represent the upper valley spaceholders in the American Falls Reservoir. I happen to be secretary of the Upper Valley Protective Union Association that comprises about 50 canal companies and irrigation districts, most of whom have space in American Falls Reservoir. You might wonder how we arranged this. We have an exchange agreement through the Bureau of Reclamation and the water masters to exchange water to the lower valley from American Falls.

Most of our people have some storage in this reservoir.

I would only urge that with all the testimony presented here today that it be constructed as soon as possible and not let anything interfere with it.

Of course, we can use our own local money. That is the best way to go.

I am also secretary of a committee of nine, the advisory group on Snake River. We have a very efficient organization that is unique in its history and something that we are proud of in this part of the State of Idaho. We get along very well. We have fine cooperation from all the water users in the districts up and down the valley.

I will be glad to answer any questions.

Mr. JOHNSON. Thank you for your statement, Mr. Scoresby.

As we flew in this morning, and as we have looked at Idaho for probably the 10th trip by air and once by automobile, I see a good farming pattern. We see people living on these farms.

In my own State of California, and especially in the area my colleague, Mr. Ketchum represents, sometimes we don't see a house for a good many thousands of acres, but there is a lot of farming going on. You people have lived with this, developed your crop patterns, built up your area. I think this is the most helpful type of farming we have and we want to try to see it continued.

Mr. SCORESBY. Right.

Mr. JOHNSON. The gentleman from California, Mr. Ketchum.

Mr. KETCHUM. No questions.

Mr. JOHNSON. Mr. Towell.

Mr. TOWELL. No questions.

Mr. JOHNSON. We thank you for the benefit of your testimony.

Mr. SCORESBY. Thank you, Mr. Chairman, and members of the committee.

Mr. JOHNSON. Our next witness will be Mr. Cecil Hobdey, secretary, American Falls Executive Committee, counsel for the largest spaceholder.

STATEMENT OF CECIL HOBDEY, SECRETARY, AMERICAN FALLS EXECUTIVE COMMITTEE; COUNSEL FOR THE LARGEST IRRIGATION DISTRICT, SPACEHOLDER

Mr. HOBDEY. Members of the committee, in view of the chairman's remarks I will make these comments very brief.

I would first like to identify the committee for whom I appear. There are some 35 spaceholders in the American Falls Reservoir. These vary from individuals holding only a few hundred feet to individuals holding several hundred thousand acre feet. By virtue of the vast amount of space involved, we have varying conditions in farming. For this reason the space holders felt that it would be advisable to create a committee to help formulate plans, investigate possibilities for replacement, and that is how the committee of eight came into existence. The committee is comprised of members from the upper reaches of the Snake to the lower end of the project.

I might say when the proposal of Idaho Power was first presented it seemed the essence of simplicity. The spaceholders would simply build a dam and Idaho Power would help repay it. However, we soon found we were headed into a hydra-headed monster, cut off one head and we were faced with two more The spaceholders have to this point advanced money to the State of Idaho for engineering, advanced money for planning, obligated themselves to Bechtel, and spent other moneys in developing testimony. To me, I think, the one point I would like to make on behalf of the spaceholders is: Cognizant of all the risks involved and the uncertainties of passage before this honorable subcommittee, the spaceholders have taken those risks and raised that money and have spent it. We think this demonstrates the good faith of the spaceholders.

I would request my full statement be made a part of the record.

Mr. JOHNSON. Your statement will appear as if given in full in the record.

[Mr. Hobdey's prepared statement follows:]

OCTOBER 6, 1973.

HON. HAROLD T. JOHNSON,
Subcommittee Chairman, Water and Power Resources Subcommittee, Interior and Insular Affairs Committee, U.S. House of Representatives, Washington, D.C.:

Mr. Chairman and members of the committee, by name is Cecil D. Hobdey. I am a lawyer and reside at Gooding, Idaho.

I am appearing before this Honorable Committee representing a committee which has been designated as "The Committee of Eight".

There are 35 Spaceholders holding storage rights in the American Falls Reservoir. These Spaceholders range from individuals owning only a few hundred acre feet of storage to irrigation districts holding several hundred thousand acre feet of storage. Also included as Spaceholders are municipalities, private irrigation companies, a public utility and the Shoshone Bannock Indians.

The farms served by the reservoir vary radically in size and in the kind of crops grown and because of the rather vast size of the area involved, are subject to varying climatical conditions. The stored water in American Falls Reservoir, therefore, obviously means different things to different persons. For some, the water stored in American Falls Reservoir is in the nature of insurance in the event of the failure of a primary water source: for others it represents a needed supplemental source, and for some it represents their only irrigation water source.

When the Bureau of Reclamation made the determination that, because of the deteriorating condition of the American Falls Dam it would be necessary to restrict the storage, it immediately became the concern of the Spaceholders to have the dam replaced in the most expeditious and economical manner.

At a general meeting of the Spaceholders a committee was organized, hopefully representative of all the Spaceholders for the purpose of investigating alternatives available to the Spaceholders.

The Committee of Eight is comprised of the following members:
Leonard Graham and Russell Heim representing the Upper Snake River area.
Roger Ling representing the Minidoka County area.
Cliff Darrington representing the Cassia County area.
Charles Marshall representing the Jerome County area.
Tom Olmstead representing the Twin Falls County area.
Robert Hogg representing the Idaho Power Company.
Cecil D. Hobdey representing the Gooding and Lincoln County area.

C. J. Marshall, Jerome, Idaho, was named Chairman of the committee and I serve as Secretary.

The committee has met almost weekly since last December.

A proposal to aid in the replacement of the dam was made by Idaho Power Company which will be explained in detail by other witnesses.

The concept was and is, simple—the Spaceholders would build the replacement dam and enter into a contract with Idaho Power Company to sell them the falling water for power generation.

It didn't take long, however, for the committee to realize that it was coping with a hydra-headed monster.

The committee first faced the problem of financing the replacement dam, from current preliminary design to construction. Because time was and is so critical, Spaceholders agreed to finance the preliminary phases with no assurance that the dam would or could be ultimately constructed by them. To this date thousands of dollars have been advanced by the Spaceholders, cognizant of the risk involved.

Conflicts with respect to the question of replacing the river crossing arose. The Spaceholders agreed to be responsible for the construction of a two-lane crossing and have advanced money for the preliminary engineering necessary.

It became apparent because the present dam is owned by the Bureau that we would need Federal Legislation and the Spaceholders advanced money to accumulate and submit testimony and evidence for this purpose. Hopefully, this committee will see fit to recommend passage of the Federal Legislation which we so desparately need.

I can assure this committee that final passage of the Bill by Congress will not terminate the problems of the Committee of Eight.

We will need additional legislation by the Idaho Legislature according to our Bond Counsel before bonds would be salable.

There are innumerable contracts to be negotiated as, for example, contracts between American Falls Reservoir, the constructing agency and the Bureau of Reclamation; between American Falls Reservoir District and Idaho River Company; between the respective Spaceholders and American Falls Reservoir District, etc.

Finally, even though all these preliminary matters are favorably resolved, the replacement of the dam cannot take place until bonds are sold and funds made available. We are operating on an extremely inflexible time schedule in an effort to minimize the time the farmers will be subject to less than full water rights.

What I have tried to emphasize is that notwithstanding the myriad of practical and legal problems the Spaceholders have faced and will face, they have been willing to risk the expenditures of money in the confidence that those in a position to assist them in our hour of need will do so.

Respectfully submitted,

CECIL D. HOBBEY.

Mr. JOHNSON. After glancing through it rather hurriedly, I see you have prepared a very fine statement for the record. I can only say that you people seem to get yourselves together very quickly after the restriction was placed on storage. You have come up with a good workable plan.

In the report from the Department, as you know, there is only one matter that concerns the Department of the Interior and the Bureau of Reclamation. That is the matter of arbitration being mandated in the legislation.

Do you have anything further on that?

Mr. HOBBEY. Yes, I think I could comment, Mr. Chairman.

I think the reason that the spaceholders feel that this is important and desirable might even stem back to a situation which is involved in the Bechtel plan. While I don't want to preempt Mr. Patrick's comments or to get into the engineering field, the plan as proposed by Bechtel was to utilize the left embankment as an impervious core for the dam, obviously for the purposes of economy. My interpretation of the Bureau's position was that this was not a desirable thing. This, I think in the minds of the committee and the spaceholders, raised the specter of the same type of disagreement being raised in the future. Our concern was and is if we get a similar hangup we don't want something sitting on someone's desk in Washington or Denver or Boise or wherever. We want a situation where we can get this thing moved.

Mr. JOHNSON. I promise you are, then, satisfied that the estimated input as far as the Idaho Power Co. is concerned, the $19 million is sufficient to cover a proper structure.

Mr. HOBBEY. I can only say there, Mr. Chairman, that I feel that the Idaho Power Co. has made a sufficient study and have only obligated themselves to what they feel is their limit in view of their own return.

I don't think Idaho Power is any kind of godfather or someone who will give us anything. I think they have reached a determination of fact—they can get so much from their investment and this is as far as we can go.

Mr. JOHNSON. In their statement they stated how far they could go as far as costs are concerned.

Mr. HOBBEY. Yes.

Mr. JOHNSON. You don't see anything that would cause the price of the structure to go up? As you mentioned there was a difference of principle already raised between the Bureau and the spaceholders as to the type and character of abutments.

Mr. HOBBEY. I am sure if the price does go up we as spaceholders are not saying Idaho Power has any other obligation other than what they have proposed.

Mr. JOHNSON. And you are satisfied with this proposal as a spaceholder?

Mr. HOBBEY. I suppose I am, but I should not be be making that determination on behalf of the committee of eight.

Mr. KETCHUM. No questions.

Tr. TOWELL. No questions.

Mr. CASEY. May I ask the witness one question?

Mr. JOHNSON. Yes.

Mr. CASEY. Would you furnish for our record or tell us now just about how much the spaceholders are out of pocket as of now in this project?

Mr. HOBBEY. I don't have that available, but I certainly can and will make that available.

Mr. JOHNSON. If you will, then we will place it in the record.

Mr. HOBBEY. Thank you.

Mr. JOHNSON. Thank you for appearing here.

Our next witness will be Mr. Ted Diehl, president of the spaceholders organization, and manager, Northside Canal. Co.

STATEMENT OF TED DIEHL, PRESIDENT, AMERICAN FALLS SPACEHOLDERS, AND MANAGER, NORTH SIDE CANAL CO., JEROME, IDAHO

Mr. DIEHL. Chairman Johnson, members of the committee, Congressman Hansen, and Senator McClure, I would like just to summarize and have my full statement——

Mr. JOHNSON. Your full statement will appear in the record as presented in full, and you may summarize.

[Mr. Diehl's prepared statement follows:]

STATEMENT OF TED DIEHL, PRESIDENT OF AMERICAN FALLS SPACEHOLDERS

Chairman Johnson, members of the committee, distinguished guests, ladies and gentlemen, my name is Ted Diehl. I am president of the American Falls Spaceholders organization. I am a registered professional engineer, and serve as general manager of the North Side Canal Co., with offices in Jerome, Idaho.

The American Falls Spaceholders support S. 1529 and the promise that it holds for the early replacement of the deteriorated American Falls Dam. Since the restriction order of last October, the Spaceholders have pulled together in a united effort to attempt to secure the speediest possible replacement of the existing American Falls Dam.

We are most pleased today that your Committee is giving us the opportunity to talk to you about the problems inherent in the operation of the American Falls Dam at less than full capacity, and its need for replacement. We particularly appreciate the Committee's scheduling of this hearing in Burley, so that we might demonstrate to you the need for the early replacement of the dam.

As you know, when the American Falls Reservoir is filled to capacity, it contains 1,700,000 acre-feet. Although it is difficult to say that any one reservoir is most important in the operation of the irrigation economy of Southern Idaho, American Falls is certainly a most vital link. In addition to providing primary water rights for two of the larger districts in Idaho, American Falls contains that supplemental water which is needed each year to finish crops properly. The benefits from the reservoir would extend to nearly 800,000 acres of irrigated land. With the operation of the reservoir at slightly under two-thirds of normal capacity, and any combination of less than bountiful water years could well spell economic disaster for American Falls Spaceholders. For example, my employer,

the North Side Canal Company, owns independently and through the American Falls Reservoir District, approximately one-fourth of the total capacity of the reservoir. This is our primary water right for our 160,000 acres of irrigated ground. With the present loss of one-third, and a possibility of additional restrictions, if we have other than good years in the watershed, it could well mean water cutbacks and agricultural losses which would be disastrous to the economy of our valley.

For these reasons, and because the Idaho Congressional delegation advised that it would be difficult to obtain early Federal funding for the replacement project, the Spaceholders united together in support of S. 1529. It is our hope that your Committee will favorably and expeditiously consider S. 1529, and encourage its passage in the United States House of Representatives. We as Spaceholders, are presently involved in advancing money to keep engineering schedules and other pre-construction work on schedule, in the hope that we will be able to proceed. Through our Executive Committee, the Spaceholders plan to honor their commitments in assisting in the construction of an adequate bridge at American Falls, as well as to work out the best possible and practicable mitigation of the environmental facilities.

We recognize that we have problems which must be overcome prior to the initiation of construction, but the Spaceholders are pledged to rebuild the dam, and we are prepared to do whatever is necessary to get that job accomplished. We appreciate the proposal of the Idaho Power Company to purchase falling water, as it would lighten the financial obligation of the landowners.

The effort to replace the dam has been a united one for Idaho. We particularly want to thank the members of our Congressional delegation and Governor Andrus, for lending our project their support. We also wish to thank the Bureau of Reclamation for their cooperation in these preliminary stages.

We acknowledge that there are problems inherent in the manner in which we propose to proceed. However, the majority of the Spaceholders are convinced that S. 1529 is the proper course.

I again thank you for coming to Burley, for this hearing, and for your tour of the facilities, so that you might get a first hand look at the American Falls replacement problem. We ask your favorable consideration of S. 1529.

Mr. DIEHL. As previously stated, my name is Ted Diehl. I am president of the American Falls Spaceholders organization. I am a registered professional engineer, and serve as general manager of the North Side Canal Co., with offices in Jerome, Idaho.

The American Falls Spaceholders support S. 1529 and the promise that it holds for the early replacement of the deterioated American Falls Dam.

Our company owns about one-fourth of the American Falls Dam. We are vitally affected with the restrictions it has presented to us. Because of the high cost of putting crops in, the area I serve cannot afford to be short of water and lose that money.

North Side Canal Co. has water rights for approximately 160,000 acres, and we need all the water that we can have to guarantee crops.

I was born and raised in the area that I serve, and I can remember back in the early 1930's and late 1920's the short-water years we had and how that really affected the farming economy in our area. If we were to have that today, it would be such a disaster compared to those days that you could not believe it, because today it $250 to $400 an acre to raise a proper spud crop.

I would like to say the Spaceholders in all good faith came up with some money, presented it where it was needed and worked real hard to get the replacement of American Falls Dam. From the offset we just looked at how can we replace the dam the quickest in the easiest method.

With that I will answer any questions you have.

Mr. JOHNSON. We appreciate your being here.

Were you curtailed with your water this summer?

Mr. DIEHL. No, we were not. We watched it very carefully, but if we were to have another winter like last we certainly would be.

Mr. JOHNSON. If you would have a dry winter you would be short next year?

Mr. DIEHL. Yes, sir.

Mr. JOHNSON. You are all participants, share and share alike, Spaceholders?

Mr. DIEHL. It is just like going down to the bank. I have a saving account and you have one and mine runs short and I ask you for yours, I am sure you won't let me have any of it.

Mr. JOHNSON. On a given river for a given area, if there is a group of users that use water for the same purposes, generally during a dry year you have to share and share alike. The same deduction is made against all the Spaceholders. Who has first call?

Mr. DIEHL. You heard about the Committee of Nine. That was formed to keep people from shooting each other over water rights. If there is water to spare there will be a chance to lease water or loan water. Some people have better rights than others. That is why we guard ourselves just like everybody else.

Mr. JOHNSON. You being an older company operating in the area, your water rights are a little more secure than some of the rest?

Mr. DIEHL. Well, I would hope so.

Mr. JOHNSON. The gentleman from California.

Mr. KETCHUM. No questions.

Mr. JOHNSON. Mr. Towell.

Mr. TOWELL. No questions.

Mr. JOHNSON. Mr. Casey.

Mr. CASEY. No questions.

Mr. JOHNSON. We would like to thank you.

Mr. DIEHL. Thank you. I want to thank all you gentlemen for coming to Idaho to see our problem.

Mr. JOHNSON. Our next witness is Mr. Burdell Curtis, manager of the Burley Irrigation District, representing the Central Valley Spaceholders.

Mr. Curtis.

STATEMENT OF BURDELL CURTIS, MANAGER, BURLEY IRRIGATION DISTRICT, REPRESENTING CENTRAL VALLEY SPACEHOLDERS

Mr. CURTIS. Thank you, Mr. Chairman, members of the committee, ladies and gentlemen.

My name is Burdell Curtis. I have been a resident of the Burley irrigation project practically all my life. I have a 300-acre farm operation, which includes the old homestead where my father cleared the sagebrush in 1909.

I have been actively engaged in or associated with agriculture and stock raising all my life. At the present time, I am manager of the Burley Irrigation District, which position I have held for the past 10 years.

In 1909, the Burley Irrigation District had 139,780 acre-feet of storage space in Jackson Lake, and 31,885 acre-feet of storage space in Lake Walcott, totaling 3½ acre-feet per acre.

The American Falls Dam was completed in 1927 and in 1952 the District's water rights in Jackson Lake, through an exchange initiated by the Bureau of Reclamation, were transferred downstream to American Falls Reservoir, where an additional 18,162 acre-feet of storage space was acquired.

The Palisades Dam was completed in 1957 and an additional 39,000 acre-feet of storage space was purchased, making a total of 4¾ acre-feet of storage space per acre, which is necessary to produce and mature the kind of crops raised in this area.

It was during the years from 1909 until the transfer was made to American Falls that crops suffered as a result of an inadequate water supply. From 1920 to 1928, an average of 2¾ acre-feet of water was delivered each year per acre to the farms. This is not sufficient water to produce crops in this area.

The storage restriction placed on American Falls Reservoir decreases our storage 1 acre-foot, down to 3¾ acre-feet per acre.

I can remember, as a youth, riding in a Model T Ford, with my parents, to Rupert, Idaho, in the spring of the year on a number of occasions when the water in Snake River would be up over the road, north of Declo, as we approached the bridge to cross the river. Then later in the summer, my father would be discussing the shortages of water and wondering which crops to irrigate and save, and which to sacrifice.

Since the construction of American Falls and Palisade Dams, the flooding conditions do not occur and the water is stored and put to beneficial use during the summer months. However, we still experience short water years due to drought.

We have had above normal precipitation since the restriction was placed on American Falls capacity. This has averted a crisis. During a normal year, it would be necessary for our district to rent 50,000 acre-feet of water at a cost of $25,000, if it was available. During a dry year, it would result in a short water supply and an economic disaster to our area.

Snake River is the life blood of this valley. The dams hold the winter and spring run-off water which is diverted during the hot summer months to fertile fields to produce food for people of our valley, State, and Nation.

The Burley irrigation district with 715 family farms, 48,000 acres of farm land, valued at more than $50 million; not to mention the vast amount invested in homes, schools, churces, utilities, highways, cities, industries, and irrigation systems. This would be practically worthless without the dams in the Snake River.

American Falls Dam is very important to us and other spaceholders and to thousands of people dependent upon it for a livelihood. It holds three-fifths of our storage, or 3 acre-feet of the 4¾ acre-feet per acre.

Speaking in behalf of the water users of this district and valley, we would appreciate your consideration and support of S. 1529 before more restriction is placed on American Falls Reservoir storage.

Thank you for the privilege of permitting me to testify before you.

Mr. JOHNSON. Thank you, Mr. Curtis, for a very fine statement on behalf of the Burley Irrigation District, as well as yourself as a rancher and the others that you represent.

I think you have covered it from the day it was sagebrush up until what you have here now. Certainly you need the amount of water you speak of to carry on your operations today.

There was a time when you could probably get by with less, but today you would be out of business. Is that right?

Mr. CURTIS. That is right.

Mr. JOHNSON. The gentleman from California.

Mr. KETCHUM. No questioning.

Mr. JOHNSON. Mr. Towell.

Mr. TOWELL. One quick question of the witness.

I think it should appear in the record that we are definitely dealing with family type farm operations. Do you have any figure as to the average size of the family farm?

Mr. CURTIS. Forty to eighty acres. That would figure out by dividing 175 into 48,000. There are some larger tracts and some 20-acre tracts. Some people have only 10 acres.

Mr. JOHNSON. Mr. Casey.

Mr. CASEY. No questions.

Mr. JOHNSON. Mr. Luken.

Mr. LUKEN. No questions.

Mr. JOHNSON. Thank you, Mr. Curtis.

Our next witness will be Mr. Wendell Johnson, representing the board of directors of American Falls Reservoir, District No. 2, and the board of director of Big Wood Canal Co., Shoshone, Idaho.

STATEMENT OF WENDELL JOHNSON, REPRESENTING THE BOARD OF DIRECTORS OF AMERICAN FALLS RESERVOIR, DISTRICT NO. 2, AND THE BOARD OF DIRECTORS OF BIG WOOD CANAL CO., SHOSHONE, IDAHO

Mr. WENDELL JOHNSON. I am very pleased to be here.

We have all stated that time is of essence, and looking at my watch, if we are going to make the tour, I will have to hurry.

My name is Wendell Johnson. I reside in Richfield, Idaho, and own and operate a ranch in Richfield and Dietrich, Idaho. I am director of the board of directors of American Falls Reservoir, District No. 2, and also a member of the board of directors of Big Wood Canal Co., Shoshone, Idaho.

The area I represent is a little different than the other areas that we have been talking about in that for about 60,000 acres of this project, this is the only storage we have. We have no other storage for this, and to answer a little more fully a question that Mr. Towell asked awhile ago, whether anybody was short, we were short. The restriction that is placed on the dam falls most heavily upon our irrigation district because of the way it is arranged. We were the last to get in the door, so we are the first ones that feel the bite.

We got by very well this year. We had excellent crops, but it was a little tight. We all had to remember how to irrigate just a little better. The memory came back of how it was to be a little short. It was a rather grim specter standing there in the wings.

The only reason we survived this year was we had the ability to rent or purchase 80,000 acre-feet of water from American Falls at a cost of

$40,000. We still had to cut our delivery to 80 percent for 2 months and we shortened it by 15 days. But it was adequate. We got by with it.

You have got to realize that we only got by in a year when we had very adequate carryovers. Had the carryovers not been this way we would have been in a very serious problem.

Time is very, very important to us, because although we do have Magic Dam that supplies 40,000 acre-feet of water. This is inadequate, and anybody who lives in our area knows that when we are getting all our water from Magic. We have less than a month's water. This is a disaster. All we are asking is, let us do it ourselves and let us get it done in a hurry.

Mr. JOHNSON. Mr. Johnson, your statement will appear in the record as if presented in full.

Thank you for your summary.

[Full statement follows:]

OCTOBER 5, 1973.

HON. HAROLD T. JOHNSON,
Subcommittee Chairman, Water and Power Resources Subcommittee, Interior and Insular Affairs Committee, U.S. House of Representatives, Washington, D.C.

Mr. Chairman and member of the committee, my name is Wendell Johnson. I reside in Richfield, Idaho and own and operate a ranch in Richfield and Dietrich, Idaho. I am a director of the Board of Directors of American Falls Reservoir District No. 2 and also a member of the Board of Director of Big Wood Canal Company, Shoshone, Idaho.

The area I represent has an early history of short water years. The project was taken up in 1907 by the Idaho Irrigation Company and was supplied by water from Magic Dam with a storage capacity of 191,000 acre feet and at a cost of $7,000,000.00. This was to irrigate 80,000 acres. After a period of about 20 years, many of which were very short of water (one year consisting of less than one month of water supply), American Falls Reservoir District No. 2 was formed and 400,000 acre feet of storage was contracted for at a cost of $6,680,000.00. At this time an additional 20,000 acres were added to the project. Many of these people will not have paid their construction cost until the year 2000 and are now faced with the prospect of paying off the old dam as well as a new one.

This area is composed of mostly small family size farms, raising diversified crops with a rather large population of dairy and beef cattle. There are approximately 11,000 acres of row crops in the area. Without irrigation water in adequate amounts, the entire economy of our area will collapse.

American Falls Reservoir District No. 2 is faced with the prospect of being very short of water as long as we are forced to operate under the one-third reduction in storage.

We have been obligated to purchase this year 80,000 acre feet of water at a cost of $40,000.00 just to finish out the season with 80% delivery in two months and the season shortened by 15 days. This was a year when we had a high carry over on the Snake River.

The prospects for 1974 are very bleak. Without an above average snow fall and a wet Spring the farmers in our area are going to be faced with having to operate with a very limited water supply.

We can probably survive one or two short water years with a lot of belt tightening but any more than that will see severe financial hardships.

As you can see, time is very important so that the proposal that makes the most sense to the average irrigator is the one that will get him his original amount of water back in the shortest possible time with the smallest amount of money coming out of his pocket.

The average irrigator feels that the original dam should have lasted at least until it was paid for but it has not so all he asks for is the necessary legislation so that he can rebuild the dam without waiting for Federal appropriations.

Respectfully submitted,

WENDELL JOHNSON.

Mr. JOHNSON. We do want to get out to the dam this afternoon and have a look at the general area of the powerhouse and related facilities.

I presume you are a little harder pressed with this than most people. If that 80,000 acre-feet wasn't there to purchase this year, you would have been hurt?

Mr. WENDELL JOHNSON. Right.

We would have been 1 more month short instead of 15 days. This is the point I would like to stress, that this water will not be available in a short year, because if the other people are short, they are going to get there first.

Mr. JOHNSON. Mr. Ketchum.

Mr. KETCHUM. No questions.

Mr. JOHNSON. Mr. Towell.

Mr. TOWELL. No questions.

Mr. JOHNSON. Mr. Casey.

Mr. CASEY. No questions.

Mr. JOHNSON. Our next witness will be Mr. Ben Cavness, attorney for the city of American Falls Bridge Committee.

STATEMENT OF BEN CAVNESS, ATTORNEY, AMERICAN FALLS, IDAHO, BRIDGE COMMITTEE

Mr. CAVNESS. Mr. Chairman, members of the committee, and Mr. Hansen, I have a written statement which is being handed out to you at this time. I request that it be submitted for the record.

Mr. JOHNSON. It will be submitted for the record in full, and you may summarize it.

[Full statement follows:]

STATEMENT OF BEN CAVNESS, ATTORNEY, AMERICAN FALLS, IDAHO, BRIDGE COMMITTEE

Good morning. My name is Ben Cavness. I am an attorney from American Falls, Idaho. I am here on behalf of the American Falls Bridge Committee. Since all of the speakers here today will address themselves to the need to immediately proceed with the replacement of the dam at American Falls, Idaho. I will concentrate my comments on the subsidiary issues, also important, which must be considered if a complete picture is to be painted. The two subsidiary issues which are most important to the people in the American Falls-Aberdeen area relate to inclusion of provisions relating to an adequate river crossing and proper mitigation of the adverse environmental impact of the new dam and powerplant.

My commentary regarding the adequate crossing issue can be brief. The constructing agency agreed prior to the Senate Hearing to submit an amendment to the original Senate bill which set out the responsibility of the constructing Agency in this regard. It is also my understanding that the identical language will be submitted by them to you here today. This wording places into effect the correct assessment of responsibility on the various parties and insures the people in the American Falls-Aberdeen areas who depend upon this crossing that they will have a new crossing, sufficient to meet their needs for the foreseeable future.

The environmental mitigation issue has only recently come to the fore. At the time of the Senate Hearing both the Constructing Agency and the members of the Bridge Committee proceeded on the basis that the present forebay would be left intact and that the fish wishing to migrate from the reservoir would be bypassed into the forebay. Subsequent engineering studies have determined that this is not possible. Subsequent plans called for complete destruction of the forebay and passage of all fish through the turbines of the power

plant. Since these plans were not acceptable to the members of the bridge committee meetings were held with the appropriate officials of the constructing agency to determine what plans would be acceptable to both parties. At a meeting in the later part of September, 1973 a joint communique was issued by the Bridge Committee and the Coordinating Committee of the Constructing Agency to the effect that the constructing agency would investigate and take all action physically and financially possible to mitigate the environmental impact of their project.

This communique was based on the understanding that the Bridge Committee would not insist upon the traveling screens method of screening and bypassing the fish away from the turbines but would accept any mechanical device that would yield the same result. We are concerned with the safe passage of these fish for good reason. The forebay fishery presently yields an annual harvest of approximately 14,000 rainbow trout and coho with the average size of approximately 14 inches and an average weight of over one pound. This harvest, which is approximately 30% of all the game fish caught in the 155 mile stretch of the river from American Falls to the Upper Salmon River Falls, is valuable both to the American Falls-Aberdeen area residents and the State of Idaho. We do not feel that it is physically possible to pass these large fish through the power plant turbines without severely high mortality rates. We will not accept any plan which calls for passage of the fish through the turbines. However, we will accept any device designed by the constructing agency which accomplishes this result. We feel that the ultimate approval or disapproval of any device of this nature rests properly with the Secretary of Interior who must finally approve all plans and the Federal Power Commission which approves or disapproves a license for this project.

In summary, we feel that the environmental impact of this project must be mitigated and the fish bypassed into the tail race of the power plant. We intend to hold the constructing agency to its commitment in this regard. If they fail to live up to the terms of their commitment we have remedies available to us in the courts of our land to force them to do so. However, the courts cannot give us the congressional authorization that we need in order to proceed with the replacement of this antiquated dam. You can and we ask that you report out favorably and push for early enactment of House Bill 6782, with the minor Senate Amendments. Thank you.

Mr. CAYNESS. You talked about the absence of opposition. I believe, as testified earlier, the Committee of Nine and the people most concerned with this are directly concerned and responsible for this.

If there has been a thorn in the Committee of Nine, that is probably us. There were several things initially planned by the water users that were at least detrimental to our area that we wished taken into account prior to supporting their proposals.

Basically the first issue was the bridge. They had no plan for an adequate crossing in their initial plans, and it was very vital to have their plans amended to include some provision for us to cross it.

After some acrimonious debate and heated arguments in the back room which we felt was the proper place to settle these differences, we managed to come up with a plan acceptable to all of us. This was submitted to the Senate at the time of the Senate hearings in Washington, D.C.

That was the first hurdle we jumped. At the time of the Senate hearing we had presumed that the Fore Bay Fishery would be maintained. This is the body of water immediately below the dam, and is a very unique feature of this dam. It is a very important one to our area.

The plan to the Senate was to keep the Fore Bay Fishery. Engineering studies have proven this to be impractical, in that we cannot main-

tain the fast water which the game fish require. The drop of all this water is what they need to make this project go.

The plans call for complete destruction of the forebay and call for passage of the fish through the turbines. Again, this unique forebay facility creates a unique fish system. The fish have to leave our reservoir at a certain time of year for lack of oxygen. These are large trout, incubated and taken care of and grown in the reservoir.

These are the 1- to 5-pound trout. What happens is that the fish now go out the penstock into the forebay where they are caught by the anglers or bypassed around the turbines of the present plant into the Snake River.

If they get around the forebay and bypass these turbines, according to fish and game and many of us, we felt these long fish would be literally mutilated by the turbines.

We can bypass small fish, but not the large ones.

Again, we went to the Committee of Nine and came up with an agreement so we can come to you people with a unified front.

At a committee meeting of the joint bridge committee and the water users committee meeting in late September, a joint communique was issued by both parties to the effect they would investigate how they can bypass these fish and screen them away from their turbines and take all actions physically and financially possible to bypass these fish.

We didn't want to be responsible somehow I had the environmental thing of the bridge committee thrust upon me. I don't want to be responsible for 5,000 big dead fish down below the reservoir, since I have to live in that area for the rest of my life.

Basically, we will do everything we can to develop a screening device to keep the fish out of the turbines.

I talked to Mr. Patrick during the recess, and he is of the opinion some type of trash screen could be put in and maybe narrowed to keep the big fish out and then a bypass method to get the fish out of there, but, again, something with engineering feasibility.

The only thing acceptable was a traveling screen, 80 feet high and 400 feet long as an engineering monstrosity as well as a maintenance monstrosity.

It is our position and the bridge committee's position that what we want is the fish bypassed and we do not care what means they do it, just as long as the result is they don't kill the fish.

The forebay yields around 14,000 fish from 1 to 5 pounds every summer, and they are all rainbow trout. It is quite an angler's paradise in the summer. In fact, when they had a public hearing with the water users they were convinced because they drove by and there were about 150 people fishing in this area.

We have gotten in the backroom and got our problems resolved. The only thing we can't get resolved is the congressional authorization. We are trying to do it ourselves and we want the dam replaced with as much of our money as we can, and the only Federal money will be the enhancement features designed into the Senate bill. We request urgently that you proceed with this matter, and we will give you all the help we can.

Mr. JOHNSON. We want to thank you, Mr. Cavness, for a very forthright summary of your statement.

I am glad you had that backroom session, because when you come to Congress, sometimes you pick up opposition you wouldn't want attached to the project.

When you talk about fish and wildlife and environment, that matter can be blown out of all proportions.

If you do it yourselves locally you have some control.

Mr. CAVNESS. That is the reason I got in the backroom.

Mr. JOHNSON. The gentleman from Nevada.

Mr. TOWELL. No questions.

Mr. JOHNSON. Mr. Ketchum.

Mr. KETCHUM. No questions.

Mr. JOHNSON. Our next witness will be Mrs. Angela Butterfield, representing the Shoshone Bannock Tribes of Fort Hall.

We are very glad to have you here, Mrs. Butterfield, to give us the other side of women's lib here.

STATEMENT OF ANGELA BUTTERFIELD, REPRESENTING THE SHOSHONE BANNOCK TRIBES OF FORT HALL

Mrs. BUTTERFIELD. Hon. Chairman Johnson and members of your honorable committee, I am representing Shoshone Bannock Tribes of Fort Hall. The following remarks are in addition to the written statement prepared by our tribal attorney, Dwight Bowen.

With all of the people appearing here, it is an honor that we appreciate and we're glad to be allowed to appear here on behalf of my people.

The Shoshone Bannock people realize that the original American Falls Dam issue is settled. We are not here to make any objection to replacement of that dam at the same level originally planned and used in its original construction.

The farmers have become used to using that amount of water. They need it and if we could, we would not, at this time, try to prevent the replacing of the dam at its original elevation. However, not only the Shoshone Bannocks, but many other people will bitterly oppose any change that increases the storage capacity or floods another foot of Indian bottom lands.

With all due respect to everyone, it is our understanding that that is not the intention. But surely, in view of past experiences, we will not be criticized or blamed for being very apprehensive about the matter. We do not intend to go over the matter of broken treaties and our disapointments that you are all familiar with. We only want positive assurance that you'll do what Congressman Hansen has assured us is planned, in his recent letter to our friend, Ben W. Davis.

We would like to call your attention to the fact that surely the Government and the farmers, who we realize are seriously involved, will want us to be protected from the continual loss of our lands by erosion, which we hope will not follow—but which we are told by experts and we know from past experience, is sure to. In the past, the course followed by the Secretary has been one of neglect in preventing erosion, which has resulted in acres of tribal land falling into the reservoir, with minimal compensation. In continuing this program of

prevention, we are converned that measures will not be taken to prevent erosion, but instead, the Secretary will rely upon minimal compensation for destroyed lands. Therefore, the bill should be more explicit in requiring prevention of erosion and instructing the Secretary of his express duty to insure prevention.

Thank you.

Mr. JOHNSON. We want to thank you, Mr. Butterfield. The statement prepared here by the attorney will be made a part of the record. Your comments are in the record.

[Statement referred to follows:]

STATEMENT OF THE SHOSHONE-BANNOCK TRIBES, FORT HALL INDIAN RESERVATION, FORT HALL, IDAHO

When the United States of America treatied with the Shoshone Nation in 1864, it recognized and acknowledged the Shoshone Nation as the sovereign aboriginal possessor of some 34 million acres, comprehending the lands which border upon the present American Falls reservoir. In and under said treaty the region was reserved and set apart to the tribe as a home in perpetuity.

By act of April 4, 1910, 36 Stat. 269, the United States Congress provided that the Secretary of the Interior should set aside and reserve certain lands between the Snake and Portneuf Rivers, known as the *FORT HALL BOTTOMS*, for the common use, benefit and enjoyment of the Indians, for grazing of cattle and horses, together with their use of the habitat of wild game and fish. Portions of the Fort Hall Bottom lands remains this date as nearly primitive as any area in the entire United States. These lands are the nesting place of geese, Canadian honkers, hutchins, practically every specie of the duck family, blue heron, gulls, pelican, Meserangers, curlew, hawks, occasional eagles, doves, grouse, pheasant, and meadowlark, all of which abound in profusion. In addition to the above, you will find beaver, muskrat, coyote, bobcat, deer, ermine, skunk, rainbow and native trout.

The Shoshone-Bannock people love their land-based reservation and have no interest whatsoever in any proposition for the substitution of other lands in exchange for these lands, inasmuch as it is inconceivable that there are other lands anywhere, much less adjacent to the reservation, that are comparable to these lands, insofar as water, feeding and grazing are concerned, together with all of the hunting and fishing abounding thereon. Moreover, the Fort Hall Bottoms constitute a place of sacred worship and repose for the Shoshone-Bannock people and numerous Indian graves can be found thereon. Further, the subject lands have already yielded a vast and rich cache of priceless artifacts and represent one of the most viable archaeological contexts in the region.

In reviewing S. 1529, together with its present amendments, the Shoshone-Bannock Tribes express concern that the Bill does not sufficiently detail provisions which will protect the resources of the tribe and tribal members. These concerns together with requested amendments are as follows:

(1) The Maximum Water Surface Elevation of the Dam and Height of Dam

The Bill should clearly specify that the dam will be reconstructed at the same height above sea level as the existing dam. An amendment to the Bill provides "that the design, construction, and operation of the replacement dam shall not result in a maximum water surface elevation at the dam higher than elevation 4,354.5 feet." The tribes ask for printed assurance in the Bill that the dam as reconstructed will not result in raising the height of the dam or increasing the maximum water surface elevation in the reservoir. The terms "height" and "water surface elevation" can be very misleading unless it clearly specifies height above sea level.

Without such assurance in the express provisions of the Bill, the tribes would be exposed to possible infringement upon their property rights by the various interpretations of those controlling and operating the dam and reservoir.

(2) The Prevention of Erosion Related to the Reservoir

As has been expressed, the Indians regard their lands as being irreplaceable. The Bill with present amendments provides "that the Secretary shall continue the program of prevention of and compensation for erosion related to the reservoir."

The tribes believe it commendable that the Bill provides for the prevention of erosion, but from a practical standpoint call to the attention of this subcommittee that the course followed by the Secretary in the past has been one of neglect in preventing erosion, resulting in acres of tribal land falling into the reservoir, with minimal compensation. In continuing the program of prevention, the tribes express concern that measures will not be taken to prevent erosion, but rather, the Secretary will rely upon minimal compensation for destroyed lands, therefore, the Bill should be more explicit in requiring prevention of erosion and instructing the Secretary of his express duty to insure prevention.

The tribes are in favor of the provision of the Bill authorizing the appropriation of "such funds as may be necessary to meet the pro-rated 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."

In considering the pending Bill, the Shoshone-Bannock tribes request Senators and Congressmen, together with the agencies and administrators of the United States Federal Government and the President of the United States, to venerate and uphold the solemn promises embodied in the treaties, act and agreements between the Shoshone-Bannock tribes and the United States Government and its agencies; that in order to fully protect Indian Property rights and to give to the Indian people assurance that their homelands as presently constituted will remain as now constituted, protective provisions and amendments to Bill should be made in order that the Indian people will not be subject to arbitrary, untenable and unacceptable interpretations and administrations.

Mr. JOHNSON. I want to say to you we are very happy you are here speaking on behalf of your people and pointing up the problem that you are confronted with and making certain that there is no increased capacity put in the reservoir, and that erosion is a problem that must be dealt with.

We flew over the area this morning and we had it pointed out by the new Assistant Commissioner that erosion was a problem and they are quite well acquainted with it. I am sure this committee would want to do everything it could to help deal with that problem properly. We have erosion. No matter what kind of project erosion is always a problem, whether a canal or waterway or reservoir.

The maintaining of lands adjacent to these reservoirs are very, very important. I know they are to you.

Mrs. BUTTERFIELD. Yes.

Mr. JOHNSON. The committee will give attention to that and make recommendations. Erosion control will be one of the considerations.

We discussed this morning and had an opportunity to see erosion taking place, because the reservoir is at a very low level and it points it up.

The gentleman from California.

Mr. KETCHUM. Thank you, Mr. Chairman.

Mrs. Butterfield, I appreciate you being here, too.

I wonder if you're familiar with an amendment suggested by the Department, a letter of October 5. Are you familiar with the amendment that has been suggested?

Mrs. BUTTERFIELD. No, sir, I am not.

Mr. KETCHUM. This isn't the whole letter, but I would certainly like to give you what I have got here so that you might see it and interpolate in the record the opinion of your people as to that.

I have no further questions, Mr. Chairman.

Mr. JOHNSON. The gentleman from Nevada.

Mr. TOWELL. I don't have a question. I have a comment.

In all due respect to Mr. Bowen, Mrs. Butterfield would make a very fine substitute.

Thank you for appearing here today.

Mr. JOHNSON. We want to thank you for being here today, and I am sure your representation will help.

[Supplementary views of Shoshone-Bannock Tribes follow:]

SUPPLEMENTARY STATEMENT OF THE SHOSHONE-BANNOCK TRIBES, FORT HALL INDIAN RESERVATION, FORT HALL, IDAHO

The Shosone-Bannock Tribes submitted a written statement and presented oral testimony before the above-entitled Sub-Committee at a field hearing held in Burley, Idaho, on October 6, 1973. At the hearing, the tribes were furnished a letter written by Jack G. Horton, Assistant Secretary of Interior, which letter represented the views of the United States Department of Interior concerning H.R. 6782 and S. 1529.

The Shoshone-Bannock Tribes respectifully submit this supplemental statement in response to that letter, and additionally, wish to call the attention of the Sub-Committee to the history of lack of erosion prevention and inadequate compensation to the tribes for erosion of Indian Lands bordering the American Falls Reservoir.

The Federal Act acquiring Indian Lands on the Fort Hall Reservation for purposes in connection with the Minidoka irrigation project was enacted May 9, 1924, 43 Statute 117. The act, a copy of which is attached to this statement as "Exhibit A", provided in Section 4 that should any Indian Lands be damaged on account of the reservoir, the amount of the damage was to be determined by a board consisting of three members—two of which shall be appointed by the Secretary of Interior—one from the Bureau of Indian Affairs, and one from the Bureau of Reclamation, the third member, who shall be a disinterested party, to be selected by the two so appointed.

Substantial misunderstanding of the terms of the act existed among the Shoshone-Bannock Tribes and particularly a misunderstanding as to the implementation of the measures called for by the provisions of the act. This misunderstanding among the Indian people is highlighted by a letter dated August 22, 1973, written by Business Council Member Angela P. Butterfield to Attorney Francis L. Horn. A copy of the letter and Mr. Horn's response are attached hereto, as "Exhibits B & C". As reflected in Mr. Horn's responsive letter, the tribes rejected the offer of compensation for eroded lands and stated as justification that the amount offered was very minimal, totally inadequate and did not reflect the fair market value per acre of the lands in question. The tribes decision is stated in tribal resolution, attached hereto as "Exhibit D" and accurately represents that the tribal Business Council never accepted the payment for erosion. This inadequate offer of compensation in 1960 represents the only offer of compensation to the tribes for erosion although erosion has continuously been taking place during the subsequent years.

With reference to prevention of erosion of Indian Lands which border the American Falls Reservoir, the tribes invite the members of this Sub-Committee to personally observe the conditions of the banks and lands surrounding the reservoir. The tribes are certain that the Sub-Committee will reach the conclusion that in fact minimal, if any, effort has been made to prevent erosion. When the Bureau of Reclamation is asked why measures are not being taken to prevent erosion, the Bureau has blamed the same upon lack of cooperation from the Indian people. Such accusations on the part of the Bureau of Reclamation are intolerable when the record clearly indicates that the Business Council of the Shoshone-Bannock tribes have never received such a request and have never rejected the opportunity to cooperate in preventing erosion of Indian lands bordering the American Falls Reservoir.

Having reviewed the history of erosion prevention and compensation for erosion, it is understandable why the Shoshone-Bannock tribes express renewed concern over the language of the pending bill which calls for prevention of erosion and compensation for erosion. A copy of page 4 of Assistant Secretary Horton's letter is attached hereto as "Exhibit E" and is quoted from as follows:

"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."

Such broad directives given may once again result in continued injustice to the Indian interests. The tribes should be given the assurance in the Bill that the replacement dam and elevation of the reservoir water surface will be stated in terms of height above sea level. The Bill should pinpoint the responsibility for preventing erosion placing it directly on some position or agency who will be answerable for neglect. The Bill should state measures to be undertaken to prevent erosion or set some standards or directives. Inasmuch as compensation for erosion has been totally inadequate, non-existent since 1960, and arbitrarily determined, the tribes desire a directive in the Bill calling for annual review of erosion conditions and annual compensation to the tribes for erosion. A copy of all such reports should be furnished to the tribes.

As has been the experience of the tribes in the past, our reliance must be placed with our Senators and Congressmen who we are hopeful will protect the best interest of Indian people by congressional mandate, dispelling the shattered promises of other governmental agencies to Indian people.

EXHIBIT A

42 Stat., April 1921 to March 1923

For continuing the enlarging and repairing of canals, structures, and dam, and replacing of structures of the irrigation system for the irrigation of lands on the Fort Hall Reservation, Idaho, and lands ceded by the Indians of said reservation, as provided for in the Act of May 24, 1922 (Forty-second Statutes at Large, page 5681, the same to be reimbursed in accordance with the provisions of said Act of May 24, 1922, $230,000.

* * * * * * *

43 Stat., December 1923 to March 1925

[Act of May 9, 1924, 43 Stat. 117]

Chap. 151.—An Act Authorizing the acquiring of Indian lands on the Fort Hall Indian Reservation, in Idaho, for reservoir purposes in connection with the Minidoka irrigation project.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subject to payment being made as provided herein, there is hereby granted to the United States, its successors and assigns, for the proposed American Falls Reservoir on the Snake River under the Minidoka Federal irrigation project, in Idaho, all right, title, and interest the Indians have to the tribal and allotted lands within that section of the Fort Hall Indian Reservation commonly referred to as the Fort Hall Bottoms, which lands will be inundated by the impounding of one million seven hundred thousand acre-feet of water within said proposed reservoir, together with a five-foot freeboard the elevation of which shall be established, using as a basis the one million five hundred thousand acre-foot contour line as shown in what is known as the Dyer-Dietz-Banks appraisal of Indian lands dated December 30, 1922, and on file in the Department of the Interior subject to the reservation of an easement to the Fort Hall Indians to use the said lands for grazing, hunting, fishing, and gathering of wood, and so forth, the same way as obtained prior to this enactment, in so far as such uses shall not interfere with the use of said lands for reservoir purposes.

SEC. 2. That the Secretary of the Interior be, and he is hereby, authorized to acquire by agreement or condemnation proceedings the area of allotted lands

described in section 1. The value fixed by agreement with the allottees, and in any case where it may become necessary to institute condemnation proceedings for such purpose, the value of the allotment or allotments involved as determined by such proceedings, shall be paid out of the sum deposited to the credit of the Fort Hall Indians as provided in section 3 hereof.

SEC. 3. That in consideration of the rights granted in section 1 hereof, of both tribal and allotted lands, there shall be deposited in the Treasury of the United States to the credit of the Fort Hall Indians the total sum of $700,000, which sum shall be taken from moneys appropriated for the construction of said reservoir: *Provided*, That the said sum of $700,000, when so deposited, shall draw interest at the rate of 4 per centum per annum.

SEC. 4. Should any lands above the five foot free-board, as provided in section 1, be damaged on account of the reservoir, the amount of the damage shall be determined by a board consisting of three members—two of which shall be appointed by the Secretary of the Interior—one from the Bureau of Indian Affairs, and one from the Bureau of Reclamation, the third member, who shall be a disinterested party, to be selected by the two so appointed. The amount of damage as fixed by the board shall be taken from moneys appropriated for the construction of said reservoir and deposited in the Treasury of the United States to the credit of the Fort Hall Indians.

SEC. 5. That there is hereby authorized to be appropriated not to exceed $100,000 of the money when deposited to the credit of the Fort Hall Tribe of Indians for use in relocating, enlarging, and reconstructing the main canal of the Fort Hall irrigation project to provide irrigation facilities for Indian lands situated in the southern portion of the Fort Hall Reservation, commonly known as the Michaud Flats, which amount so expended shall be reimbursed to the tribe by the Indians whose lands are benefited, on a per acre basis in accordance with such rules and regulations as the Secretary of the Interior may prescribe: *Provided*, That in all cases where the Indian title becomes extinguished prior to total reimbursement of the sum assessed against any particular allotment, the party acquiring title to such allotment shall be required to execute an agreement before any water will be furnished therefor, providing for the payment of construction charges assessed against such lands, and for the payment of the annual operation and maintenance charges.

Approved May 9, 1924.

EXHIBIT B

AUGUST 22, 1973.

WILKINSON, CRAGUN & BARKER,
Law Offices,
The Octagon Building, Washington, D.C.
(Attention: Mrs. Frances Horn).

DEAR FRANCES: Mrs. Lillian Galloway has provided me with a copy of the bill dated February 11, 1924 (H.R. 6864) copy of which is enclosed, authorizing the use of Indian lands on the Fort Hall Indian Reservation, in Idaho for reservoir purposes in connection with the Minidoka irrigation project.

On behalf of many of us Shoshone Bannocks who don't understand what happened, I'd like to ask the following questions:

(1) What happened to the interest? (4% per annum of the sum of $700,000 deposited in the U.S. Treasury to the credit of the Fort Hall Indians)

(2) What happened to the three (3) member board that was supposed to determine the extent of damages caused by the erosion of lands above the five-foot freeboard?

(*a*) If such a board has been appointed, who are the members?

(*b*) How often have they met and when and where?

(*c*) If the board has determined an amount of damage caused by the erosion of these lands; what is the amount?

(*d*) If some money has been credited to the Fort Hall Indians, when was this done?

(*e*) To which account was it credited?

(3) What became of the $100,000 that the Secretary of Interior was authorized to use in relocating, enlarging and reconstructing the main canal of the Fort Hall Irrigation project to provide irrigation facilities for Indian lands stuated in the Southern portion of the Fort Hall Reservation?

If we could have answers to these questions, we would all have a better understanding and would possibly feel much better about this matter.

If you are unable to find the answers to these questions, would you please consider this to be our request that this matter be thoroughly investigated and included in our Tribal Accounting Claim?

Very sincerely yours,

ANGELA P. BUTTERFIELD,
Member, Fort Hall Business Council.

EXHIBIT C

WILKINSON, CRAGUN & BARKER,
LAW OFFICES,
Washington, D.C., September 5, 1973.

MRS. ANGELA BUTTERFIELD,
Fort Hall Business Council,
The Shoshone Bannock Tribes,
Fort Hall, Idaho.

DEAR ANGELA: I have your letter of August 22, 1973 requesting answers to certain questions put by Mrs. Lillian Galloway. I am unable at this time to answer all of them, but initially I can inform you that H.R. 6864, the 1924 bill authorizing the acquiring of Indian lands on Fort Hall Reservation for purposes in connection with the Minidoka irrigation project, was amended somewhat before being enacted into law. The act acquiring the land was enacted May 9, 1924, 43 Stat. 117. You will find a copy of it at page 170 of the compilation of statutes, resolutions and agreements pertaining to Shoshone Bannock Tribes and Fort Hall Reservation which was prepared for the Tribes by this office in 1954. If you do not have a copy of the compilation handy, let me know and I will send you a xerox copy of the statute.

The GSA Report should indicate how much interest was earned on the $700,000 fund and what happened to it. The Report is presently in the hands of the accountants. I will request that they supply us with that information.

Some papers supplied to us by Mont Faulkner, together with a letter of December 12, 1969, answer your question (2) at least in part. The letter was addressed to Jerry Straus "Re: Accounting Claim: American Falls Reservoir". They indicate that $40,000 of the $700,000 fund was distributed per capita among the Fort Hall Indians pursuant to an Act of March 3, 1927. This, of course, could have reduced the interest-bearing fund from $700,000 to $300,000 or less in 1927. One hundred thousand dollars of that $700,000 was to be used for relocating, enlarging and reconstructing the main canal of the Fort Hall irrigation project. $99,320.80 was actually used for that purpose subject, under the statute, to reimbursement by the United States. No reimbursement has been made and it is included as part of your claims against the United States in the accounting claim.

The papers sent to us by Mont contain correspondence in 1958 and 1959 on the choice of the tree member board. The members were Mr. Carl E. Hopt, supervisory appraiser for the Bureau of Reclamation, and Mr. Lloyd W. Ogden, staff appraiser of the Portland Area Office representing the Bureau of Indian Affairs. The two agreed upon Mr. E. L. Newell from the Fort Hall area as a third member. The file does not indicate how many times the board met, but they appraised the damage to the Fort Hall land by reason of erosion of the lands above the five foot freeboard at $11,660 for tribal land and $15,150 for allotted land. On May 12, 1960, the Fort Hall Business Council declined to accept the amount appraised and requested that they be paid at the rate of $50 per acre. The Tribes' request was denied and the Commissioner of Indian Affairs determined pursuant to the language of the Act of May 9, 1924, that the sum of $11,660 should be deposited to the credit of the Shoshone and Bannock Tribes of the Fort Hall Reservation. According to a letter of April 20, 1966 from the Regional Director of the Bureau of Reclamation to Mr. John L. Pappan, then Superintendent at Fort Hall, copies to the tribal council and to your attorney, Reed J. Bowen, a check in the amount of $11,660 for the tribal lands was paid by the Bureau of Reclamation in May, 1960 to Superintendent Frell M. Owl to be used for the benefit of the Fort Hall Indians. Mr. Pappan confirmed that the check was received October 19, 1960 and was held in a special deposit and transferred to the tribal IIM Accounts by Journal Voucher No. 0504–337–61, dated June 9, 1961.

Your accountant will examine not only the funds here in the Treasury, but the records of the tribal IIM Accounts. Because this fund grew out of damages caused by erosion after 1946, we may be unable to include this particular fund in the accounting, but we may, nevertheless, be able to provide you with the information indicating how the fund was used.

We presume that you have in your files a copy of Mont Faulkner's letter, together with the attached correspondence. If you do not, and if this summary is insufficient to answer the questions, we will copy this material for your files.

On another subject, Dr. Madsen has signed and returned to us the draft of contract by which he agrees to prepare himself to testify as an historian in the Fort Hall accounting case and to otherwise aid in the preparation of the claim. We are sending it to the Tribal Council care of Roma Sheppard. We hope that the Council will take immediate action so that Dr. Madsen and his colleagues can get started.

Sincerely,

WILKINSON, CRAGUN & BARKER,
By Frances L Horn.

EXHIBIT D

RESOLUTION

Whereas, communications have been reviewed by the Fort Hall Business Council concerning the damages on tribal land included in the proposed perpetual flowage easement bordering the American Falls Reservoir, and

Whereas, in a memorandum dated November 24, 1959, the Superintendent sets forth the tribal land involved in this taking line, and also the allotted land. The total number of acres of tribal land is 314.61 and the appraised damage totals $11,660.000, and

Whereas, the Council has been asked to submit a resolution accepting the appraised damages to tribal land and the Business Council discussed this matter at its meeting on May 12, 1960.

Now therefore be it

Resolved, by the Business Council of the Shoshone-Bannock Tribes that they do not feel that $11,660 is sufficient for the damage done as it figures out at around $30 per acre, and

Be it further resolved, That the Council wishes to use as its justification in this decision the fact that the Tribes have paid in the neighborhood of $50 per acre for land in this area, and

Be it further resolved, That the Council hereby declines to accept the amount of appraised damages in the amount of $11,660 for tribal land and requests that they be paid $50 per acre.

Authority for the foregoing resolution is found in the Indian Reorganization Act of June 18, 1934 (48 Stat 984) as amended and under Article VI, Section 1 (c) of the Constitution of the Shoshone-Bannock Tribes of the Fort Hall Reservation, Idaho.

Dated this 12th day of May, 1960.

EDWARD BOYER,
Fort Hall Business Council.

CERTIFICATE

I hereby certify that the foregoing resolution was passed while a quorum was present by a vote of six in favor, none dissenting, and one not voting on the date it bears.

LUCILLE HINEY,
Tribal Secretary, Fort Hall Business Council.

EXHIBIT E

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 Ameri-

can 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 therefore 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.

Mr. JOHNSON. Our next witness is Mr. Jim Patrick, Bechtel Consulting Engineers representative.

STATEMENT OF JAMES G. PATRICK, MANAGER OF HYDRO PROJECTS IN BECHTEL, INC.

Mr. PATRICK. Mr. Chairman, members of the committee, ladies and gentlemen.

I am James G. Patrick. I am an engineer and hold the position of manager of Hydro Projects in Bechtel Inc., one of the Bechtel companies which provides worldwide engineering and construction services.

The American Falls Dam, on the Snake River near American Falls, Idaho, was completed in 1927. It is a concrete gravity dam with earth abutments, approximately 5,200 feet long in total length and 94 feet high at maximum section, impounding a reservoir of 1,700,000 acre-feet. A two-lane highway, 18 to 21 feet wide, was provided in the design and construction of the dam.

Abnormal cracking throughout the concrete was observed as early as 1929. Subsequent observations have indicated alkali-aggregate reaction which prompted the Bureau of Reclamation to limit the storage to no more than 66 percent of the reservoir capacity. Restrictions also have been placed on the use of the highway.

The American Falls Reservoir District retained Bechtel to prepare preliminary design and comparative cost estimates for replacing the dam. Those studies indicate that replacement would be the prudent procedure.

Detail design of the replacement dam incorporating a modern two-lane highway is in progress.

At this time I would like to show some drawings of the dam so you will recognize what you will be seeing this afternoon.

I draw your attention first to the drawing at the bottom of the display. This is a plan view of the dam. The reservoir is the bottom of the "G" and the river, the Snake River is going toward the top. In dotted lines is shown the existing dam, in here down to here.

In the original color and the green is shown your proposed replacement dam, I could go through that by different sections.

To start on the left abutment, over here, which is designated section A.A. and above in this cross section, and this consists in utilizing the existing concrete dam as the impervious membrane of the earth type structure so that replace sand and gravel upstream and downstream of existing concrete dam and form a new dam. Of course, that is the two-lane highway on top of it.

Moving down to section BB is the spillway section as shown in this section here, which is a conventional concrete graft type dam with a spillway controlled by gates. The drawing also shows the old dam and the extent of its removal. The section also shows a new two-lane highway downstream of the dam.

Getting back to the left abutment, this brown is also a new two-lane highway. You have a two-lane highway downstream of the dam as well as on top of the dam.

Moving toward the right abutment, we come to section CC, which is the intake section for the powerhouse.

Again, we have a concrete gravity dam with pin stakes coming through the dam controlled by gates upstream of the dam. The powerhouse is located about 280 feet downstream.

Coming to the right abutment, we have what is known as a right abutment section, which is a new earth type embankment extending from the concrete section to the right abutment, consisting of an impervious layer of earth, as well as sand and gravel shelves, as well as a removal of the old dam.

You would be interested to know that the brown in the planned view is the new highway downstream again.

The proposed layout and preliminary design for the replacement dam were reviewed by a board of consultants selected by the American Falls Reservoir District after consultation with officials of the Bureau of Reclamation. The board, consisting of three eminent internationally known engineers, Messrs. W. L. Chadwick, Barry Cooke and Roy W. Carlson, considers that the proposed layout would provide a safe and economical dam. A copy of the board's report dated August 10, 1973 is attached to this statement.

The powerhouse I mentioned is about 280 feet downstream and will contain three 30-megawatt units.

The estimated cost of replacing the dam with provisions for a two-lane highway is $20,594,000 based on 1973 costs. This estimate includes allowances for contingencies and engineering but does not include allowances for escalation, possible costs associated with land, recreation, fish and wildlife and other owner costs including taxes, financing, et cetera. The construction schedule provides for a construction contract to be awarded not later than November 1, 1974, so that advantage could be taken of river flows and drawdown of the reservoir

for irrigation releases during 1975. The dam would be completed in time to permit storing the high river flows in the spring of the following year.

The general layout and design developed during the initial phase of the project has been substantiated by continuing engineering studies.

I would like to answer any questions you may have.

Mr. JOHNSON. The consultants' report will also be made a part of the record as well as your statement.

[Statement and report referred to follow:]

STATEMENT OF JAMES G. PATRICK, MANAGER, HYDRO PROJECTS, BECHTEL, INC.

Mr. Chairman, members of the committee, ladies and gentlemen. I am James G. Patrick. I am an engineer and hold the position of Manager of Hydro Projects in Bechtel Incorporated, one of the Bechtel companies which provides worldwide engineering and construction services.

The American Falls Dam, on the Snake River near American Falls, Idaho, was completed in 1927. It is a concrete gravity dam with earth abutments, approximately 5200 feet long in total length and 94 feet high at maximum section, impounding a reservoir of 1,700,000 acre-feet. A two-lane highway, 18 to 21 feet wide, was provided in the design and construction of the dam.

Abnormal cracking throughout the concrete was observed as early as 1929. Subsequent observations have indicated alkali-aggregate reaction which prompted the Bureau of Reclamation to limit the storage to no more than 66 percent of the reservoir capacity. Restrictions also have been placed on the use of the highway.

The American Falls Reservoir District retained Bechtel to prepare preliminary design and comparative cost estimates for rehabilitating the dam and for replacing the dam. Those studies indicated that replacement would be the prudent procedure.

Detail design of the replacement dam incorporating a modern two-lane highway is in progress.

The proposed layout and preliminary design for the replacement dam were reviewed by a Board of Consultants selected by the American Falls Reservoir District after consultation with officials of the Bureau of Reclamation. The Board, consisting of three eminent internationally known engineers, Messrs. W. L. Chadwick, Barry Cooke and Roy W. Carlson, considers that the proposed layout would provide a safe and economical dam. A copy of the Board's report dated August 10, 1973 is attached to this statement.

The estimated cost of replacing the dam with provisions for a two-lane highway is $29,594,000 based on 1973 costs. This estimate includes allowances for contingencies and engineering but does not include allowances for escalation, possible costs associated with land, recreation, fish and wildlife and other Owner costs including taxes, financing, etc. The construction schedule provides for a construction contract to be awarded not later than November 1, 1974 so that advantage could be taken of river flows and drawdown of the reservoir for irrigation releases during 1975. The dam would be completed in time to permit storing the high river flows in the spring of the following year.

The general layout and design developed during the initial phase of the project has been substantiated by continuing engineering studies.

AUGUST 10, 1973.

MR. J. G. PATRICK,
Manager, Hydro Projects, Bechtel, Inc.,
San Francisco, Calif.

AMERICAN FALLS PROJECT, BOARD OF CONSULTANTS REPORT

DEAR MR. PATRICK: In accord with your arrangements, the undersigned Board of Consultants met with you, some of your staff, representatives of spaceholders in American Falls Reservoir, and representatives of Idaho Power Company, on August 9 and 10, 1973 in Pocatello, Idaho, to review your preliminary designs for

replacement of the existing American Falls Dam. A list of those who were in attendance, part or full time, is attached.

The first day was occupied by: inspection of the site, inspection of two borrow pit areas, your presentations of layout drawings, and discussion of project features. The second day was occupied in further discussions with you and representatives of Idaho Power and in preparation of this report. The first day's inspection included the sites for the proposed dam, spillway, powerhouse, roadway and auxiliaries as pointed out on the ground, and inspection of the full length of the inspection gallery of the existing dam, as well as inspection of the downstream surface of the existing left nonoverflow section. The present cracked condition of some of the spillway gate piers and of the downstream surface of the existing penstock sections was observed. The borrow pits which were inspected, namely the Michaud pit, about 15 miles east of the dam, and the impervious deposit along the right reservoir bank are among possible borrow sites.

Prior to its meeting you furnished the Board with a Consultant's Data Book containing data pertinent to the project, descriptions and location of principal project features, a history of investigation work to date, a text presenting certain background and general information, prints of some 30 drawings, and copies of the five reports of the Bureau of Reclamation listed on an attached sheet. Also included were tables showing core material and aggregate sources. A proposed construction schedule was also presented.

On the first day, the Board was presented, among other data, with the results of piezometric measurements within the dam as reported by the U.S. Bureau of Reclamation. These measurements were described to the Board by Mr. Karl Taylor. On the same day a background statement was made by Mr. Robert A. Hogg for the spaceholders.

GENERAL LAYOUT

The proposed layout for the new dam includes a central spillway-sluiceway-intake gravity structure downstream from the existing dam, and concrete gravity sections at each end of this structure for connection to embankment wing sections. A short right wing section is to be a conventional earth core—granular shell dam. For the long left wing (2,700 ft.) section it is proposed to utilize the existing non-overflow concrete section as a central core for granular shell sections. An existing low embankment section at the far left abutment is retained. The new highway is located immediately downstream from the new dam.

The Board considers that the proposed layout would provide a safe and economical dam.

LEFT ABUTMENT

Your proposal to construct the left side of the new dam as an embankment which would utilize the non-overflow section on the left side of the existing dam as an impervious core was reviewed in considerable detail, first, from the standpoint of the present condition and future life of the existing section, considering the alkali aggregate reaction which as already occurred, and second, the appropriateness of your proposed design.

The Board understands that this left non-overflow section was designed originally on the premise that it would not be required to withstand ice pressure under full reservoir conditions, that is, that the reservoir would not be used for principal storage during the winter. It is also understood that this section was designed in accord with the general practice in 1925, which would be considered inadequate in present practice. Some design criteria, such as those for uplift forces, were acceptable in 1925 but are not acceptable today. At that time seismic forces were usually neglected. Also, the concrete density actually attained was lower than that used in the design. The Board's understandings concerning design and construction conditions have been obtained mainly from the reports which were furnished to the Board, and from an article in *Western Construction News*. This article was by Ivan E. Houk, then Senior Engineer, Bureau of Reclamation. It was entitled "American Falls Dam, Minidoka Project, Idaho" (September 29, 1929).

Evidence of cracking of concrete in the non-overflow section were first reported in 1929. Successive reports by Bureau of Reclamation observers show this cracking to have been continuing. Following extensive study, such cracking was determined to be caused by reaction of alkalies in the cement with certain aggregate constituents. This reaction is described in some detail under a following heading. The reaction and its effects were studied by crack surveys, by core drilling and by successive inspections. In 1959 as an aid in judging the changes which were

occurring, numerous prominent cracks in the south wall of the inspection gallery were patched over, covering short sections with distinctive mortar so that during successive inspections extension of cracks could be better evaluated. At that time, some cracks had progressed in the south wall of the gallery to ¼ inch in width. Observations made on August 9 and 10, 1973, for this Board show, for Blocks 25 through 78, that 54 blocks have telltale mortar patches. Of 123 such patches, 73 show no cracking since 1959 and 50 show show detectible cracks. These later cracks are estimated to be from 0.01 to 0.02 inches in width. Thus, a crack which was open 0.25 inch in 1959 must have opened to 0.27 inch by 1973. These results indicate much slower expansion of the concrete at the patch points since 1959 than prior thereto.

The upstream or north wall of the inspection gallery shows little or no cracking similar to that in the south wall. It is understood that although some construction lift joints have eroded, the upstream face of this non-overflow section does not show the heavier alkali-aggregate cracking which occurs in the south inspection gallery wall, in the gallery adit structures, or in the downstream surface. Leakage into the inspection gallery is surprisingly small.

Data which have been presented to the Board show that upstream water pressure is being undesirably communicated along some construction lift joints or along other cracks with resultant uplift pressures. Added to the lack of provision in the original design for ice pressure, seismic forces, lower foundation uplift and low concrete densities, such internal pressures further decrease the stability and safety of the present structure.

You have proposed using this left non-overflow section as an impervious core for a new embankment to extend from opposite the left end of your proposed spillway section to the left abutment. You propose an upstream shell of sand and gravel, or other suitable material, and a similar shell downstream, but with a drain "chimney" against the existing downstream face, a drain layer below the new downstream shell and a collecting pipe under the "chimney" leading to a weir to facilitate continuing measurement of leakage. You also propose leaving the present inspection gallery open with extensions of two of the access adits beyond the new embankment.

It is understood that questions have been raised concerning the useful life of such construction, that is, the useful life free of unreasonable maintenance. Using the findings from observations of the telltale patches as a measure, this Board believes that the greatest expansion from alkali aggregates reaction occurred between the completion of the dam and ten to twenty years later, certainly before 1959. The changes in the 14 years since then indicate a marked slowing down in this expansion, if not actual cessation in some places. These observations are consistent with the technical analysis discussed elsewhere herein. Inasmuch as your proposed construction would increase the restraint, on the downstream surface of the existing structure, additional expansion would be further lessened.

Your proposal to use a "dirty" sand and gravel as an upstream shell would provide a source of sealing material for any upstream crack which exists when the new upstream shell is placed. Further, your proposal for a drain chimney adjacent to the downstream slope with a drain layer under the downstream shell and a collection pipe, provides sound means to remove any seepage which might occur through the adapted core structure. With these provisions the downstream shell could be composed of any appropriate material.

For the right side of the new dam you have proposed an embankment with a vertical impervious core with sand and gravel shells. Although the Board understands that the proposed section is tentative, that section is appropriate and in accord with good practice.

In view of the decrease which is measurable in the rate of expansion of concrete in the south gallery wall from alkali-aggregate reaction, this Board believes that the left non-overflow section, if used as an impervious core would endure indefinitely and that the proposed composite structure would have a life which would be useful at least as long as that to be expected from the right impervious core embankment. We believe your proposed construction for this left side of the proposed new dam would provide a structure which would be adequate for all loadings now proposed. Your design is sound and in full accord with good engineering practice. For the reasons given in the following section of this report, the Board cannot foresee a continuance of concrete disintegration to the point where the concrete would become rubble or sand and gravel.

Two indirect advantages will accrue from use of the left non-overflow sections as an impervious core for the new embankment. The first is that the underlying foundation has been well tested during nearly 50 years of service, following core drilling and exploration by the U.S. Bureau of Reclamation prior to construction. Any new left embankment would require new foundation exploration. Adequacy of the present foundation treatment is apparent from the fact that there is no observable seepage through the foundation under the left nonoverflow section. The second advantage will be that removal of this massive structure will be unnecessary. Leaving such an abandoned structure would be unacceptable. A large construction saving will result.

The Board was asked to comment on the need for a dynamic analysis for the left and right embankment sections. The Board considers that such analysis would not be meaningful in design of these sections.

ALKALI-AGGREGATE REACTION AND ITS EFFECTS

As described above the concrete monoliths and the spillway piers of the existing dam have been damaged because of a chemical reaction between the alkalies of the cement and the silica of the aggregate. The sodium and potassium hydroxides in the cement attacked the opaline silica of the aggregate to produce a rim of alkaline silicate around every opaline particle. As this rim of silicate increased in thickness, it exerted an expansive force in an attempt to accommodate its increasing volume. Finally the force became great enough to crack the hydrated cement surrounding the particle. The pressure was then relieved, but the overall dimensions of the concrete were increased slightly. The accumulation of slight expansions from many such particles caused a total expansion of the concrete with consequent cracking.

The time required for the chemical reaction to progress far enough to produce observable expansion varies widely for different concretes and conditions. In general, the time for noticeable expansion is a number of years, with an accelerating expansion for some years and then a slowing down and gradual approach toward a condition of no further expansion.

The chemical reaction, on the other hand, can proceed beyond the time when the further expansion ceases. The reason the expansion ceases is that a time will come when all of the opaline particles have a tiny crack in the hydrated cement around them. This permits the silicate to migrate into voids in the concrete, without sensible pressure. Thus, more alkali silicates can then be formed without associated expansion.

The long continued chemical reaction is possible because the sodium and potassium silicates, after escaping from the rims of the aggregate, become exposed to a liquor saturated in calcium hydroxide. The active alkali silicate then converts to calcium silicate, the calcium silicate being more stable. The active alkali silicates have then become alkali hydroxides once more, so the process can continue. This sequence of events would go on until all reactive aggregates were converted to calcium silicate except for one important limitation. The calcium hydroxide can become exhausted. In general, hydration of Portland cement releases an amount of this hydroxide equal to about one per cent of the volume of the concrete. All of this would be consumed by converting the silicon dioxide of the aggregate to calcium silicate by using only a very small portion of the aggregate. Thus there must be an end to the chemical reaction after many years when there is no more calcium hydroxide.

The long-time integrity of the concrete has been considered carefully by the Board. After the concrete has lost strength due to the internal cracking associated with the expansion, some investigators believe that the concrete would improve slightly rather than continue to deteriorate. The conversion of calcium hydroxide into calcium silicate is one of nature's basic cementing processes, with silicates forming in cracks or voids to make for better strength. Therefore, even before the calcium hydroxide is exhausted to stop the chain reaction, there must be this favorable action, tending to recover a small portion of the lost strength.

There are at least three unfavorable consequences of the alkali-silicate reaction. First, there is the loss in strength due to the internal cracking as mentioned above. Second, large boundary stresses occur because the expansion is not uniform. The moisture necessary for the reaction is not available near surfaces exposed to drying, so that concrete near a surface expands little or not at all, while the interior does expand. Thus, the surface concrete suffers large shrinkage-

type stresses and it must crack. The concrete in a gravity dam is restrained from longitudinal expansion and therefore the cracks in a gallery would be expected to be mainly horizontal, as indeed they are. Many dams suffering from non-uniform expansion due to chemical action have been examined by members of the Board. Non-structural cracks have been found to be shallow. Structural cracks are here defined as those due to a change in geometry of the structure, as when an arch dam is deflected many inches upstream. In two dams in desert country where drying would be expected to penetrate the deepest, large non-structural cracks which appeared to have destroyed the dams were examined and found to be less than 12 inches in depth.

The third consequence of the concrete expansion is that due merely to the changing dimensions. This can cause problems with such functions as gate operation.

Next, consider what behavior can be expected if an expanding gravity dam is covered with a heavy blanket of gravel or crushed rock. The downstream face will become moistened and tend to participate in the internal expansion. If any further expansion occurs, it should tend to equalize cumulative volume changes, and therefore be more tolerable. Also, the weight of fill material on the downstream face of the dam must reduce whatever expansion would otherwise occur. Many experiments have proved that a relatively small force can prevent or reduce expansion of chemical origin. Only about a third as much force is required to prevent expansion as is required to restore dimension if the expansion were first allowed to occur freely.

Observations and Tests Concerning the Alkali-Silicate Reaction:

1. The most recent tests of cores from the *mass* concrete showed compressive strengths averaging 2500 psi as compared with 1080 psi reported for the age of 28 days. (The Board does not consider the 1080 figure to be representative; surely the observed expansion weakened the concrete. But the 2500 psi figure is significant).

2. The cores tested in 1964 showed higher compressive strengths than those tested in 1943. (Admittedly, this is not positive proof of improvement, since only a few cores were tested in 1943.)

3. The opening of cracks during the past 14 years has been almost negligible compared with that for the preceding 32 years. In fact, many of the patches over cracks showed not enough expansion since 1959 to crack the patches.

4. Of the cores taken from the dam in 1964, the poorest ones were from parts of the structure which are to be removed during the proposed reconstruction.

5. The proposal to use low-alkali cement to prevent chemical attack in concrete for the new dam is endorsed by the Board. In addition, consideration should be given to using a pozzolan as a partial replacement for cement to provide better insurance against undesirable expansion.

OTHER FEATURES

Geology.—The geology of the site was reviewed. The basalt rock has been satisfactory foundation for the existing dam and will continue so for the new dam, though drilling as presently underway is necessary to confirm satisfactory conditions for the proposed new concrete structures.

Hydrology and Spillway.—Hydrology was not reviewed. Although still tentative the Probable Maximum Flood is presently estimated to be 166,000 cfs inflow, and five gates (44 ft. wide by 23 ft. high) are proposed to handle this flow, with water surface at top of gates and 12 ft. of freeboard. With upstream regulation, flood routing, and acceptance of surcharge, it is concluded that even with a possible higher finalized PMF the presently proposed structure will prove to be adequate. The use of a stilling basin spillway, as proposed, is appropriate for the rock conditions and for minimizing spray in the vicinity of highway and power plant.

Highway.—The proposed alignment is just downstream from the dam. From considerations of inderstabout earlier construction, optimum highway alignment, and probable minimum cost the proposed alignment appears to be well conceived. The proximity of the highway to the dam will not affect the safety of the dam.

Schedule.—A schedule with new dam completion during January 1976 and first power November 1976 was reviewed. The schedule is closely tied to reservoir operation and to flood season, to maintain fullest use of the reservoir, and to eliminate risk of overtopping during construction. An earlier schedule is not

feasible due to the above requirements. The proposed schedule is feasible, but requires adherence to December 1974 award of contract.

A delay in this date of one or two months would mean a year's delay in completion, or higher costs for accelerated construction to adjust to the restraints of reservoir operation and flood season.

Respectfully submitted,

ROY W. CARLSON.
W. L. CHADWICK.
BARRY COOKE.

ATTENDANCE, AMERICAN FALLS DAM, CONSULTANTS MEETING, AUGUST 9 AND 10, 1973

Roy W. Carlson—Consultant.
W. L. Chadwick—Consultant.
Barry Cooke—Consultant.
C. J. Marshall—Chairman, Committee of Eight.
Leonard E. Graham—Committee of Eight.
Russell Hohn—Committee of Eight.
Clifford H. Farrington—Committee of Eight.
Tom Olmstead—Committee of Eight.
Robert A. Hogg—Committee of Eight IPCo (retired).
Roger D. Ling—Attorney, Committee of Eight.
Cecil D. Holdley—Attorney, Committee of Eight.
Ted Diehl—President of Water Users.
Virgil Temple—Secretary of Water Users.
William Kernor—Director, American Falls Res. Dist. No. 2.
Leon Grieve—Manager, American Falls Res. Dist. No. 2.
John A. Rosholt—Attorney, American Falls Res. Dist. No. 1.
Armin Schroeder—Aberdeen Springfield Res. District.
D. E. Barclay—Idaho Power Company.
Gomer H. Condit—Idaho Power Company.
Ralph I. Clements—Idaho Power Company.
K. V. Taylor—Bechtel Inc.
Charles S. Content—Bechtel Inc.
K. Janka—Bechtel Inc.
J. G. Patrick—Bechtel Inc.

REPORTS FURNISHED TO BOARD OF CONSULTANTS, MEETING OF AUGUST 9 AND 10, 1973

1. U.S.B.R. "Laboratory Report No. C-204, March 20, 1943, Progress Reports on Investigation of Concrete Deterioration in American Falls Dam, Minidoka Project, Idaho, Results of test on 6-inch diameter concrete cores."
2. U.S.B.R. Report No. C-1147, July 5, 1965, "Evaluation of Mass Concrete in American Falls Dam as Determined by Testing of 6-inch Diameter Cores."
3. U.S.B.R. Uplift Pressure Measurements—Old Piezometer Installations.
4. U.S.B.R. Uplift Pressure Measurements—New Piezometer Installations.
5. Miscellaneous Core Hole Data.

RÉSUMÉ OF EXPERIENCE

Name: Roy W. Carlson.
Position: Research Associate, University of California and Consultant.
Affiliation: University of California.
Business address: 55 Maryland Avenue, Berkeley, California 94707.
Birthdate: September 23, 1900.
Education: A.B. (Mathematics) University of Redlands, M.S. (Civil Engineering) University of California, Sc.D. (Materials) Massachusetts Institute of Technology.
Chronological professional history:

1922-23—Southern California Edison Co., Big Creek, California: Recorder and draftsman.
1923-24—Graduate student (physics) at California Institute of Technology.

1924–25—University of Redlands, Redlands, California, Acting Associate Professor of Physics and Engineering.
1925–27—Southern California Edison Company, Big Creek, California, Testing Engineer on Stevenson Creek Experimental Dam and Florence Lake Dam. Helped to develop trial-load method for designing arch dams as later applied for Hoover Dam.
1927–31—Los Angeles County, Los Angeles, Testing Engineer in charge of concrete materials for more than ten dams.
1931–34—Research Engineer at University of California to solve thermal-stress problems by way of low-heat cement and pipe refrigeration.
1934–35—Massachusetts Institute of Technology, Cambridge, Assistant Professor of Civil Engineering, in charge of cement and concrete research.
1935–36—University of California, Berkeley, Associate Professor of Civil Engineering, teaching strength of materials and counseling on research projects.
1936–43—Massachusetts Institute of Technology, Cambridge, Associate Professor of Civil Engineering, in charge of cement and concrete research.
1943–45—University of California, Berkeley and Los Alamos, Engineer on the development of the atomic bomb, where he solved several problems in mechanical design of the bomb, including that of the large thermal contraction of the bomb's interior during flight at low temperatures.
1945 on:

Self-employed as consultant on scores of projects and manufacturer of instruments for measurement of stress, strain, temperature, etc. as invented by himself. Carlson meters are embedded in most important dams in the world to monitor the long-time structural action and safety.

Engaged in many research and development projects such as (a) to develop a superior X-ray system with lower radiation dosage, higher resolution, portability and 3 dimensions, and (b) to develop vacuum pumps of the oil-diffusion type with better efficiency and smaller size.

Currently consulting on nearly all the hydro power projects in Brazil for the Brazilian Government.

Consulting for many Districts of the U.S. Army Engineers.

Consultant on the following projects: St. Lawrence Seaway Locks, Dworshak Dam, Libby Dam, Oahe, Big Bend, and Ft. Randall Dams.

Numerous Engineering Publications, Honors, Awards and Patents.

J Barry Cooke—Consulting Civil Engineer

Mr. Cooke graduated from the University of California in 1929 with a BS degree in Civil Engineering, after which he performed graduate work in hydraulics and structures. He is a member of Tau-Beta-Pi, Chi-Epsilon, Sigma-Xi and the University of California Honor Society. He is a registered professional engineer in California, a Fellow of the American Civil Society of Engineers, a member of the United States Committee on Large Dams, and the Consulting Engineers Association of California. In 1960 he won the ASCE Rickey Medal for his paper on the "Haas Hydroelectric Power Project"; in 1961 he won both the James Laurie Prize and the T. A. Middlebrooks Award from the same society for outstanding technical papers on rockfill dams He is author of numerous technical papers on hydraulic developments—especially underground projects, and those having high head.

As supervising engineer and consultant with the Pacific Gas & Electric Company, Mr. Cooke has developed an unusually broad technical experience in the design and construction of water resources projects, especially hydroelectric developments, dams and tunnels. After 22 years with that company he resigned in 1961 to establish his own world-wide consulting practice. While with P.G. & E., Mr. Cooke was engaged in the design and engineering work on 18 new hydroelectric developments and the operating problems of 70 hydroelectric developments, 110 dams, and 130 miles of tunnels. The projects were high or medium head plants with impulse or Francis type turbines. The dams were of all types, and the new projects included raising two arch dams. The conduits in most cases consisted of intake, unlined and lined tunnel, surge chamber, and penstock.

He has served as an individual consultant, or member of a board of consultants on more than 20 major projects world-wide in the past three years. Among these are the Taum Sauk Pumped Storage Project for Union Electric Company; the

Kemano Tunnel repairs for the Aluminum Company of Canada; the 600 MW Bata Power Project (a 580 ft. Rockfill Dam for INGETEC in Colombia); the Geehi Dam in the Snowy Mountains Development in Australia; and he was general rockfill dam consultant on the 370 ft. high Mont Cenis dam in France.

WALLACE L. CHADWICK, CONSULTING CIVIL AND MECHANICAL ENGINEER

Mr. Chadwick received his education at the University of Redlands and is registered as a civil and mechanical engineer in California. He is a Fellow of the Institute of Electrical and Electronic Engineers, American Society of Mechanical Engineers, and American Society of Civil Engineers In the latter, he has served as President of the Los Angeles Section and as the National President. He was president of the Los Angeles Engineering Council and was the recipient, in 1962, of the Engineer of the Year Award from the Los Angeles Engineering and Technical Societies.

Since his retirement as a Vice President in charge of engineering and construction for Southern California Edison Company in 1962, Mr. Chadwick is a practicing consultant regularly associated with Bechtel and is often used for consultation on all water resources development and steam power projects undertaken by Bechtel. For more than 40 years he has been prominent in the engineering fields of water resources development and electric power generation.

Starting with Edison Company in 1922, Mr. Chadwick was engaged in planning, design and construction of the Big Creek-San Joaquin hydroelectric development to 1931. During this period he had major responsibilities in connection with the Florence Lake Tunnel, Mono-Bear Diversion and Big Creek 2A, Huntington-Shaver and Shaver Lake Projects, and with transmission facilities. In 1931 he joined the Metropolitan Water District of Southern California as Engineer and Senior Engineer on design and construction of the famous Colorado River Aqueduct. He returned to Southern California Edison in 1937 to become Civil Engineer and Chief Civil Engineer, 1937–44; manager of engineering, 1945–50; Vice President from 1951 to his retirement in 1962. During the period 1937–62 his responsibilities included design and construction of Vermilion Dam, Big Creek 4 and Mammoth Pool hydroelectric projects, as well as several large steam electric plants, transmission lines and associated facilities.

Mr. JOHNSON. In your contract with the Spaceholders, what limitation is placed on the total cost of the dam that you are going to design?

Mr. PATRICK. Our contract with the Spaceholders has no limitations.

Mr. JOHNSON. No limitations?

Mr. PATRICK. No, sir.

Mr. JOHNSON. Well, as I understand it, there could be higher costs than you spoke of this morning.

Mr. PATRICK. Yes, sir. I made it clear that the figure I gave you did not include escalation, and my figures were based on 1973 costs.

Mr. JOHNSON. Now, in your study, have some pretty hard figures been put into it, in your opinion?

Mr. PATRICK. The figures I quote are the result of extensive investigation, preliminary designs. Detailed design is now in progress, the actual construction quantities and preparing a cost estimate based on these quantities for construction and purchase.

Mr. JOHNSON. The gentleman from California, Mr. Clausen.

Mr. CLAUSEN. No questions.

Mr. JOHNSON. The gentleman from California, Mr. Ketchum.

Mr. KETCHUM. No questions.

Mr. JOHNSON. The gentleman from Nevada, Mr. Towell.

Mr. TOWELL. As I understand it, the State is going ahead with their bridge project, or a two-lane bridge, this coming fall?

Mr. PATRICK. That is right.

Mr. TOWELL. And your design would be an additional two lanes?

Mr. PATRICK. That is right.

Mr. TOWELL. I assume a traffic count has been done. That would come out so we would have a four-lane—I just wanted to have that clearly in my mind. No further questions.

Mr. JOHNSON. Mr. Casey, do you have any questions of the witness?

Mr. CASEY. I don't have any engineering questions, but I was wondering if you would be kind enough to submit for the record a short biographical sketch of your board of consultants.

Mr. PATRICK. I would be very happy to.

Mr. JOHNSON. Mr. Luken.

Mr. LUKEN. No, thank you, Mr. Chairman.

Mr. JOHNSON. We want to thank you for your detailed testimony here and report of your consultants as well as the diagram. It sounds very good to us. It looks like you have pointed up all the problems we have in our minds when we go up there this afternoon and look at what is there now. We are very glad to have this.

The gentleman from California.

Mr. CLAUSEN. I just wanted to ask that should our visitations to the site and the opportunity to review your statement more in depth, should it be necessary for me to ask more question, I would like to reserve the right to ask more questions.

Mr. PATRICK. I would be happy to respond.

Mr. JOHNSON. I might say to all of you people that the reacord will be held open for 2 weeks after the close of the hearing today, for additional comments or statements. You may have some questions stemming from the visit there this afternoon and the various witnesses appearing here. So we will hold the record open. Thank you.

Mr. KETCHUM. Mr. Chairman, on that point, if I may——

Mr. JOHNSON. Yes, sir.

Mr. KETCHUM. Since the record is going to be held open for 2 weeks, I wonder if we might have Mrs. Butterfield, as a representative of the Shoshone-Bannock Tribal Council, to submit her comments or those of her attorney as to the amendment that I gave her a moment ago.

Mr. JOHNSON. You will submit those, and we will place them in the record when received.

Mrs. BUTTERFIELD. Thank you.

Mr. JOHNSON. Our next witness is Mr. MacFarlane, the AFL–CIO representative in the area here, and possibly the State.

We are glad to have you with us today.

STATEMENT OF ROBERT W. MacFARLANE, PRESIDENT OF THE IDAHO STATE AFL–CIO

Mr. MACFARLANE. Thank you, Mr. Chairman.

Mr. Chairman, Senator McClure, and Representative Hansen, I am Robert W. MacFarlane. I have submitted a statement to be entered into the record, with just a few words in passing.

Mr. JOHNSON. Your statement will appear in the record in full, and you may summarize it.

[Mr. MacFarlane's statement follows:]

STATEMENT OF ROBERT W. MACFARLANE, IDAHO STATE AFL-CIO, BOISE, IDAHO

I am Robert W. Macfarlane. President of the Idaho State AFL-CIO. I represent thousands of members in the State of Idaho.

Organized labor in Idaho strongly supports the immediate replacement of the American Falls dam. Our position has not been altered; it has been strengthened.

As we have people employed in every industry in Idaho, we are probably more aware than most that agriculture is the largest economic factor in our state.

Our people have installed and now maintain most of the deep well pumps used for irrigation purposes on the farm lands, and they have built and now maintain and operate the large processing plants in this state, so it becomes apparent that our interest is a very real one.

You, no doubt, flow over the American Falls dam and have observed the mud banks lining the river channel. The reduction of the water level by the U.S. Bureau of Reclamation coupled with the short water year has caused this near economic disaster. This action by the Bureau reduced the storage water available for irrigation by about 600,000 acre feet. This storage limitation if continued will adversely affect 900,000 acres of irrigated lands in the American Falls-Magic Valley area of southern Idaho that depend upon this water for late Season irrigation or for final water to finish out crops. With another low-water year similar to 1973, the potential loss to the agriculture community alone has been estimated to be over $100 million annually.

The economic impact of such a crop failure and the loss of $100 million of farm income in southern Idaho would have a major wide-spread effect upon the total economy not only for the year of the crop failure but for the several years to follow.

This loss compounded would also follow into the food processing industry where nearly 15,000 men and women are employed, many of whom are members of the AFL-CIO. It would also affect many workers in satellite industries—fertilizer, irrigation equipment, etc.

The total water being stored in the upper Snake River today is less than half that of last year and while this may sound bleak, this is the situation we are facing today.

The reconstruction of the dam and power plant is estimated to cost in the neighborhood of $50,000,000. This would be spent by the American Falls Reservoir District and its agents in a period of two years. It is an accepted rule of thumb that approximately 40% of costs of a project of this nature, or approximately $20 million, would be expended for labor.

This would mean immediate employment for our crafts. The economic impact on the areas and state would be considerable.

This money would be derived from the sale of bonds and securities and these would be new dollars to the area and would not place a tax burden upon our members.

It is for these and many other reasons that I urge that Congress immediately approve legislation before the Committee giving permission for the American Falls Reservoir District to replace the American Falls dam with private monies and that construction be commenced at the earliest practical date.

Mr. MACFARLANE. We have been aware for some time of the deterioration of the American Falls Dam. We have made personal inspections of it, and we also realized this deterioration would curtail the water in the dam, which affects the economy of the State. We realize that agriculture is the No. 1 segment of the economy of the State of Idaho, and anything that affects agriculture, affects the economy of the entire State. Therefore, we are here and we urge support of this proposition to rebuild the American Falls Dam as soon as possible.

Mr. JOHNSON. We want to thank you for appearing here and giving us the support of organized labor toward the legislation that is pending before the Congress.

We all agree, I think, all of us on this committee, that the basic economy of the whole Nation stems from what the farmers do and what comes from the soil. We are trying our level best to bring about good water resource development to allow this to continue, because if we are going to have profitable farming ventures, we have to give them the tools to work with. The first one is water. We know how to do it pretty well from there on out. Water has to be made available at the lowest cost possible. That has been the aim of the Federal Government in developing water resources throughout the years, and we will continue throughout the years to do this.

The gentleman from California, Mr. Clausen.

Mr. CLAUSEN. I am certainly appreciative of your comment.

What is the employment situation in the area generally? What is the percentage of unemployment, shall we say, in the area?

Mr. MACFARLANE. Well, agriculture itself, as you may realize, is somewhat seasonal, but each year becomes less and less so. I would say unemployment would be 5 percent, but contingent upon the agricultural economy, we have many people employed in the manufacture of farm implements, in the maintenance of farm implements. In this particular area, we have people employed in installing pumps, in the maintenance of the pumps, and thousands of people employed in sugar-beet and potato processing in this area.

Mr. CLAUSEN. I believe you stated 8,000 people. I believe we can anticipate with this project going forward, you will obviously increase the employment potential in the area, and it cannot help but have a reducing effect on the unemployment; would this be a true picture?

Mr. MACFARLANE. I would think so. As the production increases. I do not mean through the use of extra land, but the productivity of existing land and the products, employs more and more people.

Mr. CLAUSEN. And it stabilizes the economy and job potential, not only now but well into the future?

Mr. MACFARLANE. Yes.

Mr. CLAUSEN. Thank you.

Mr. JOHNSON. Any questions, Mr. Ketchum?

Mr. KETCHUM. No questions.

Mr. JOHNSON. Mr. Towell?

Mr. TOWELL. No questions.

Mr. JOHNSON. Mr. Luken?

Mr. LUKEN. No questions.

Mr. JOHNSON. Our next witness is Mr. Tom Nelson, the attorney for the American Falls Reservoir District.

STATEMENT OF THOMAS G. NELSON, REPRESENTING THE AMERICAN FALLS RESERVOIR DISTRICT

Mr. NELSON. Mr. Chairman, members of the committee, I have submitted a prepared statement which I would request leave of the committee to have included in the record at this point.

Mr. JOHNSON. It will appear in the record in full and you may summarize it.

[Mr. Nelson's statement follows:]

STATEMENT OF THOMAS G. NELSON

Mr. Chairman and members of the committee, my name is Thomas G. Nelson. I am a partner in the Twin Falls law firm of Parry, Robertson, Daly and Larson. Our firm represents the American Falls Reservoir District, and I appear here today at the request of the Board of Directors of the American Falls Reservoir District. We have been involved in the Spaceholders' attempts to obtain authorization to reconstruct the dam since the inception of the program. My specific participation at the request of the Executive Committee of the Spaceholders, has fallen in the areas of the river crossing and the impact of the reconstructed dam on the fishing below the dam.

The Committee has already received information relating to the present status of the river crossing project, to consist of a two-lane bridge below the dam and two lanes on top of the dam when reconstructed. Some time ago, approximately $900,000.00 was allocated to the river crossing on the existing dam under the Bridges on Federal Dams Act (23 USC Section 320). Those funds are still available and still allocated to the American Falls river crossing. A technical amendment is necessary to S. 1529 in order to make it clear that the reconstruction of the dam and river crossing is a project within the meaning of the Bridges on Federal Dams Act. A copy of the amendment to S. 1529 was included in Governor Andrus's testimony, and for the Committee's convenience, I am attaching a copy of it to this statement as an exhibit.

In preliminary discussions on the project, it was the thought of the Spaceholders and the Idaho Department of Fish and Game and the U.S. Bureau of Sport Fisheries and Wildlife that it would be possible to preserve the fishing in the forebay by passing 50 cubic feet per second of water flow around the power house into the forebay. Upon further investigation, it was determined that this would provide an essentially calm body of water and that the trash fish species would intermix with the game fish species, and the fishing as it presently exists would be destroyed. To preserve the flows in the forebay which presently physically separate the trash fish from the game fish species would separate the trash fish from the game fish species would require a minimum flow of 3,000 cubic feet per second and 20,000 cubic yards of fill in the bottom of the forebay. This flow would have to be bypassed around the power house into the forebay, and bypassing of a flow of this magnitude would result in a loss of 58% of the power which would be gained by construction of penstocks and the generating plant below the dam. It was obvious that flows of that magnitude render the project totally uneconomical.

As a result of the information gained in the forebay study, we are presently investigating different options which may be open to mitigate the impact of the reconstruction of the dam and power house to the extent physically and financially feasible. We are also investigating some down stream improvements which could be included as part of the project to improve access to the tail water of the power house, which will constitute the major fishing area immediately down stream of the dam, following its reconstruction.

In addition to passage of S 1529 at the earliest possible time, the Spaceholders also need further authorizations from the State Legislature. That legislation is being drafted and will be submitted to the legislature at the session commencing in January of 1974. The legislature was quite cooperative in the bills which we presented to them last session, and we have every reason to hope that we will obtain speedy passage of the necessary State authorizations in order that the bond election could be held early in 1974.

Mr. Chairman, the American Falls Reservoir District and the American Falls Spaceholders have invested considerable time, effort and money in moving this project along toward a projected commencement of construction of January 1, 1975. We believe that passage of S 1529 will enable the Spaceholders to reconstruct the dam at the earliest possible time, which is the sole purpose of the proposal of the Spaceholders. The Spaceholders believe that the approach embodied in S 1529 offers the best vehicle for accomplishment of this purpose.

Mr. Chairman, I also ask your consent for the inclusion in the record of several statements which I have brought with me today. They represent the views of

other water users and people in Idaho who are also concerned with a rapid solution to the American Falls problem.

I appreciate having been given the opportunity to testify today. I will attempt to answer any questions which members of the Committee or staff might have.

SECTION 2

(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~~ *constructing agency* 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.~~ *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 purposes of subpart (ii) of this subsection, the constructing agency shall be considered an "agency" within the meaning of 28 U.S.C. 320(a).*

Mr. NELSON. Thank you, Mr. Chairman.

Also, I have a number of statements of other people who are interested in the project, that I would like to submit for the record at this time.

Mr. JOHNSON. If you will identify their names——

Mr. NELSON. A statement from Gooding Public Schools; statement from Bell Taylor of Gooding, Idaho; a statement of E. J. Price of Gooding, Idaho; a statement of Thomas B. Miller of Gooding, Idaho; a statement of Wood River Area Resource Council of Governments; a statement of Charles E. Sams of Gooding, Idaho; a statement of the city of Gooding; the city of Wendel; statement of the Lincoln County Commissioners; a statement of the Shoshone Chamber of Commerce; a statement of the city of Buhl; a statement of Shields from Buhl; a statement of the Rupert Chamber of Commerce; a statement of the Rupert City Council; a statement of the Minidoka County Commission; a statement of the Burley Chamber of Commerce; a statement of the city of Burley; a statement of the Cassia County Commissioners; a statement of the city of Shoshone; a statement of the Twin Falls County Commissioners; the city of Filer; the Twin Falls Bank & Trust Co.; the Idaho Bank & Trust Co.; the Idaho First National Bank; the Aberdeen Springfield Canal Co.; the Twin Falls Canal Co.; the South Idaho Production Credit Association; the Buhl Chamber of Commerce; the city of Twin Falls; the chairman of the board of the Upper Snake River Water Users Protective Union; a statement from the Harrison Canal & Irrigation Co.; a statement of the Twin Falls Chamber of Commerce; a statement of the Idaho Water Users Association, with copy of an attached resolution passed at their convention; a statement of the chairman of the board of the Northside Canal Co.; a statement of the chairman of the Committee of Nine; and a statement of the Burgess Canal & Irrigating Co.; and a statement of Tom Almstead, a director of the American Falls Reservoir District.

Mr. JOHNSON. I presume those are all in support of the project?

Mr. NELSON. Yes, sir.

Mr. CLAUSEN. Is anybody against it?

Mr. Nelson. I did not bring any statements from any of those people, if there are.

[The statements follow:]

Gooding Public Schools,
Joint School District No. 231,
Gooding, Idaho, October 5, 1973.

Hon. Harold T. Johnson,
Subcommittee Chairman, Water and Resources Subcommittee, Interior and Insular Affairs Committee, U.S. House of Representatives, Washington, D.C.

Dear Representative Johnson: In reference to the American Falls Dam and the effects it has on all aspects of our local society, without the water that American Falls Dam supplies this area would revert back to its original state. What we have worked to accomplish for the last seventy years could be all in vain without an adequate supply of water.

I work with young people, and being in an agricultural area, water is a very necessary product. A majority of our young people remain in the area and are employed in agriculture or agricultural affiliated occupations, and irrigation water becomes very necessary.

Your support in expediting Senate Bill #1529 in regards to American Falls Dam on the Snake River will be greatly appreciated.

Thank you for your consideration.

Respectfully yours,

James V. Muscat,
Superintendent of Schools.

Gooding, Idaho, *October 4, 1973.*

Hon. Harold T. Johnson,
Chairman, Subcommittee on Water and Resources, Interior and Insular Affairs Committee, House of Representatives, Washington, D.C.

Dear Mr. Johnson: I am writing in regards to Senate Bill 1529 which would allow the water users to replace the American Falls Dam with private funds.

Immediate replacement of the dam is of vital concern to the farmers and the communities of this area and another dry winter could be disasterous.

I certainly urge that favorable consideration be given to SB 1529.

Sincerely,

Dell E. Taylor.

Gooding, Idaho, *October 4, 1973.*

Representative Harold T. Johnson,
Chairman, Subcommittee on Water and Resources, Interior and Insular Affairs Committee, House of Representatives, Washington, D.C.

Dear Mr. Johnson: I am in full support of Senate B 1 1529 which, in part, allows for private funding of replacement of American Falls Dam.

If a water short year should occur during this winter, all of southern Idaho will be in extreme jeopardy! At present, there is no longer any stored water behind the American Falls Dam. The channel of the Snake River is visable with one of the few times this has happened in some time. The carryover water, if any, will be mighty short.

I ask that favorable consideration be given to SB 1529.

Sincerely,

G. J. "Whitey" Price.

Gooding, Idaho, *October 3, 1973.*

Hon. Harold T. Johnson,
Chairman, Subcommittee on Water and Resources, Interior and Insular Affairs Committee, House of Representatives, Washington, D.C.

Dear Representative Johnson: I write to you in support of Senate Bill 1529 to allow the water users of this area to rebuild the American Falls Dam using private funds. I am sure you realize that water is a vital issue to us farmers, and the seriousness of the condition of the present dam has caused a short water year this year.

Another dry winter season could cause early turn off of irrigation water and spell disaster to most of the farmers in the Gooding area. We ask that favorable consideration be given to SB1529.

Sincerely,

Thomas D. Miller,

WOOD RIVER RESOURCE AREA,
COUNCIL OF GOVERNMENTS,
Gooding, Idaho, October 3, 1973.

HON. HAROLD T. JOHNSON,
Chairman, Subcommittee on Water and Resources, Interior and Insular Affairs Committee, House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE JOHNSON: The Wood River Resource Area Council of Governments is in full support of Senate Bill 1529 which would, in part, allow for private funding for the replacement of the American Falls Dam.

The Council agrees that there should be the earliest replacement of the American Falls Dam as is physically and politically possibe. The economic base of all of Southern Ideho rests upon the continued and adequate supply of irrigation water.

Should there be a dry winter on the watersheds of the Snake River, the very way of life of Southern Idaho agriculture would be threatened.

We, therefore, urge favorable consideration to Senate Bill 1529.

Sincerely,

DON G. FREDERICKSEN, *Chairman.*

GOODING, IDAHO, *October 4, 1973.*

HON. HAROLD T. JOHNSON,
Subcommittee Chairman, Water and Resources Subcommittee, Interior and Insular Affairs Committee, U.S. House of Representatives, Washington, D.C.

DEAR MR. JOHNSON: I am writing you at this time with reference to Senate Bill No. 1529.

As a Business man here in Gooding operating a Department Store I am very much interested in passage of Senate Bill No. 1529.

This store has been in operation since 1936 and supported aproximately 90% by farmers, cattlemen and sheepmen.

Unless water for their operations is consistently supplied and their existence insured then this business along with others will be reversed effecting economy of this section of Idaho as well as owner of this store.

I urge you to support and work for passage of the Senate Bill No. 1529.

Your help in this matter will be most appreciated.

Very truly yours,

CHARLES E. SAMS.

CITY OF GOODING,
Gooding, Idaho, October 2, 1973.

HON. HAROLD T. JOHNSON,
Subcommittee Chairman, Water and Resources Subcommittee, U.S. House of Representatives, Washington, D.C.

DEAR MR. JOHNSON: In regard to the new American Falls Dam, I will say that we the people of the Gooding Area, are greatly interested in our irrigation water as a factor to survival. I am sure that all the farmers do not know how serious our shortage of irrigation water is, or can be next year during 1974's irrigation season.

I am sure the people of surrounding areas will appreciate anything your committee can do to expedite Senate Bill No. 1529 in regards to the new American Falls Dam.

Very Truly yours,

H. V. CRIPPEN, *Mayor.*

CITY OF WENDELL,
Wendell, Idaho, October 2, 1973.

HON. HAROLD T. JOHNSON,
Subcommittee Chairman, Water and Resources Subcommittee, U.S. House of Representatives, Washington, D.C.

DEAR MR. JOHNSON: In regard to the new American Falls Dam, I will say that we the People of the Wendell Area, are greatly concerned and interested in our irrigation water as a factor to survival. I am sure that all of our area farmers

no not know how serious the shortage of irrigation water is or can be next year during the 1974 irrigation season.

I am sure the people of surrounding areas will also greatly appreciate anything your committee can do to expedite Senate Bill No. 1529 in regards to the new American Falls Dam.

Very Truly yours,

EUGENE SOARES,
Mayor, City of Wendell.

SHOSHONE, IDAHO, *October 3, 1973.*

HON. HAROLD T. JOHNSON,
HOUSE OF REPRESENTATIVES PUBLIC HEARING ON THE AMERICAN FALLS DAM,
Burley, Idaho,

GENTLEMEN: As to the subject of the public hearing to be held in Burley, Idaho, Saturday, October 6, 1973, concerning the replacement of the deteriorated American Falls dam. We wish to go on record as favoring Senate Bill 1529 to authorize private companies to assist in the building of the dam.

Since Lincoln County is agriculturally oriented and so much of its irrigation waters come from the American Falls Reservoir, we would like to express the urgency that exists in getting the dam built at its earliest possible date. Water is the life line in our economy!

Respectfully submitted,

LINCOLN COUNTY COMMISSIONERS,
GLENN L. SORENSEN.

SHOSHONE CHAMBER OF COMMERCE,
Shoshone, Idaho, October 4, 1973.

Congressman HAROLD T. JOHNSON,
Chairman of Water and Power Resources Subcommittee of the Interior and Insular Affairs Committee, U.S. House of Representatives, Washington, D.C.

DEAR SIR: The City of Shoshone is comprised of approximately 1500 people whose main source of livelihood is derived from agricultural production. This area is normally arid in nature and can only become productive through irrigation from storage facilities such as the American Falls Dam. The economy of this community has been greatly jeopardized by the condemnation of the American Falls Dam; therefore we the people of the City of Shoshone and its surrounding area do hereby urge the immediate passing of Senate Bill No. 1529, authorizing the construction of the American Falls Dam with private funds.

We respectfully submit this request for the committee's approval.

Respectfully submitted,

REID J. NEWBY,
President, Chamber of Commerce.

CITY OF BUHL,
Twin Falls County, Idaho, October 3, 1973.

HON. HAROLD T. JOHNSON,
Subcommittee Chairman, Water and Power Resources Subcommittee, Interior and Insular Affairs Committee, U.S. House of Representatives, Washington, D.C.

DEAR MR. JOHNSON: The City of Buhl is located in Southern Idaho, in the Twin Falls Canal Company project, and is dependent upon irrigated agriculture of the surrounding area and, therefore, feels it has a vital interest in the replacement of the existing American Falls dam, located on the Snake River near American Falls, Idaho. At the Buhl City Council meeting held October 2, 1973, the City Council discussed S. 1529 and unanimously voted to support the passing of said bill as it feels said bill is in the best interests of the citizens of the City of Buhl, Idaho, and the property owners of the area surrounding the city.

Very truly yours,

MAYOR TED PENCE.

SHIELDS.
Buhl, Idaho, October 5, 1973.

Hon. HAROLD T. JOHNSON,
Subcommittee Chairman, Water and Power Resources Subcommittee, Interior and Insular Affairs Committee, U.S. House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE JOHNSON: We are one of the handlers of beans, seed and grain in Southern Idaho. Much of our trading is through a Cooperative Marketing Association of farmers in the area.

The possible loss of water due to present operating restrictions and the subsequent decline in crop yields make the replacement and/or reconstruction of the American Falls Dam urgent. The economy of Southern Idaho depends on farming by irrigation.

Passage of a bill such as S. 1529 permitting the private funding of a replacement dam seems to be the only rapid solution. We urge your favorable consideration of this matter.

Very truly yours,

JAMES T. SHIELDS.

STATEMENT OF RUPERT CHAMBER OF COMMERCE

The Board of Directors of the Rupert Chamber of Commerce, at their meeting on October 1, 1973, voted unanimously in support of S. 1529, allowing the spaceholders of American Falls Reservoir to proceed with the early construction of American Falls Dam to replace the present American Falls Dam for storage of irrigation water. It is the firm belief of the Board of Directors of the Rupert Chamber of Commerce and its members that the earliest possible replacement of American Falls Dam must be obtained and that this can be best accomplished under the provisions of S. 1529 which would allow the spaceholders to proceed with the replacement of American Falls Dam with due haste. The members of the Rupert Chamber of Commerce are fully aware of the acute need for this storage of irrigation water on the Snake River to provide an adequate water supply to the lands presently under irrigation in our community. As businessmen in the city of Rupert, we are also fully aware of the dependency of business in our area upon the agricultural economy. We sincerely urge the prompt consideration and approval by the Water and Power Resources Subcommittee of the Interior and Insular Affairs Committee and the ultimate passage of this important legislation by Congress.

Dated this 2nd Day of October, 1973.

STATEMENT OF RUPERT CITY COUNCIL

Congressman Johnson and Subcommittee Members:

The Mayor and City Council of the City of Rupert, at its regular meeting on October 2, 1973, by unanimous vote, supported the replacement of American Falls Dam on the upper Snake River pursuant to the concepts contained in S. 1529, now being considered by your subcommittee. As the City of Rupert and its inhabitants are a water-user of Minidoka Irrigation District which obtains a part of its water supply from storage in American Falls Dam, we are fully aware of the catastrophe that would result should our water supplies be insufficient to irrigate our arid land. So long as the storage in American Falls Dam is restricted, this danger is more readily apparent. Through the replacement of American Falls Dam at the earliest possible time, we can be somewhat assured of having an ample water supply during the irrigation season. We sincerely believe that S. 1529 provides the avenues by which American Falls Dam can be replaced within the shortest possible time period. We sincerely urge that your subcommittee favorably report S. 1529 for its early consideration and passage by Congress.

Respectfully submitted this 2nd Day of October, 1973.

STATEMENT OF COUNTY COMMISSIONERS OF MINIDOKA COUNTY

Congressman Johnson and Subcommittee Members:

We, the undersigned, County Commissioners of Minidoka County, do hereby fully support the early passage of S. 1529 to allow the replacement of American

Falls Dam through private funding by the Spaceholders and such subsidy as they may obtain through a Falling Water Contract for the development of power. As the primary industry in Minidoka County is farming, an adequate water supply is essential. The gamble that exists so long as there is a restriction on American Falls Dam for the storage of water is of such a magnitude that in a short water year, the nature of the crops grown could be severely affected. We, therefore, sincerely urge the early consideration and approval by your subcommittee of the concepts of S. 1529 and the early passage of this bill by the House of Representatives.

Dated this 4th day of October, 1973.

BURLEY CHAMBER OF COMMERCE,
Burley, Idaho, October 5, 1973.

Hon. HAROLD T. JOHNSON,
Subcommittee Chairman, Water and Power Resources Subcommittee, Interior and Insular Affairs Committee, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the Burley Chamber of Commerce, we are fully aware, realize, and understand the importance of the present water shortages, the lack of storage space because of safety factors at the American Falls Reservoir, and certainly is coupled with the energy crisis in our area, and ultimately which the county is facing today.

For the past several years, not only the Burley Chamber of Commerce, but also the South Idaho Water Users Association, in a joint venture has foreseen some of these problems, and consequently produced a film "People, Land, and Water" which was submitted at that time to the Interior Insular Affairs Committee, Washington, D.C. for the purpose of replacing American Falls Reservoir and hopefully to gain additional storage. Our main concern at that time was supplementary water for farming land especially since Idaho is heavily dependent upon their livelihood from the farming industry. Now, several years later, irrigation still is one of the most important factors in our area, but it is quite apparent that equally important is a problem that exists in regard to our energy resources. Not only our local business community, but also for the farming industry as well.

Since we have long realized the existing problems of American Falls Reservoir in regard the condition of the structure itself along with the danger it creates to all property owners downstream, therefore and in accordance with the Hearing that was held before the subcommittee on Water and Power Resources of the Committee of Interior and Insular Affairs of Senate of the 93rd Congress, first session, we of the Burley Chamber of Commerce agree and fully support the Idaho Power Company's proposal and recognizing the irrigation needs of space holders of American Falls Reservoir and District, and requesting their full support and cooperation in every possible way in obtaining a power commission license for the construction of power generation facility for the Idaho Power Company below the Dam.

The Burley Chamber of Commerce greatly appreciates this opportunity to express their views and concern for both the replacement of the dam for additional storage for water, the power that can be generated, and also the safety factor.

Respectfully submitted,

GEORGE P. FORSCHLER, *President.*

CITY OF BURLEY,
Burley, Idaho, October 3, 1973.

Hon. HAROLD T. JOHNSON,
Subcommittee Chairman, Water and Power Resources Subcommittee, Interior and Insular Affairs Committee, U.S. House of Representatives, Washington, D.C.

DEAR SIR: I remember as a boy how short the water supply was in Magic Valley before American Falls Dam was built. Even then with Twin Falls County having the best water right in Jackson Lake there was some years of shortage.

With the building of American Falls Dam and the assurance of plenty of water the other counties of this wonderful valley expanded and it has become one of the most productive areas in the U.S. Two hundred thousand people depend upon the water from American Falls Dam for continued production and the economic well being of the entire Magic Valley. It isn't a question of rebuild or not to rebuild, but how the project can be expedited to completion.

Sincerely,

J. G. ROBERTSON, *Mayor.*

CASSIA COUNTY COMMISSIONERS,
Burley, Idaho, October 2, 1973.

HON. HAROLD T. JOHNSON,
Subcommittee Chairman, Water and Power Resources Subcommittee, Interior and Insular Affairs Committee, U.S. House of Representatives, Washington, D.C.

HON. HAROLD JOHNSON: The Reservoir is low and only the main stream flows through. An empty reservoir draws immediate attention to the thinking public. How can we produce food and fiber for the inhabitants of our great State of Idaho and nation without water storage facilities? Natural flow of water is very deceptive and in many cases can be disastrous. Farmers who farm on the Burley Irrigation Project and the Minidoka Irrigation Project know too well that they will go broke in low water years if there is not water storage. The best way to protect our water is to use it. And we cannot use it on this Minidoka project without water storage at the American Falls Reservoir. We need to rebuild for replacement of water storage in the American Falls Reservoir for our own security and for the development of a well-fed and healthy society.

Our basic need is food. For the first time in history, Americans are coming to face the reality that we can no longer take for granted—one of our basic needs. All people have a stake in world wide food production. Our greatest source of food comes from fertile soils, plus water storage, plus the knowledge to harness the water and make it more useful to man.

Our water supply was thought to be extravagantly abundant to State governments of the arid Southwest. Our water is not abundant at all. Underfed reservoirs, drying river banks and an impending shortage of electricity proves the need for rebuilding the American Falls Dam.

Respectively Yours,

JOHN A. CLARK, *Chairman.*
J. WELDON BECK.
ORVIL BEECHER.

CITY OF SHOSHONE,
Shoshone, Idaho, October 5, 1973.

HON. HAROLD T. JOHNSON,
Chairman, Water and Power Resources Subcommittee, Interior and Insular Affairs Committee, U.S. House of Representatives.

The Shoshone City Council at its regular meeting on October 2, 1973 cited to urge the immediate passage of SB 1529 authorizing the replacement of the American Falls Dam by private means. Our town's economy is based on our agricultural community. Trying to make out on a short water supply vitally effects our livelihood.

Very truly yours,

RUTH K. CHESS,
City Clerk.

TWIN FALLS COUNTY
BOARD OF COUNTY COMMISSIONER,
Twin Falls, Idaho, October 6, 1973.

HON. HAROLD T. JOHNSON,
Chairman, Water and Power Resources Subcommittee, House Interior and Insular Affairs Committee, Longworth House Office Building, Washington, D.C.:

The Twin Falls County Commission unanimously endorses the earliest possible replacement of the American Falls Dam. We support the Spaceholders in their efforts to accomplish this replacement after the passage of S. 1529.

We thank the Committee for scheduling the field hearing in Southern Idaho, so that they might become better acquainted with the immediate problems.

Since our County is almost totally dependent upon agriculture for its economy, we feel that it is imperative that the American Falls Dam be in condition to be operated at full capacity. The economic ramifications of short water years and inadequate storage might well strike a blow which our farm economy would take years to recover.

We encourage your early consideration of S. 1529.

Respectfully submitted,

WILLIAM L. CHANCEY, *Chairman.*

CITY OF FILER, IDAHO,
October 4, 1973.

HON. HAROLD T. JOHNSON,
Subcommittee Chairman, Water and Power Resources Subcommittee, Interior and Insular Affairs Committee, U.S. House of Representatives, Washington, D.C.

DEAR SIR: The City Council of the City of Filer, Idaho urge passage of Senate bill 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, Minidoka project, Idaho and for other purposes.

Failure of the existing Dam would create a major disaster to the economy of the area. Therefore we feel it necessary to proceed with new construction at the earliest possible date.

Sincerely,

DAN KAUFFMAN, *Major.*

TWIN FALLS BANK AND TRUST CO.,
Twin Falls, Idaho, October 6, 1973.

HON. HAROLD T. JOHNSON,
Chairman, Water and Power Resources Subcommittee, House Interior and Insular Affairs Committee, Longworth House Office Building, Washington, D.C.

DEAR CONGRESSMAN JOHNSON: The Board of Directors of the Twin Falls Bank & Trust Company heartily endorse the Spaceholders' efforts toward the early replacement and reconstruction of the deteriorated American Falls Dam. When originally constructed, this reservoir provided the difference between successful farming and unsuccessful farming in many areas of our Magic Valley. The North Side irrigation tracts particularly depend upon American Falls water for profitable farming.

Agriculture continues to be our State's leading industry. As you well know, it is an industry that is worth protecting in light of current shortages and rising prices. The farmers in our area are heavily dependent upon American Falls water. It is the most important irrigation facility in the Upper-Snake River Valley.

We would like to commend your Committee for the help given in the past by authorizing the Salmon Falls Division in South Central Idaho. We encourage your support of the Spaceholders' effort to rebuild at American Falls.

Please favorably consider SB 1529 for early passage.

Sincerely,

CURTIS T. EATON,
Chairman of the Board and President.

IDAHO BANK & TRUST CO.,
Burley, Idaho, October 2, 1973.

HON. HAROLD T. JOHNSON,
Chairman, Water and Power Resources Subcommittee, House Interior and Insular Affairs Committee, Longworth House Office Building, Washington, D.C.

DEAR CHAIRMAN: The Idaho Bank and Trust Company, with its fourteen offices in Idaho, has become very interested in the American Falls Dam Project.

I would like to make a statement from the Burley Office of Idaho Bank and Trust Company. Any loss of storage capacity at the American Falls Dam following a dry water year would seriously influence the economy of Burley and Cassia County. There are 48,000 cropland acres in Cassia County alone that depend upon irrigation from the control of American Falls Dam. Without water the im-

mediate loss would amount to many hundreds of dollars per acre alone to the grower. In addition to this the affect upon the purchaser of farm products and the retailer dealing in these same agricultural commodities would more than triple the present dollar per acre loss. The economy loss would seriously affect our area.

It is of the utmost importance to our agricultural dependent state that the American Falls Dam Project be restored. Restoration should be accomplished before further immediate loss of capacity due to the deterioration of the dam occurs.

This statement respectfully submitted by:

ROBERT D. (Bob) HILLIARD,
Vice President and Manager.

THE IDAHO FIRST NATIONAL BANK,
Twin Falls, Idaho, October 6, 1973.

HON. HAROLD T. JOHNSON,
Water and Power Resources Subcommittee, House Interior and Insular Affairs Committee, Washington, D.C.:

I wish to express this bank's concern and encouragement for the early replacement of the American Falls Dam. In the areas served by American Falls water, our bank has seven branches. All of the farming areas near the seven branches are totally dependent upon irrigation water, and in some way involve the American Falls Dam.

As of December 31, 1972, we had some $55,000,000 in outstanding loans within the service area of American Falls water. Eighty per cent of these loans go directly to farmers or agricultural product processing operations, and to persons employed by farmers or processors. I believe that other banks would have somewhat similar percentages of loans related to agriculture, processors, or workers. Since I have been a native of Gooding, Jerome, and Twin Falls Counties all of my life, I am well aware of what occurred those years before American Falls was available in terms of crop failures in this area.

Our bank supports S. 1529 and stands ready to back the Spaceholders in any way that we can in seeking the early replacement of the dam. I ask that this letter be attached to the official record of the field hearing on October 6th concerning S. 1529.

Sincerely,

L. A. FRAZIER,
Senior Vice President.

ABERDEEN-SPRINGFIELD CANAL COMPANY,
Aberdeen, Idaho, October 6, 1973.

HON. HAROLD T. JOHNSON,
Chairman, Water and Power Resources Subcommittee, House Interior and Insular Affairs Committee, Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: As president of the Aberdeen Springfield Canal Company, I submit this statement for the official record of your field hearing scheduled for Burley on October 6th.

Our company irrigates approximately 63,000 acres and are Spaceholders in the American Falls Reservoir in the amount of 55,000 acre-feet.

We are well aware of the problems that a restricted American Falls Reservoir presents for Southern Idaho water users. Because of the exchanges and the necessity of operating Upper Snake River reservoirs as one total unit, the loss of one link in the chain weakens the total economy.

A series of short water years, or below normal snow packs in even one year could well be disastrous to the farm economy.

Because we represent people with irrigated farms, as a Board of Directors of the Aberdeen-Springfield Canal Company, we feel compelled to support SB 1529 since we believe it will result in the earliest possible replacement of the American Falls Dam. The Directors of our company are in accord with the provisions of SB 1529, and have agreed to cooperate with the other Spaceholders in advancing monies and doing the other things necessary to effect the earliest construction start.

Please attach this statement to the record of the field hearing.

Very truly yours,

ARMIN SCHROEDER, *President.*

TWIN FALLS CANAL CO.,
Twin Falls, Idaho, October 6, 1973.

HON. HAROLD T. JOHNSON,
Chairman, Water and Power Resources Subcommittee, House Interior and Insular Affairs Committee, Longworth House Office Building, Washington, D.C.

DEAR CONGRESSMAN JOHNSON: As president of the Board of Directors of the Twin Falls Canal Company, we wish to thank your Subcommittee for your attention to the legislation which would authorize the replacement of the American Falls Dam.

Although our company is a minor spaceholder in terms of acre-feet, we are the largest spaceholder in terms of acres. The lands within our canal company operating system are within the boundaries of the American Falls Reservoir District, and consequently would provide a substantial amount of the security for bonds which would be sold to finance the reconstruction project.

Although we are not owners of a large block of American Falls storage, nevertheless it is important to us. Since our primary right is a natural flow right, in years when the river is below average in natural flow, the American Falls water is extremely valuable in August and September for the finishing of crops. Some of our crops are heavy water users and the last irrigation is the difference between success and failure.

The Board of Directors of the Twin Falls Canal Company stand ready to help in whatever way they can to assist in the early replacement of the American Falls Dam. We recognize the problems of the majority of American Falls Spaceholders and we join with them in their united efforts.

I would ask that this statement be included as a part of the record of the hearing by the Water and Power Resources Subcommittee held in Burley on October 6, 1973.

Truly yours,

ED REICHERT, *Chairman.*

SOUTHERN IDAHO PRODUCTION CREDIT ASSOCIATION,
Twin Falls, Idaho, October 4, 1973.

HON. HAROLD T. JOHNSON,
Chairman, Subcommittee on Water and Power Resources, House Interior and Insular Affairs Committee, Washington, D.C.

DEAR SIR: The Southern Idaho Production Credit Association respectfully urges House approval of S. 1529. The association provided $67 million in short-

the utmost urgency in the best interests of our area's farmers, ranchers and in the eight counties of south-central Idaho.

According to the 1969 census of agriculture, there were 4379 commercial farms in the eight counties with gross sales of $191 million. Due to the escalation of farm prices in 1972 and 1973, gross sales this year could exceed $250 million.

Only a small fraction of this production would be possible without ample irrigation water in an arid region which averages only about nine inches of precipitation annually.

Because this area is so heavily dependent upon water storage in American Falls reservoir, continued reduction of that storage will have a critically adverse effect upon the farm-related economy of Magic Valley and Idaho. Each dollar decline in sales of farm products is estimated to eliminate the circulation of seven dollars in the business community.

Construction of a replacement for the existing American Falls dam at the earliest possible date, and the corresponding increase of water storage, are of the utmost urgency in the best interests of our area's farmers, ranchers and business establishments.

Sincerely yours,

EARL R. STANSELL, *Manager.*

BUHL CHAMBER OF COMMERCE,
Buhl, Idaho, October 1, 1973.

HON. HAROLD T. JOHNSON,
Subcommittee Chairman, Water and Power Resources Subcommittee, Interior and Insular Affairs Committee, U.S. House of Representatives, Washington, D.C.

DEAR REP. JOHNSON AND MEMBERS OF COMMITTEE: On October 1, 1973, the Buhl Chamber of Commerce met and considered S.B. 1529. The Chamber unanimously

endorsed the provisions of S.B. 1529 to provide for the reconstruction of the American Falls Dam utilizing private financing. We understand that the operation and maintenance of the reconstructed American Falls Dam will continue to be under control of the Secretary of the Interior. The operating restrictions on the present Dam present problems to the agricultural economy of southern Idaho. We therefore, urge fast consideration of this bill.

Sincerely yours,

KENNETH JONES, *President.*

CITY OF TWIN FALLS,
Twin Falls, Idaho, October 6, 1973.

HON. HAROLD T. JOHNSON,
Chairman, Water and Power Resources Subcommittee, House Interior and Insular Affairs Committee, Washington, D.C.

DEAR CHAIRMAN JOHNSON: On behalf of the City Council of the City of Twin Falls, we wish to extend a welcome to the Committee to Southern Idaho, for the field hearings on the American Falls Dam replacement.

We also wish to emphasize the direct economic impact which the American Falls Dam has on the economy of our area.

As mayor of one of the largest cities in the irrigated valleys served with American Falls water, I feel qualified to testify on the many times that agricultural dollars are turned over in our areas.

The Twin Falls City Council endorses the earliest possible replacement of the dam, and we support the Spaceholders in their effort toward private financing of the reconstruction.

We trust that the Committee will enjoy your stay in Southern Idaho, and will consider S. 1529 at an early date.

Sincerely,

JOHN F. CHRISTOFFERSON, *Mayor.*

OCTOBER 3, 1973.

HON. HAROLD T. JOHNSON,
Subcommittee Chairman, Water and Power Resources Subcommittee, Interior and Insular Affairs Committee, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN JOHNSON: The members of the Board of Directors of the Upper Snake River Water Users Protective Union have instructed me to write this letter to you and request that it be made a part of the record of the hearing before the Water and Power Resources Subcommittee of the United States House of Representatives in Burley, Idaho on October 6, 1973.

The Upper Snake River Water Users Protective Union is an organization of some 50 canal companies in the Upper Snake River Valley, most of which own space in the American Falls Reservoir. In most cases, the storage water from the space in American Falls Reservoir is essential to the maturing of the crops on lands under the systems of each of the canal companies. The water users of these canal companies and the board are very interested in the early replacement of the American Falls Dam so that the American Falls Reservoir can be restored to its former storage capacity.

The protective union respectfully requests this subcommittee of the House of Representatives to make an early favorable report of senate bill 1529 and urges its early passage.

Thank you for your kind help and consideration.

Yours very truly,

LEONARD E. GRAHAM,
Chairman of the Board,
Upper Snake River Water Users Protective Union.

HARRISON CANAL & IRRIGATION CO.,
October 3, 1973.

HON. HAROLD T. JOHNSON,
Subcommittee Chairman, Water and Power Resources Subcommittee, Interior and Insular Affairs Committee, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN JOHNSON: We are writing this letter on behalf of the Harrison Canal and Irrigation Company. The Harrison owns and operates a

canal system in the Upper Snake River Valley near Idaho Falls, Idaho through which it conveys natural flow and storage water rights to some 13,000 acres owned by approximately 375 water users. A substantial portion of the Harrison Canal and Irrigation Company's water rights consist of storage rights in American Falls Reservoir. In an average water year it would be impossible for the irrigators under our system to mature a crop without the water from the storage in American Falls.

We urge this subcommittee to make a favorable report and request the House of Representatives to hasten the passage of Senate bill number 1529. We feel that the early replacement of the American Falls Dam is an emergency which requires the serious consideration of the United States Congress.

We request that this letter be made a part of the record of the hearing to be held in Burley on October 6, 1973. Thank you for your help and attention to this matter.

Yours very truly,

WALTER CHAPPLE,
President.
GRANT F. STUCKI,
Secretary.

TWIN FALLS CHAMBER OF COMMERCE,
Twin Falls, Idaho, October 6, 1973.

HON. HAROLD T. JOHNSON,
Chairman, Water and Power Resources Subcommittee, House Interior and Insular Affairs Committee, Washington, D.C.

DEAR MR. CHAIRMAN: The Twin Falls Chamber of Commerce, acting through their Agriculture Committee, wishes to convey to you their support for S.B. 1529. It is the belief of our committee that the passage of this bill will enable us to replace the dam at the earliest possible date.

The members of our committee are very cognizant of the effects on the agricultural markets when water shortages occur. One need only look to the northern part of our State, where irrigation is not prevalent, but a summer draught did occur, forcing the price of cattle feeds to record highs. The American Falls Dam is closely tied to the economy of all of Magic Valley and the Twin Falls area.

The Twin Falls Chamber of Commerce extends their thanks to your committee for holding field hearings in Idaho, to consider the American Falls replacement problem. We ask your early favorable consideration of the legislation.

Very truly yours.

OTTO FLORENCE, JR.,
Chairman, Agriculture Committee.

IDAHO WATER USERS ASSOCIATION, INC.,
Boise, Idaho, October 6, 1973.

HON. HAROLD T. JOHNSON,
Chairman, Water and Power Resources Subcommittee, House Interior and Insular Affairs Committee, Longworth House Office Building, Washington, D.C.

DEAR CHAIRMAN JOHNSON: As Executive Director of the Idaho Water Users Association, I wish to present this letter for the official record of the field hearing to be held in Burley on October 6, 1973, concerning SB 1529.

The Idaho Water Users Association represents some 180 canal companies and irrigation districts throughout the State of Idaho.

In September, we met in annual session in Coeur d'Alene, and the Association unanimously adopted a resolution supporting the early replacement of the American Falls Dam, a copy of which resolution is attached to this letter as Exhibit "A".

We are advised that the Spaceholders are doing what they can to help themselves toward this end. The Association encourages this effort and solicits your subcommittee's help in securing the early passage of SB 1529 by the U.S. House of Representatives.

Thank you for your favorable consideration of the American Falls matter.

Sincerely,

JACK A. BARNETT,
Executive Director.

EXHIBIT "A"

RESOLUTION NO. 73-9—AMERICAN FALLS DAM

Whereas, The American Falls Dam on the Snake River has been determined by the Bureau of Reclamation to have reached such a point of deterioration that a restriction on the storage behind the dam must be imposed; and

Whereas, The water storage in American Falls Reservoir is vital to over 892,560 acres of irrigated land relying entirely or in part upon the water stored in American Falls Reservoir for irrigation; and

Whereas, The substantial restriction on storage in American Falls Reservoir could result in serious crop failures on the lands to which the irrigation water stored in American Falls Reservoir is appurtenant for irrigation and such crop failures could have a serious impact upon the economy of Southern Idaho; and

Whereas, Restrictions on American Falls Dam have created a state of emergency necessitating replacement; and

Whereas, The spaceholders in American Falls Reservoir are proceeding with plans for rebuilding of American Falls Dam by private funding and desire to enter into a falling water contract for the generation of power to underwrite a part of the construction costs to be incurred in the rebuilding of American Falls Dam; and

Whereas, The spaceholders of American Falls Reservoir have sought and are now seeking Federal and State legislation to aid in the implementation of the plans for rebuilding American Falls Dam, including the passage of SB 1529 by the United States Senate: Now, therefore, be

Resolved, That the Idaho Water Users Association fully supports the spaceholders of American Falls Dam in their plans for rebuilding American Falls Dam with private funds and urges the following:

(1) Prompt consideration and approval of SB 1529 by the United States House of Representatives;

(2) Prompt consideration and passage by the legislature of the State of Idaho of such legislation as may be required to obtain the earliest possible implementation of the Water Users Plan for rebuilding American Falls Dam;

(3) That all State and Federal agencies reviewing the environmental impact statements on the proposed rebuilding of American Falls Dam give full consideration to the benefits created by American Falls Dam and Reservoir and the loss of benefits to the environment which would result should American Falls Dam not be rebuilt within the earliest possible time.

NORTH SIDE CANAL CO.,
Jerome, Idaho, October 6, 1973.

HON. HAROLD T. JOHNSON,
Chairman, Water and Power Resources Subcommittee, House Interior and Insular Affairs Committee, Longworth House Office Building, Washington, D.C.

DEAR CHAIRMAN JOHNSON: My name is C. J. Marshall. I am a farmer in Jerome County, Idaho. I am also chairman of the Spaceholders' Executive Committee. I have served as president of the North Side Canal Company Board of Directors for the past ten years.

The North Side Canal Company is a Carey Act operating company. Our predecessor, The North Side Land and Water Company, that developed our tract, incurred many financial hardships because of water shortages which existed at the time of construction of our system. It was not until American Falls was constructed that our company was able to obtain an adequate water supply in average years. Still we suffered some shortages. The construction of Palisades Reservoir actually provided the supplemental water necessary for our company and many others to insure adequate supplies for the production of crops. The recent restriction order applied to the American Falls Dam directly affects our company to the extent of approximately 140,000 acre-feet annually. We need this water to make the type of irrigation deliveries necessary to finish crops in our valley.

Our board endorses the action taken to date of the American Falls Spaceholders' organization and the Executive Committee in support of S. 1529. Presently we are involved in advancing our own monies and increasing our assessments to be able to initiate construction at American Falls as soon as possible. We recognize the many problems that face us, however we continue to be con-

vinced that this course of action is the best possible course under today's circumstances.

We appreciate the cooperation of your committee, and of the many governmental people who have assisted us to date. We encourage your continued support and the early passage of S. 1529.

As chairman of a large wateruser organization, and as president of the Executive Committee, I pledge my continued support to the completion of a replacement dam at American Falls and toward the resolution of any other questions that may confront us along the way.

I trust that the committee will enjoy themselves while in Idaho. Because this issue is of statewide concern in our state, we very much appreciate the expeditious manner in which your committee has elected to schedule this field hearing.

We think you in advance for your support of our project and after passage of S. 1529, look forward to many years of economic solidarity for the central agricultural valleys of Southern Idaho.

Truly,

C. J. MARSHALL.

OCTOBER 3, 1973.

Hon. HAROLD T. JOHNSON,
Subcommittee Chairman, Water and Power Resources Subcommittee, Interior and Insular Affairs Committee, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN JOHNSON: I am writing this letter as chairman of and on behalf of the members of the Committee of Nine. The Committee of Nine has traditionally been the entity resulting from the efforts of the water users of the Snake River and its tributaries in South and Eastern Idaho from Milner Dam to its head waters to have unity and order in the development and administration of the storage and irrigation system in that area As the name suggests, the committee has always been composed of nine water users elected from various areas of South and Eastern Idaho. Over the years, the committee has been the instrument by which the water users in this vast area have been able to work for and create the unique integrated system of reservoirs, irrigations works and projects which are responsible for making South and Eastern Idaho a significant source of our nation's food supply. The Committee of Nine was formally made an official advisory committee under the terms of the Palisades Contract and has always been vitally concerned over all reservoirs in this great storage and distribution system.

The present restrictions on the storage capacity of the American Falls Reservoir is of grave concern to the Committee of Nine. The American Falls Reservoir is the largest and certainly one of the major reservoirs in this system. The decreased storage capacity in American Falls Reservoir as a result of the deterioration of the American Falls Dam has created an emergency situation and has a potential for a devastating effect on the agriculture and hence the economy of South and Eastern Idaho.

The Committee of Nine urges the Water and Power Resources Subcommittee of the United States House of Representatives to make a favorable report on Senate bill number 1529 and make every effort to insure its early passage so that the replacement of the American Falls Dam to restore that reservoir to its former storage capacity can be accomplished without delay.

LEONARD E. GRAHAM,
Chairman, Committee of Nine.

BURGESS CANAL & IRRIGATING CO.,
Rigby, Idaho, October 3, 1973.

Hon. HAROLD T. JOHNSON,
Chairman of the Water and Power Resources Subcommittee, Interior and Insular Affairs Committee, Washington, D.C.

DEAR CONGRESSMAN JOHNSON: The following statement is respectfully submitted to be included as part of the record of the hearing scheduled for October 6, 1973, at Burley, Idaho, on the rebuilding of the American Falls dam.

The Burgess Canal and Irrigating Company heads from the South Fork of the Snake River in the eastern part of Jefferson County, Idaho. The waters from the canal irrigate 22,000 acres of land in the southeastern part of Jefferson county and the northern part of Bonneville county. Crops grown are: wheat 3000 acres,

small grains 4000 acres, corn for silage 1000 acres, potatoes 2000 acres, alfalfa and other hay 8500 acres, irrigated pasture 2500 acres, and in 1973 300 acres to seed peas. Prior to 1973 about 700 to 800 acres were used as set aside for the federal wheat and feed grain programs.

The Canal services 425 shareholders, of whom about 275 are farmers residing on the land and engaged in the production of crops and livestock. About 150 of the shareholders have built homes in the service area and receive water for gardens, lawns, and small acreages. A very productive livestock enterprise has been built up in the area of cattle, sheep and swine.

The Burgess Canal and Irrigating Company receives water under various decreed rights from the South Fork of the Snake River, and also owns storage space in Jackson Lake, Palisades Reservoir, and also 9,496 acre feet of storage space in American Falls reservoir. Because of the lateness of some of the decreed water for the canal, from 25 to 50 percent of the natural flow may be cut off early in August, or, in a short water year, in July. To sustain the productive agricultural production and livestock enterprise, it has been necessary to depend largely upon the storage waters from the reservoir to carry through the irrigation season and finish the crops, maintain the pastures, and prepare the land for fall tillage. Potatoes are one of the crops which requires late irrigation, and this is a very important crop for this area.

The loss of even a portion of the storage space, as in 1973 from deterioration of the old dam, may be critical, and the spaceholders could suffer heavy crop and livestock losses. It appears that this may be more critical in future years unless the snow pack increases over 1973.

Because of our vital need for supplemental water and our interest in American Falls Reservoir, we urge that Congress act immediately to authorize the replacement of American Falls Dam, and to see that it is constructed and the earliest possible time.

Very truly yours,

LOWELL R. HIX, *President.*
ELDRED LEE, *Secretary-Treasurer.*

OCTOBER 6, 1973.

HON. HAROLD T. JOHNSON,
Chairman, Water and Power Resources Subcommittee, House Interior and Insular Affairs Committee, Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I request that this letter be included as a part of the record of the field hearing on S. 1529, to be held in Burley, Idaho, on October 6, 1973.

My name is Tom Olmstead and I am a farmer and cattle rancher. I reside at Route 2, Twin Falls, Idaho. I have been interested in water matters all of my life, and have served on the American Falls Reservoir District Board, the Twin Falls Canal Company Board, and I am a past director of the NWRA Board of Directors, and participated for some time as a member of the Idaho Water Resource Board. In my capacity on that board, I also represented Idaho on the Western States Water Council.

I am very proud to say that I am a bona fide farmer, and my total income is from farming, ranching, and cattle feeding. This is my background, and as an American Falls wateruser, I want to stress to the committee, the emergency that exists. American Falls water is the difference between making money and not making money in farming in Idaho in average water years. Approximately 800,000 acres are affected in some way or another if American Falls Reservoir cannot be operated at maximum capacity.

The Spaceholders have endorsed S. 1529 and are committed to obligate themselves for replacement of the dam and reservoir. We ask your assistance in the passage of S. 1529, so that that objective may be accomplished.

We thank you for your early consideration of the bill, and hope that you will join with us, the Idaho Congressional delegation, and our State government, in recommending passage for S. 1529.

Respectfully,

TOM OLMSTEAD.

Mr. KETCHUM. If the gentleman would yield, I would like to ask a somewhat facetious question. Does your law firm represent all of those people?

Mr. NELSON. No, sir. Some portion, though.

Mr. KETCHUM. I was thinking seriously of going back to school.

Mr. NELSON. Mr. Chairman, as the last scheduled witness, I have submitted the statement which I think covers a number of items which I think have already been covered in some detail. I might from the standpoint of the work I have done with the Spaceholder groups that have worked at the dam, give you some information perhaps on some items that have been alluded to but perhaps not covered entirely or may not be apparent from the record.

First, I think it is important to realize that the Spaceholder proposal did not originate because of any criticism of the Bureau of Reclamation or their proposal. Our problem was strictly one of time. We were told by our delegation that an optimistic estimate of funding would be 8, 12 years, or longer, and you have heard testimony of the problems this creates in this area. The Spaceholders came strictly in an effort to save that time, or as much as we could.

The Spaceholders put the project together. I think it is important to emphasize this is a water user proposal. It is not an Idaho Power Co. proposal. The Idaho Power Co. participation in the project is limited to participation through the falling water contract and the money that that will generate. They will, I think as we now plan it, let a joint construction project—that is, let one construction company construct both the dam and the powerhouse—but the contract will be let by the American Falls Reservoir District, with either a joint or separate contract for the powerhouse. This is in no way an Idaho Power Co. proposal, or in any way an electric company utility proposal.

Mr. JOHNSON. Let me get that straight. The American Falls Reservoir District, are you the people that will be the contracting agency?

Mr. NELSON. Yes, sir. The constructing agency, as the term is used in the Senate bill, is the American Falls Reservoir District, as we now see it. It is the largest Spaceholder, and would have by that reason the most bonding capacity.

Mr. JOHNSON. Then, the Idaho Power Co. would engineer and handle the powerhouse separate, in a separate contract from the dam itself?

Mr. NELSON. It is not clear to me exactly how that would be handled. The costs certainly would be separate. We have some constitutional problems about the American Falls Reservoir District not operating directly in the letting of this contract. It may have to be a joint contract with separate cost accounting, but we want the same construction company because we cannot afford to have two separate contractors on the job running into each other all the time. We have to take bids ourselves. That has to be worked out, the details.

The American Falls Reservoir District would contract directly for construction of the dam as that change from the proposal of the power company originally made, attached to Mr. Hogg's testimony. At that time, it was contemplated the power company would act as agent. We find since, we probably cannot do that.

Mr. JOHNSON. But the bonds that will be floated there by your American Falls District would cover the total project?

Mr. NELSON. Yes, sir, and then each other water user would obligate itself to pay its proportion of the total cost.

Mr. JOHNSON. Not the power?

Mr. NELSON. Not the power, that is correct.

You have heard the testimony of Mr. Patrick on what we would like to do as far as the time for construction of the dam. We would like to start approximately the first of 1975.

The one hangup we had throughout this project was the highway and how to handle traffic across the project while it was being constructed. That, we hope, we have taken care of by cooperation with the highway department through the letting of the contract to commence this winter. If that contract stays on schedule, the bridge will be complete by the end of 1971 so traffic can be diverted entirely away from the dam to use those two lanes while the other two lanes are being constructed. In that regard, the Spaceholders raised $50,000 and paid it to the department of highways for half of the initial engineering. The intention now is, and we have given the highway department a letter of intent, that we will participate with them in the project on a 50–50 basis. We look at the four lanes as a project. We will deduct the Federal funds allocated to it and split the remaining costs equally between the department of highways and the Spaceholders.

This is somewhat different than the Senate bill which contemplates two lanes by them and two lanes by us. We found out that did not work out very successfully. We made this proposal. It is about equal, and as far as we can tell, the costs are about the same.

We have, in putting this project together, I think you can see we have come a long way down the road since the storage restriction was first imposed about a year ago. I would estimate now, and we will get the figures for the record, but I would estimate the Spaceholders have obligations to spend well over $12,000 on the preliminary work that has been done. We have, in putting it together, operated somewhat presumptiously, I think, in assuming all along we would get the necessary congressional authorization. If we waited for the congressional authorization and started these things we would be 4 or 5 years down the road by the time we put it all together. We have started with dam design. You heard Mr. Patrick's testimony that he is in some phases of final design on the powerhouse now. The Idaho Power Co. has filed its FPC license application as of a couple of weeks ago.

The highway design, I am told, reached the final design review stage this week. That is on schedule for letting this winter.

We have retained bond counsel and investigated the question of the taxable status of the interest on the bonds. We are in the process of preparing authorizing legislation to the State legislature to clarify some problems districts have in building bridges and getting involved in efficient location.

So we are well down the road, all on the assumption we get what we need from Congress.

On the question posed to Mr. Sullivan on rehabilitation versus replacement, we investigated that question independently and came to the exact conclusion, that in terms of dollars it was almost the same in terms of what you had when you were through. You might as well spend the extra million or two in our case and get a new dam as opposed to the old one. The $400,000 has been mentioned as a Federal contribution. This, you will recall from the Federal Bureau, they had some enhancement features built into their project. The $400,000 was included so that enhancement and some other enhancement could be included as part of the project, if possible. There is nothing about

the $400,000 at all that is integral with the project. We would like to have it available to the proper agency in the project as we go. If that $400,000 does not become available at the time we want to start it will not hold us up. That is downstream and upstream improvements and not going with any part of the project. We can proceed and leave that part pending. We would like to see it go, but it is not essential.

On the arbitration matter, which is a matter of some concern, that as written in the Senate bill is the last ditch approach. We do not think we will need it, but we can see the problem where we are at loggerheads with the Secretary and have no facility to get the matter resolved. We had one problem decided by Mr. Holdey on the question of the whole philosophy, use as much as you can of the existing dam and put in a concrete center or put in a new dam as proposed by the Bureau. This became important, because where you put the dam determines where you put the powerhouse, and where you put the highway. We had to have that problem answered before we could design the highway or draw a line on a piece of paper. This was drawn up. We have, we think, resolved that question at this point.

We have been given a qualified approval of the concept that Bechtel is pursuing and we do not think this is a problem. At least, we are going ahead with the highway and if we move the dam it will be built right on top of the bridge. This is the kind of thing we can foresee would hold us up for a long time. We thought the arbitration provision would give us some way to get the bill out and let us proceed, because as I say, time is of the essence, that is why we are here. Otherwise, we could wait for Federal authorizations through the usual course.

I would be happy to respond to any questions.

Mr. JOHNSON. When was this American Falls Reservoir district created?

Mr. NELSON. 1923, I believe.

It has been in existence 50 years.

Mr. JOHNSON. You say you have to go back to the Idaho Legislature for revision of existing statutes as they relate to these different types of districts that make up the spaceholders?

Mr. NELSON. Yes, sir. There was no authorization and is no authorization in an existing irrigation district to build a bridge, for example, or participation in creating wildlife and recreation legislation. We took a stab at it earlier and did not fill a couple of these gaps, so we are going back to get that cleaned up so we can have a bond issue, hopefully, next spring.

Mr. JOHNSON. The gentleman from California, Mr. Clausen.

Mr. CLAUSEN. You are talking in terms of an election to be held this next spring?

Mr. NELSON. Yes, sir.

Mr. CLAUSEN. We see a tremendous amount of support here, and you know the general trend of bond issues is difficult to speculate. Do you think there will be any difficulty?

Mr. NELSON. It is basically a question of education, I think. If you can at all project to the electorate who will be involved in that election, exactly what it is you are doing I would say, you have no difficulty at all. If they are about half involved then you can have some

problems. If they think of it as a new courthouse or new school, a general sort of thing then you can have some problems.

My personal feeling is we can pass that bond issue.

Mr. CLAUSEN. My conclusion is that you have all done an excellent job of presenting testimony here that will certainly be persuasive to this committee. We will take it back there to our colleagues on the full committee as we go back to Washington. I think it is safe to say and should be said in the presence of all those here, we can only go so far in working to get the delegations through, and it will be up to them to deliver on this very important bond issue.

Mr. JOHNSON. The gentleman from California, Mr. Ketchum.

Mr. KETCHUM. No questions.

Mr. JOHNSON. Mr. Towell.

Mr. TOWELL. Just to further extend the thought of the bond issue, how many people could vote in that?

Mr. NELSON. It is difficult to say. The present statute says that resident landowners within an irrigation district can vote on a question of this type. There is some question whether that electorate has to be expanded—but taking the larger electorate, someone who resides within the district, whether he owns land or not, I would roughly estimate 120,000 people.

Mr. TOWELL. That is not total population?

Mr. NELSON. I would say about one-half can vote.

Mr. TOWELL. That is all.

Mr. JOHNSON. Mr. Casey?

Mr. Luken?

Mr. LUKEN. No; thank you.

Mr. JOHNSON. Well, we appreciate very much your statement here and your reply to the questions. You people have worked hard on this up to now and probably crossed every hurdle that has been thrown your way so far.

Mr. NELSON. We try.

Mr. JOHNSON. Cleaning up your State statutes and your authority is very, very important. Of course, your bond counsel will make sure you do all of these things.

Mr. NELSON. He is watching us very carefully.

Mr. JOHNSON. And then you have to have the vote of the people.

I think you have proved your case, especially with that 66 percent of capacity available in the reservoir as a voting yardstick. Then if you had a dry year it would be much less than 66 percent.

Mr. NELSON. A few pictures of the mud flats should be pretty convincing, I think.

Mr. JOHNSON. The picture for you people who live here is a pretty dim and dismal picture. If the good Lord is not good to us this winter it may be pretty bad to start the season next year.

If you have any further comments you would like to present, the record will be held open for 2 weeks.

Mr. NELSON. Thank you, Mr. Chairman.

Mr. CLAUSEN. Mr. Chairman, may I ask a question?

Mr. JOHNSON. Yes.

Mr. CLAUSEN. I wanted to ask of the Chair of his statement wherein the record will be left open, do I understand for 2 weeks? There was a

gentleman that asked me in the hall if he would have an opportunity to make a presentation, even though he was not on the agenda.

Mr. JOHNSON. He will be given that opportunity now if he is ready to talk.

Is there anyone here now who wishes to testify in support or opposition? How many? There are four of you. We are going to put you on a limited time. The gentleman back there raised his hand first. You may come forward and give your name and give your testimony.

Mr. CLAUSEN. That was the gentleman that asked me.

STATEMENT OF FLOYD SILVA, SHOSHONE, IDAHO

Mr. SILVA. Chairman Johnson, my name is Floyd Silva, Shoshone, Idaho.

Chairman Johnson, members of the committee, ladies and gentlemen, I am appearing personally and my testimony will concern only myself.

I am a resident Shoshone. I farm a few rock-strewn acres in northern Shoshone. I am sorry I had no written statement previously. I was unable to do so because of the fact I was illiterate. My testimony will be different from the fact that my primary concern is not the dollar economy of the community and so forth. My primary concern in hastening the building of the American Falls Canal is that this little dribble should come down my ditch through the rock-strewn acres so along with the sweat of my brow and the forces of nature that I can provide the food each day for my family and myself and enough extra during the months of snow and cold that I am able to survive.

Now, it seems to me that the forces of nature are willing to provide the water to be impounded in this American Falls Reservoir and that the forces of nature, with the normal amount of sweat of the people who work the soil, that we will be able to produce enough that I might survive.

However, it appears after the testimony I have listened to that the main hurdle or objection to the whole thing is human beings. So, could I plead with you gentlemen and ask you to hasten all you can the construction of this dam so that I as an individual can survive.

Mr. Curtis suggested that he had driven a Model T Ford across the bridge on the Snake River many, many years ago. I would like to remind him that in my consistently poverty-stricken condition that my main means of transportation today is a Model T.

Thank you, gentlemen.

Mr. JOHNSON. Thank you for your testimony.

Mr. CLAUSEN. If that fellow is illiterate I want to see one that is literate.

STATEMENT OF JESS INGSTROM, JR., IDAHO

Mr. INGSTROM. These are my thoughts and I would like these to be written into the testimony.

Mr. Chairman and interested parties, I am Jess Ingstrom, Jr., from Idaho. I am a land holder and stockholder.

I personally feel there is a joker in the deck somewhere along the line of thinking today. Are we all so complacent in our thinking that we will follow through with a plan to allow a corporation to build a

dam for us when we as water users and landholders have 100 percent of the ability to build our own dam and powerhouse under the supervision of the U.S. Bureau of Reclamation who have served us so well for 100 years. We also have people on the boards who can get these things done just as fast as any corporation.

We will bypass having to go to the Idaho Legislature and also to Congress to pass our bonds.

We also have some of the most brilliant people who understand business and reclamation on our present water boards representing us locally. Why reverse the thinking of our fathers and grandfathers who developed these great Snake River projects who are the owners and sellers of this power to the Idaho Power Co.? Where would we be today if it were not for the U.S. Bureau of Reclamation's advice? Where would we be tomorrow without the help and advice of the U.S. Bureau of Reclamation if this plan does not go through?

Idaho Power is receiving the rights to these waters. At the present time they do not have the right to do so. Also, why did our fathers through the leadership of our Senators from Idaho, enact legislation to protect us from monopolies like in our great Snake River Valley of which we citizens will lose control?

I have conversed with a few families in southern Idaho. We will purchase the major portion of this $93 million worth of tax-free bonds. Why can we not as individuals build our own dams? We have some control over our own destinies and not the Bureau of Reclamation.

Mr. JOHNSON. Thank you for your testimony.

The next gentleman.

STATEMENT OF BERNARD RAVENSCROFT, STATE REPRESENTATIVE, IDAHO STATE LEGISLATURE

Mr. RAVENSCROFT. Bernard Ravenscroft. I am a State representative in the Idaho State Legislature and I served as chairman of that backroom committee to which Ben Cavenness made reference.

Let me assure you it was almost a pleasant assignment because in most instances we had a mutual goal, and we have a very cooperative and constructive group of people to work with.

I want to touch on a few points that came before that committee, a few points that came before this hearing.

Congressman Towell raised the question of four lanes whereas there are now two. We have been in touch with the State highway people, all of the basic studies have been completed and the community problem in American Falls is such that right now they do need four lanes, and as the traffic increases we will need four lanes. It will be no obligation to the water users beyond the two lanes. The remainder will accrue to the State highway people and provided from State funds on an emergency basis.

The for pay fishery has been mentioned. As a water user and as a spokesman we have recognized within the limits of feasibility we want to do everything we can to help in the solution of that fish and wildlife problem to restore this for the American people.

I want to assure you as far as the legal technicalities of the State

Legislature, that the atmosphere is almost identical of the atmosphere that you have experienced here in this hearing.

I would bring the whole project in proper perspective, particularly in light of some of the things said. The water users are the ones who will have to pass the bond and pay for this dam. The technicalities of the bill you have before you would turn the ownership and control and maintenance back to the bureau upon its complex. The sale of falling water will not totally pay for the obligations involved. There will still be moneys that come from the water users themselves in order to complete this project as soon as possible.

I would only underline what everybody else has been saying to you. We want to go this route because of the time element. We cannot afford the lag involved in a totally Federal project.

Mr. JOHNSON. Thank you.

I believe that takes care of all the witnesses who are scheduled and those who wanted to appear. We do have to get on to the site of the proposed dam and new powerhouse. We have made a good record, I think. We will know more about it when we read it after it is transcribed and made available to us.

The record will be held open for 2 weeks.

We would like to allow Mr. Hansen, before he leaves here—to make a closing statement.

Mr. HANSEN. I would only echo the expression of appreciation that has been voiced here today to the committee for their appearance and their prompt attention to the legislation.

Mr. JOHNSON. Now, a closing statement by the Senator, Mr. McClure from the State of Idaho.

Senator MCCLURE. Thank you, Mr. Chairman.

Thanks again to the committee for taking the time. I think this has been an extremely beneficial hearing, and I could not help but echo the comments made throughout this hearing about urgency and about the unanimous support of this program. The legislature has spoken unanimously and that is very unusual, I assure you.

Mr. JOHNSON. The gentleman from California, Mr. Clausen.

Mr. CLAUSEN. Mr. Chairman, I think I will take advantage of this opportunity to do something which is not totally consistent with established congressional procedure, but it is an appropriate approach that should be considered at this point.

Would the people in the audience join me in expressing our appreciation to the Chairman for the manner in which he has handled this meeting? [Applause.]

Mr. JOHNSON. The gentleman from California, Mr. Ketchum.

Mr. KETCHUM. No comment.

Mr. JOHNSON. The gentleman from Nevada, Mr. Towell.

Mr. TOWELL. No further comment.

Mr. JOHNSON. The gentleman from the committee, Mr. Casey, has an announcement.

Mr. CASEY. We have some extra witnesses statements.

Mr. JOHNSON. The Subcommittee on Water and Power Resources stands adjourned.

[Whereupon, at 2 p.m., the hearing was concluded.]

[Statements and letters received after the hearing, follow:]

IDAHO ENVIRONMENTAL COUNCIL,
Moscow, Idaho, October 2, 1973.

HON. HAROLD T. JOHNSON,
Chairman, Subcommittee on Irrigation and Reclamation, House Committee on Interior and Insular Affairs.

DEAR CONGRESSMAN JOHNSON: The Idaho Environmental Council is on record as strongly supporting replacement of the American Falls Dam with a structure of equal height.

We understand that efforts will be made to preserve the excellent fishery in the existing forebay. Other than possible damage to this fishery, it appears that the environmental impact of replacing the dam will be positive. In any case, replacement should be made because the 1.7 million acre/foot reservoir is a key feature of the Minidoka Project, and it is vital to the present economy of Southeastern Idaho.

In recent years we have had cause to question the construction of a number of reclamation projects in the state of Idaho and elsewhere (our position opposing the Teton Dam and the Central Utah Project is well known). However, we feel that the American Falls Dam and Reservoir is a good example of reclamation at its best; and we ask that a method of enabling replacement of the existing dam be given favorable consideration by your committee.

Thank you.

Sincerely,

RALPH MAUGHAN,
Southeastern Idaho V.P.

GOODING COUNTY SHERIFF,
Gooding, Idaho, October 4, 1973.

HON. HAROLD T. JOHNSON,
Subcommittee Chairman, Water and Resources Subcommittee, Interior and Insular Affairs Committee, House of Representatives, Washington, D.C.

DEAR MR. JOHNSON: In regard to the new American Falls Dam, I will say that we, the people of the Gooding area, are greatly interested in our irrigation water as a factor to survival. I am sure that all of the farmers do not know how serious our shortage of irrigation water is. Or—how short it can be next year during the irrigation season.

I am sure that the people of surrounding areas will appreciate anything your committee can do to expedite Senate Bill No. 1529 in regards to the new American Falls dam.

Very truly yours,

EARL V. BROWN,
Sheriff, Gooding County.

STATEMENT OF RUSSELL HOLM, AMERICAN FALLS DAM REPLACEMENT COMMITTEE

My name is Russell Holm, Shelley, Idaho. A farmer, livestock raiser, Idaho Irrigation Director and have several community jobs.

Our district owns 22,911 acre feet of storage in American Falls Reservoir, which we need badly at times for exchange with lower valley water users who own up river storage, we also have storage in each of the two up stream reservoirs on the main stem of Snake River.

The above heading is a dim view of The American Falls Reservoir pool with only some forty seven thousand acre feet of total storage, about enough to run the proposed new power plant two days without inflow benefits. However it is now filling as are the other reservoirs of the upper Snake River because of unusual heavy rain and snow storms this late fall.

Some tracts under American Falls Reservoir ran very close on their storage this past summer, in fact used all their storage before the irrigation season was over, had it not been for two good rain storms during the season on the upper water sheds and some small ones it would have been questionable about maturing their crops.

Should we have a lighter than usual snow pack on the water sheds this coming water year those districts under American Falls Reservoir who are wholly dependent on storage from that source may seriously consider the wisdom of even

planting a crop because of the upwards of $700.00 per acre to produce a crop in that area and finish it.

However it is highly unlikely the mighty Snake River would desert us to that degree.

It has been estimated conservatively that crop lands under American Falls Reservoir, down stream, could under normal prices and conditions provide cash returns of $100,000,000 and by the time that economy push went all the way around the horn it would provide seven times that amount of economical benefits. "Annually"

These benefits help greatly to build up local communities, schools, churches, new and old businesses, recreation of all kinds, new and better homes. The recreation benefits from reservoir pool area is far beyond the imagination of even those who use it the most. There are more fish areas, bird and wild life habitat areas.

An abundance of food and fiber will always be a blessing and this past summer food shortages of every description have brought stark reminders of what can happen in a very short time. Even the apparent drought in the Pacific Ocean has put sea foods beyond the reach of many people.

Generally irrigation areas with firm suplies of storage water and good stream channels have more latitude in the production of food and fiber, also a great deal more ability to control unexpected death dealing and property damaging floods.

Even though American Falls Reservoir has provided economy to area communities with out which these communities would be far less prosperous or nonexistent, demands are mounting for benefits far in access of what they have enjoyed the past forty six years all of which was created by the reservoir in the first place.

The dam replacement costs have about doubled from the first Engineering estimates which the space holders bought and without any sign of a lid on the final costs.

If these costs and demands for more and more recreation benefits get beyond the ability of the space holders to pay that amount over and above what the fummbling water contract promises to pay out on. Then I personally would hope the door would remain open and allow for the Interior Secretary to move in quickly, since the Interior Dept. already has a valid Electric Power Plant license and construct the replacement dam under their usual program with in addition space holder cost sharing.

Thanks kindly for conducting these field hearing so local people can have a better prespective of what goes into dam building.

May I respectfully request this paper be included in the records.

KACKLEY, OLD WILLIAMSBURG,
Wayan, Idaho, October 15, 1973.

HON. HAROLD JOHNSON,
Chairman, and Committee Members, House Subcommittee Water and Power Resources, House Interior and Insular Affairs Committee, Washington, D.C.

MEMBERS OF THE COMMITTEE: I appreciate the opportunity extended by the Committee to submit a writen statement for the record following the hearing at Burley on the pending legislation to replace the American Falls Dam structure.

My name is Evan M. Kackley, residing at Boise and Wayan, Idaho. I hold no space rights in the American Falls Reservoir, nor significant water rights in the Snake River, only culinary and livestock watering rights on a small creek a hundred miles northeast of the dam.

I have had the pleasure of appearing before your Committee several times on various water matters. I also was a member of the Idaho Water Resource Board (IWRB), officially representing the district in which the American Falls project is located, when the replacement and/or the raising of the dam was first brought up a few years ago.

At that time, the unrecognized end of an era and the beginning of another was in transition: The end of the concept of water reclamation as the West had known since the inception of the Reclamation Law when the West was young, and the beginning of conservation after the West had matured. To those as mem-

bers of the IWRB, this transition from one era to another was a period of passing through a veritable maelstrom of conflicts.

The issue to the IWRB of the needed replacement of the dam because of deterioration became a deadly conflict—of raising the dam, backed by the proponents of the ending era, and the replacement of the present structure backed by those of the new era. It became totally impossible to face the issue of the needed replacement, and ended in an unstable armistice. This is the reason you are today considering legislation instead of several years ago.

In the proposal to raise the dam then, the lush, historical Fort Hall tribal bottom lands would have been destroyed, and it would have destroyed the economic staff for survival of the Indians: the Livestock Industry. Also reared on these Bottoms are the Indian buffalo herd, a part of the ceremonial and religious beliefs of the Indians.

The conflict became so intense that the Fort Hall Tribal Council made the Reservation off-limits to the representatives of one of the State of Idaho's major boards dealing with water problems. There was at this time an incipient Twentieth Century Wounded Knee atrocity in the making, which would have caught the heart of the American people if and when they learned of it.

The Tribal Council was joined in resistance by many and large official and unofficial organizations in opposition to the raising of the dam. The reasons for this will be expressed later.

West of the Tribal lands on the west shore of the Snake River, elevation of the dam would have flooded out large acreages of heavily cultivated lands and livestock operations from American Falls east through Aberdeen, Sterling and Springfield. This loss was very extensive as was the Fort Hall Bottoms, for with the raising of the dam, the water would rise above the natural walls of the present reservoir, and would shallowly flood these areas. By the very nature of the operation of the raised project, these lands would, in the drawdown, become mud flats early in the summer and large dusty flats of immense and costly problems as the summer progressed, just as have the shallow areas of the Canyon Ferry Dam project on the Missouri in Montana. Besides, of course, in the flooding of these lands there was their loss in productivity, vitally affecting the economy of the American Falls-Springfield sector.

Hence, the Fish and Wildlife, and Environmental official and unofficial groups strongly oppose raising the dam for very valid reasons.

One project plan proposed to the IWRB would have flooded out part of the today City of American Falls.

However, the dam would have been raised then except for the valiant and self-sacrificing opposition to the raising by the American Falls Space Holders. It was this group who cast the deciding weight that saved the Fort Hall Reservation from immense loss and destruction, as well as the American Falls-Springfield sector and the Fish and Wildlife and Environmental interests. The Space Holders should have the full backing now of all these groups to arrive at the replacement, for the Space Holders now must assume and guarantee a heavy debt, which, if they had yielded several years ago, would have been comparatively cheap. After the decisive and saving action of the American Falls Space Holders several years ago, today to make unjust and unreasonable demands against them is as if extracting a pound of flesh from the Good Samaritan now with his back against the wall and facing destruction. A disastrous crop failure due to a lack or shortage of water among the American Falls Space Holders now would bring on an unmitigating and unforgiving public wrath against those who obstructed the simple replacement of the dam a few years ago, as it would against those who might obstruct the simple replacement today.

Naturally, the Fort Hall Tribal Council should be protected by special provisions in the legislation against further encroachment on their lands, for they came within a hair of a Twentieth Century Wounded Knee in the past. In reading the Department of Interior's American Falls Dam Replacement Summary of December 1972, one who had been in the same position as the Fort Hall Tribal Council several years ago would have cause for apprehension if specific provision is not made in the legislation now before the Committee.

Also, the desire of the Space Holders should receive consideration for mandatory arbitration of disputes between Space Holders in the dam and the Department of the Interior. The excessive powers of the Department of Interior are such, and studies now by Congress of recommendations made by commissions and

the American Falls Space Holders' situation there is cause for specific legislation for compulsory arbitration of disputes between them and the Department.

May I ask your consideration of the background of American Falls in your decision.

Sincerely,

EVAN M. KACKLEY.

STATEMENT OF DALE TAYLOR, PRESIDENT, SOUTHEAST IDAHO ROD AND GUN CLUB

The members of the Southeast Idaho Rod and Gun Club would like to see the American Falls Dam replaced as soon as possible. We generally feel that this dam has created more wildlife habitat than it has destroyed. For instance, pheasant hunting in the Burley-Twin Falls area and waterfowl resting on the reservoir have been created by its construction. However, during construction, many miles of high quality river, which cannot be replaced, were inundated. The dam construction created a unique but highly productive forebay fishery which probably receives more fishing pressure and provides more pounds of fish to the angler than any area of comparable size in the State of Idaho. We understand this forebay area will be lost because of the proposed dam replacement.

We feel that proper enhancement and mitigation measures should be done so the project is not detrimental to wildlife. Our specific recommendations are as follows:

1. In mid-summer, when reservoir waters warm and the oxygen becomes low, most fish move from it into the forebay. After dam replacement, these fish will move into the river below the Idaho Power Company's plant. We feel it is extremely important that screens or some other type of device be installed so that fish can successfully move into the river below without high mortalities.

2. Adequate access should be provided in the tailrace area so that it can be effectively fished by the public. Fish structures should be built over the tailrace with the design and location such that they would provide maximum benefits.

3. The tailrace should be developed so as to create a maximum of fish habitat. Specifically, large boulders should be strategically located and water flows such that velocities over a large area are suitable for trout.

4. We would also like goose nesting islands constructed as proposed. These would provide additional waterfowl for hunters of this area and the entire area where the Great Basin goose is found.

5. Minimum flows in the river below, access development along the river upstream from the reservoir, and additional fishery water developed in the area to offset the loss of the highly productive forebay fishery should also be considered.

We appreciate the opportunity to make comments on this project. Hopefully, it can be built so that all Idahoans can benefit.

OCTOBER 1, 1973.

To: Carlos Randolph, Bureau of Reclamation, P.O. Box 549, Burley, Idaho 83318.
From: Idaho Division of the Rocky Mountain Council National Federation of Fly Fishermen, Duane Marler Conservation Chairman; Boise Valley Fly Fishermen, Boise, Idaho; Magic Valley Fly Fishermen, Twin Falls, Idaho; Sun Valley Fly Fishermen, Sun Valley, Idaho; Upper Snake River Valley Fly Fishermen, Rexburg, Idaho; Flat Rock Club, Idland Park, Idaho; Mountain Home Fly Casters, Mountain Home, Idaho.
Subject: American Falls Dam.

The Rocky Mountain Council, Idaho Division of the Federation of Fly Fishermen would like to express concern over the possible loss of the present forebay fishery below the existing American Falls Dam due to necessity of the dam relocation.

We are not opposed to the new dam site; however, we are concerned about the location of the power plant. Unless the power plant is properly located, the existing fishery could be lost. Our organization urges careful consideration be given to the location of the power plant so as to minimize this loss. Also, if it is impossible to save the forebay fishery, we urge some method of compensation to replace this fishery loss.

DUANE MARLER.

○

Exhibit 21

Pub. L. 93-206, 87 Stat. 904 (1973)

Public Law 93-206

December 28, 1973
[S. 1529]

AN ACT

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.

American Falls Dam, Minidoka project, Idaho. Replacement.

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 (hereinafter called the Secretary) is authorized to negotiate and enter into agreements with the American Falls Reservoir District or other appropriate agency representing the present spaceholders (hereinafter called the constructing agency), which agreements shall authorize the constructing agency to finance and provide for the construction of a dam and related facilities to replace the existing American Falls Dam of the Minidoka project, Idaho-Wyoming. The United States shall take title to the dam upon a determination by the Secretary that construction of the dam is substantially completed, and the dam shall be a feature of the Minidoka reclamation project and shall be considered to be a "Government dam" as defined by the Federal Power Act (Act of June 10, 1920, 41 Stat. 1063, as amended). The Secretary shall operate and maintain the replacement dam as a feature of the Minidoka 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 landowners (including owners of land subject to a flowage easement for the reservoir) if such erosion cannot be corrected or prevented.

49 Stat. 863, 16 USC 791a.

Storage and contract rights, protection.

SEC. 2. (a) Replacement of the existing dam as authorized in section 1 hereof 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.

River crossing construction.

(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 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 purposes of subpart (ii) of this subsection, the constructing agency shall be considered an "agency" within the meaning of section 320(a) of title 28, United States Code.

72 Stat. 917.

(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.

Repayment contracts with spaceholders.

SEC. 3. The constructing agency may enter into repayment contracts with the spaceholders in the existing American Falls Reservoir providing for the repayment by the spaceholders of proportionate shares of the total project costs incurred by the constructing agency for engineering, financing, designing, and constructing the replacement dam, 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 said contracts shall be consistent with the terms of existing contracts between the Secretary and the spaceholders for repayment of the costs of the existing American Falls Dam.

Leasing contract for hydroelectric power production.

SEC. 4. The constructing agency may contract with an appropriate non-Federal entity for the use of the falling water leaving the dam for power generation, which contract shall provide for a monetary return to the constructing agency to defray the costs of construction of the replacement dam. The constructing agency may enter into agreements with an appropriate non-Federal entity to coordinate the construction of hydroelectric power facilities with the construction of the replacement dam. The contract and agreements for use of the falling water shall not be subject to the limitations of section 9(c) of the Reclamation Project Act of 1939 (53 Stat. 1194), or any similar limitations in any other applicable Acts of Congress: *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.

43 USC 485h.

Designs and specifications, approval.

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.

Costs, reimbursement to Secretary of Interior.

Recreational, fish, and wildlife facilities.

SEC. 6. The Secretary is authorized to provide specific facilities for public recreation and fish and wildlife enhancement in connection with the replacement dam, and the costs of such facilities shall be repaid in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213). 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.).

16 USC 460*l*-12 note.

Appropriation.

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 $406,000 (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. 386a). There are also authorized to be appropriated such funds as are required for the operation and maintenance of the dam and related facilities.

Fort Hall Indian Reservation, irrigation storage rights costs.

25 USC 386a.

Approved December 28, 1973.

Exhibit 22

Petition of AFRD to Intervene in Support of Application for License (Jan. 25, 1974)

DOCKET ORIGINAL
CENTRAL FILES

RECEIVED
JAN 25 10 18 AM '74
FEDERAL POWER COMMISSION

BEFORE THE

FEDERAL POWER COMMISSION

IN THE MATTER OF	PROJECT NO. 2736
IDAHO POWER COMPANY	PETITION OF AMERICAN FALLS RESERVOIR DISTRICT TO INTERVENE IN SUPPORT OF APPLICATION FOR LICENSE
APPLICATION FOR LICENSE	
AT AMERICAN FALLS, IDAHO	

COMES NOW, The American Falls Reservoir District, by and through John M. Barker, President of the Board of Directors of said district, and on behalf of said district, files this Petition to Intervene in support of the license application of the Idaho Power Company, for the construction of a power generating facility at American Falls, Idaho, as follows:

I

The American Falls Reservoir District is an irrigation district existing under the laws of the State of Idaho, and is the owner of 487,063 acre-feet of irrigation water storage space in the American Falls Reservoir. The district holds said storage water as trustee for five irrigation-operating companies which deliver the water to approximately 418,000 acres of land in seven counties of South Central Idaho.

II

The American Falls Reservoir District has been a Spaceholder in the American Falls Reservoir since the construction of the dam in the 1920's. In 1972, the Bureau of Reclamation imposed year around storage restrictions for

DOCKET SECTION

safety reasons because of the deteriorated condition of the dam. The loss of one-third of the available storage could well cause an economic disaster for American Falls Spaceholders if the dam is not reconstructed.

III

The American Falls Reservoir District received an offer from the Idaho Power Company to help pay for the cost of the dam if that company would be entitled to use the water released from the dam. The district prepared a bill and encouraged Congressional action thereon, culminating in the passage of S.1529 by the Congress of the United States, which Bill was signed into law by the President, authorizing the district as "constructing agency" to seek private financing and to co-ordinate the replacement of the dam on a self-help basis.

IV

After the Idaho Power Company has received a license from the Federal Power Commission for the construction of a power generating facility at American Falls, the district will contract with the Idaho Power Company for payments to the district in the amount of the cost of the dam or $19,000,000.00, whichever is the lesser, plus tax-exempt interest, said payments to be made by the company over a forty year period. The American Falls Reservoir District will then proceed to a bond issue authorizing the issuance of bonds in the amount necessary to reconstruct the dam and related facilities and will contract with other Spaceholders for the repayment of their proportionate

share of the total cost over and above the amounts received from the Idaho Power Company.

V

The American Falls Reservoir District together with other American Falls Spaceholders, support the earliest possible reconstruction of the American Falls Dam.

VI

American Falls Dam and Reservoir are operated to store and release water in fulfillment of the rights of those having space in the reservoir. Under the proposal, the Idaho Power Company would be entitled to generate power only at such times as releases are made in the normal operation of the reservoir in accordance with the rights of Spaceholders. All rights in the present reservoir have been confirmed to existing Spaceholders by S.1529, conditioned only upon the execution of contracts to repay their proportionate share of the cost of reconstructing the dam. Upon completion of the replacement dam, title to the dam will be in the Secretary of Interior for continued operation and maintenance, and the reconstructed American Falls Dam would be operated as a feature of the Minidoka Project in Southern Idaho by the Bureau of Reclamation.

VII

The American Falls Reservoir District, and the other Spaceholders are committed to providing one-half

the cost of a four-lane highway crossing at American Falls when the dam is reconstructed. The district and the Spaceholders are also committed to work out problems that may exist regarding water quality, fish and wildlife, recreation, and health and safety in connection with the replacement dam.

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JAN 25 10 18 AM '74
FEDERAL POWER COMMISSION

VIII

WHEREFORE, your petitioner prays that the American Falls Reservoir District be authorized to participate as an intervenor in any hearings or related proceedings in accordance with the Order of the Commission dated December 5, 1973, for Project No. 2736, to evidence the support of the American Falls Reservoir District, and the American Falls Spaceholders, for the earliest possible issuance of an FPC license to the Idaho Power Company for the American Falls generating facility.

IX

The names and mailing addresses of the persons to whom communications concerning this petition are to be addressed are as follows:

John M. Barker, President
American Falls Reservoir District
1132 Locust Street
Twin Falls, Idaho 83301

Parry, Robertson, Daly & Larson
Attorneys at Law
P.O. Box 525
Twin Falls, Idaho 83301

Dated this 23rd day of January, 1974.

JOHN M. BARKER, President
American Falls Reservoir District

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JAN 25 10 18 AM '74
FEDERAL POWER COMMISSION

STATE OF IDAHO)
) ss.
County of Twin Falls)

JOHN M. BARKER, being first duly sworn on oath, deposes and says that he is the President of the American Falls Reservoir District, the petitioner and intervenor above-named, and makes this verification, being duly authorized to do so; that he had read the contents thereof and states that the facts therein contained are true and correct.

John M. Barker

Subscribed and sworn to before me this 23rd day of January, 1974.

John A. Rosholt
Notary Public for Idaho
Residing at Twin Falls, Idaho

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of Sec. 1.17 of the Rules of Practice and Procedure.

Dated at Twin Falls, Idaho, this 23 day of January, 1974.

PARRY, ROBERTSON, DALY & LARSON

By: John A. Rosholt

Of Counsel for
American Falls Reservoir District

Exhibit 23

Final Envt'l Statement: American Falls Dam Replacement and Powerplant (Department of Interior Nov. 13, 1974)

ENVIRONMENTAL STATEMENT

AMERICAN FALLS DAM REPLACEMENT AND POWERPLANT

Minidoka Project, Idaho

FINAL

U.S. Department of the Interior
Bureau of Reclamation

DEPARTMENT OF THE INTERIOR
(INT FES 74-60)

FINAL
ENVIRONMENTAL STATEMENT

AMERICAN FALLS DAM REPLACEMENT AND POWERPLANT

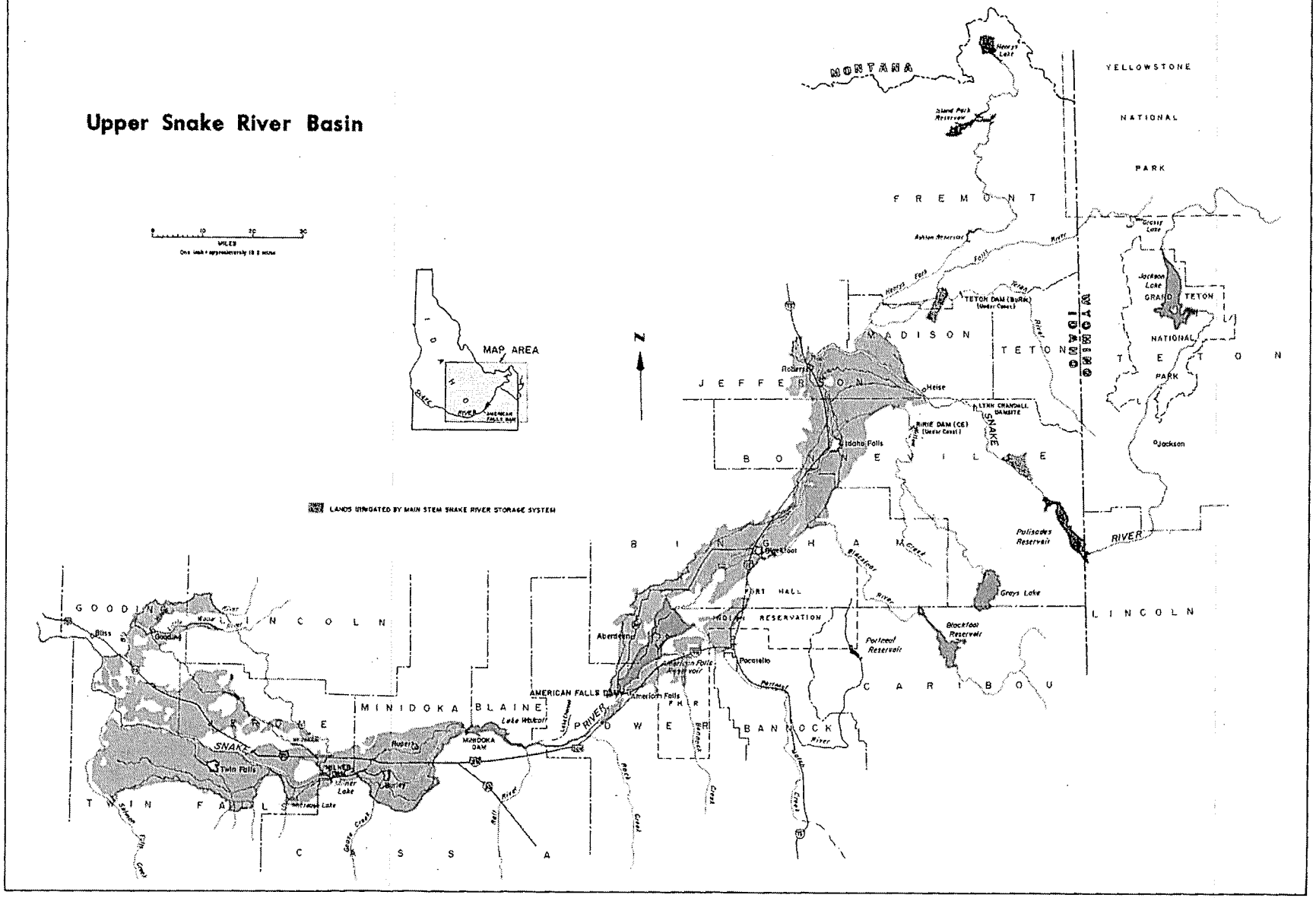
MINIDOKA PROJECT, IDAHO

Prepared by
Bureau of Reclamation
Department of the Interior
(November 13, 1974)

G. G. Stamm
Commissioner

1023-129-124 OCTOBER 1972 INTERIOR-RECLAMATION

Upper Snake River Basin



SUMMARY

( ) Draft (X) Final Environmental Statement

Department of the Interior, Bureau of Reclamation, Pacific Northwest Region

1. Type of Action ( ) Administrative (X) Legislative--in conjunction with P.L. 93-206

2. Brief Description of Action

This project would replace the existing American Falls Dam, maintain the 1.7-million acre-foot reservoir at its present size, and construct a new 106 MW-capacity powerplant just downstream. The dam, reservoir, and powerplant will be located on the Snake River in Power, Bingham, and Bannock Counties in southeastern Idaho. Other measures include construction of (1) a highway across the new dam, (2) fish and wildlife and recreation enhancement and mitigation features, (3) basic facilities for public health and safety, and (4) a warehouse-workshop building near the dam, (5) partial removal of the existing dam. Construction activity is expected to last approximately two years.

3. Summary of Environmental Impacts and Adverse Environmental Effects

a. The threat to human safety and well-being will be removed by replacing the old dam.
b. Fish mortality during downstream passage will be increased due to passage through the new powerplant.
c. The existing forebay area and related fishery will be eliminated.
d. The construction area for the new dam and the borrow areas for construction materials will be disturbed.
e. Storage of the water supply for 892,560 acres of irrigated land will be assured, and current storage restrictions which limit storage to 66 percent of the reservoir capacity will be removed.
f. Bank erosion will continue on some sections of the reservoir shore, resulting in an estimated loss of 1,500 acres of shoreline lands over a 100-year period.
g. Pollution, esthetic deterioration, and safety hazards near the dam will be reduced through the provision of basic health and safety facilities.
h. Trout production in an existing State fish hatchery will be increased.
i. Fifty small islands will be built in the upper end of the reservoir to establish a new goose nesting and production area.
j. Water quality standards downstream will be decreased.
k. A new highway crossing will eliminate the safety hazards of the narrow road crossing on the old dam.

4. Alternatives Considered

a. Build nothing and run the risk of possible further water storage restrictions.
b. Replace existing dam without powerplant.
c. Repair existing dam.
d. Enlarge dam and reservoir.
e. Develop storage at other sites.
f. Alternative power sources.

5. List of Entities From Whom Comments Have Been Requested or Received With Responders Indicated by "*" (See next page)

6. Date Made Available to CEQ and the Public

Draft Statement: May 17, 1973
Final Statement: November 13, 1974

Entities From Whom Comments Were Requested
on Draft Environmental Statement
American Falls Dam Replacement and Powerplant, Idaho

'ARTMENT OF THE INTERIOR

* Bonneville Power Administration
* Geological Survey
* Bureau of Indian Affairs
* Bureau of Land Management
* Bureau of Outdoor Recreation
* Bureau of Mines
* National Park Service
* Bureau of Sport Fisheries and Wildlife

HER FEDERAL AGENCIES

Pacific Northwest River Basins Commission (include State members)
* Department of Agriculture
* Corps of Engineers
* Department of Commerce
* Environmental Protection Agency
Department of Health, Education, and Welfare
* Advisory Council on Historic Preservation
* Department of Transportation, Bureau of Public Roads
* Department of Housing and Urban Development
* Federal Power Commission

TE AND LOCAL AGENCIES

daho
* State Clearinghouse, Idaho State Planning and Community Affairs Agency (15 copies)
* Water Resource Board
* Fish and Game Department
Department of Agriculture
* Department of Highways
Department of Environmental and Community Services
Department of Water Administration
State Historical Society
State Parks and Recreation Department
Water Resources Institute, University of Idaho
Idaho State University
Fort Hall Indian Reservation
Southeast Idaho Council of Governments
Bannock County Commissioners
Bingham County Commissioners
Bingham Regional Planning Commission
Power County Commissioners
Fort Hall Business Council
Mayor of Ashton
Mayor of St. Anthony
Mayor of Rexburg
Mayor of Rigby
Mayor of Ammon
Mayor of Idaho Falls
Mayor of Shelley
Mayor of Aberdeen
Mayor of Pocatello

Idaho (continued)
Mayor of American Falls
Mayor of Rupert
Mayor of Heyburn
Mayor of Burley
Mayor of Kimberly
Mayor of Twin Falls
Mayor of Buhl
Mayor of Filer
Mayor of Jerome
Mayor of Wendell
Mayor of Gooding
Mayor of Shoshone
Mayor of Blackfoot

Wyoming
State Clearinghouse, Wyoming State Planning Coordinator
Wyoming Natural Resource Board
Wyoming Reclamation Representative

INDIVIDUALS AND ORGANIZATIONS

American Falls Bridge Committee
Reed J. Bowen, Idaho Falls
A. H. Carpenter, El Paso, Texas
Columbia Interstate Compact Commission
* B. W. Davis, Attorney, Pocatello
* Environmental and Energy Systems, San Francisco, Ca.
Federation of Western Outdoor Clubs
Fort Hall Indian Stockmen's Association
H. Paul Friesema, Evanston, Illinois
William S. Holden, Idaho Falls
Idaho Environmental Council
Idaho Power Company
Idaho Water Users Association
Idaho Wildlife Federation
D. W. Johnson, Pocatello
L. J. Koutnik, Twin Falls
Northwest Public Power Association
Outdoors Unlimited
Parry, Robertson, Daly & Larson, Attorneys, Twin Falls
* Public Library, Pocatello
Pocatello Zoological Society
Seagull Boat Club, Inc., Pocatello
Sierra Club
Mary Smith, Attorney, Rexburg
* Snake River Power Association
Trout Unlimited
* Union Pacific Railroad
Upper Colorado River Commission

Chambers of Commerce in American Falls Vicinity
Weekly and Daily Newspapers in Southern Idaho
American Falls Reservoir Spaceholders
Committee of Nine Members (Water Users Representatives)
Area Water Users Organizations
School and Public Libraries in Southern Idaho

Comments received and attached

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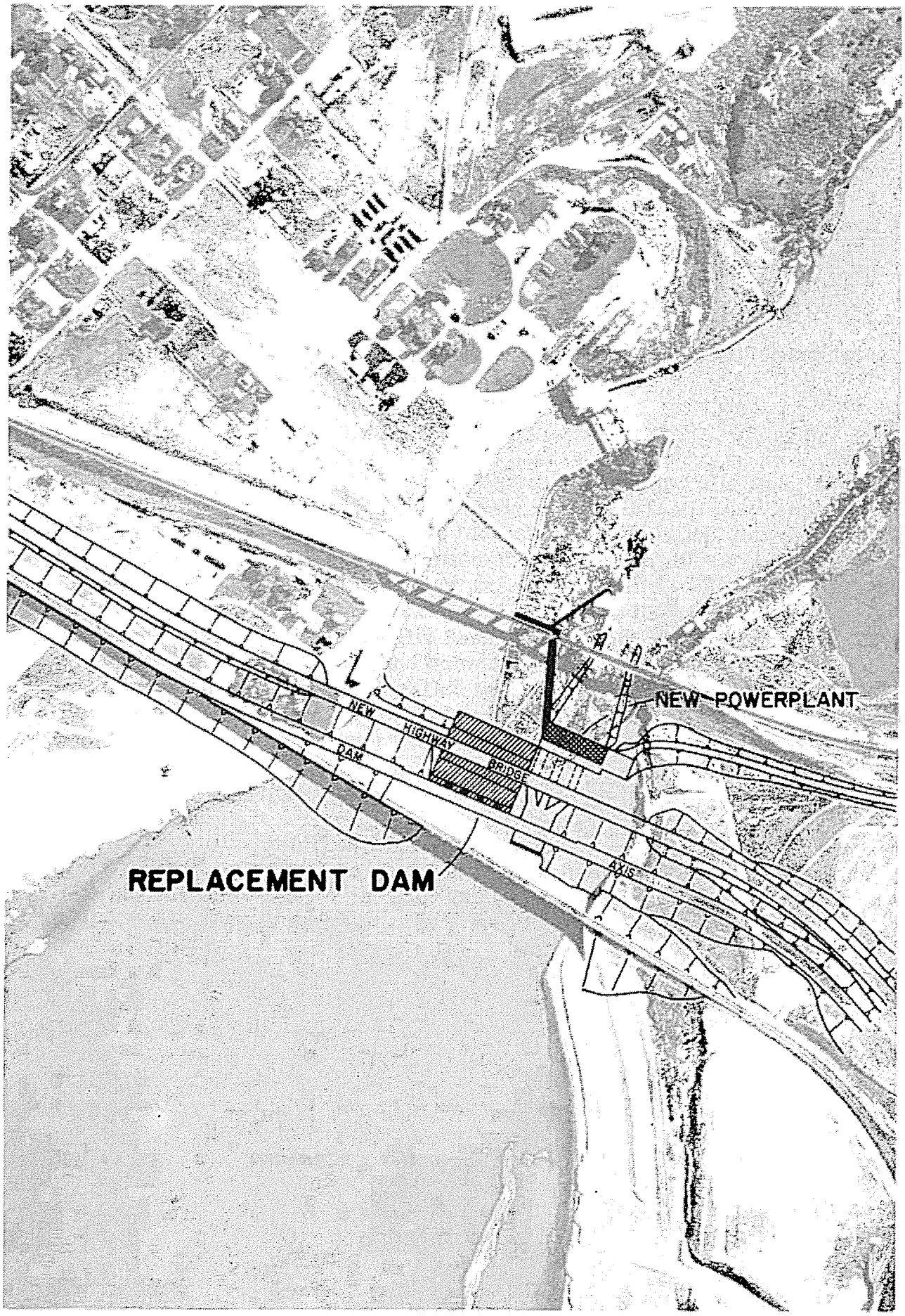
(1) Consultation and coordination during development of the proposal and during preparation of the draft environmental statement

(2) Coordination during review of the draft environmental statement

(3) Bibliography

ILLUSTRATIONS

Upper Snake River Basin Map	Frontispiece
Damsite and Powerplant Area Vertical Aerial Photo ..	Follows Table of Contents
Project Layout--Plan, Elevation & Section	Follows Page 5
American Falls Dam Photo and Location Key	Follows Page 13
Geologic Sections	Follows Page 14
Detail Drawing	Follows Page 33


NEW POWERPLANT
NEW HIGHWAY BRIDGE
DAM
AXIS
REPLACEMENT DAM

FINAL ENVIRONMENTAL STATEMENT
AMERICAN FALLS DAM REPLACEMENT AND POWERPLANT, IDAHO

This environmental statement covering the construction of American Falls Dam replacement, construction of a new powerplant, and related features has been prepared as required by the National Environmental Policy Act of 1969.

A. Description of the Project

This section outlines the project, the actions required for implementation, and the relationship to other projects.

1. Planned Development

This project is for replacement of the existing American Falls Dam, including a two-lane highway on the crest of the dam, related facilities, wildlife enhancement and recreation facilities, fishery, water quality, and recreation mitigation measures, and construction of a new powerplant. American Falls Reservoir would be maintained at its existing capacity -- 1.7 million acre-feet. The Department of the Interior would, under the plan, enter into an agreement with the American Falls Reservoir District to permit that agency to construct a replacement dam and enter into a contract for use of the water leaving the dam for power generation in return for monetary compensation to defray the expense of replacing the dam. As a result, a new 100 MW powerplant is also planned for construction.

a. Location

The new dam and powerplant would be located on the Snake River in southeastern Idaho. The dam would be built immediately downstream from the existing dam near the town of American Falls in Power County. The reservoir is located in Power, Bannock, and Bingham Counties.

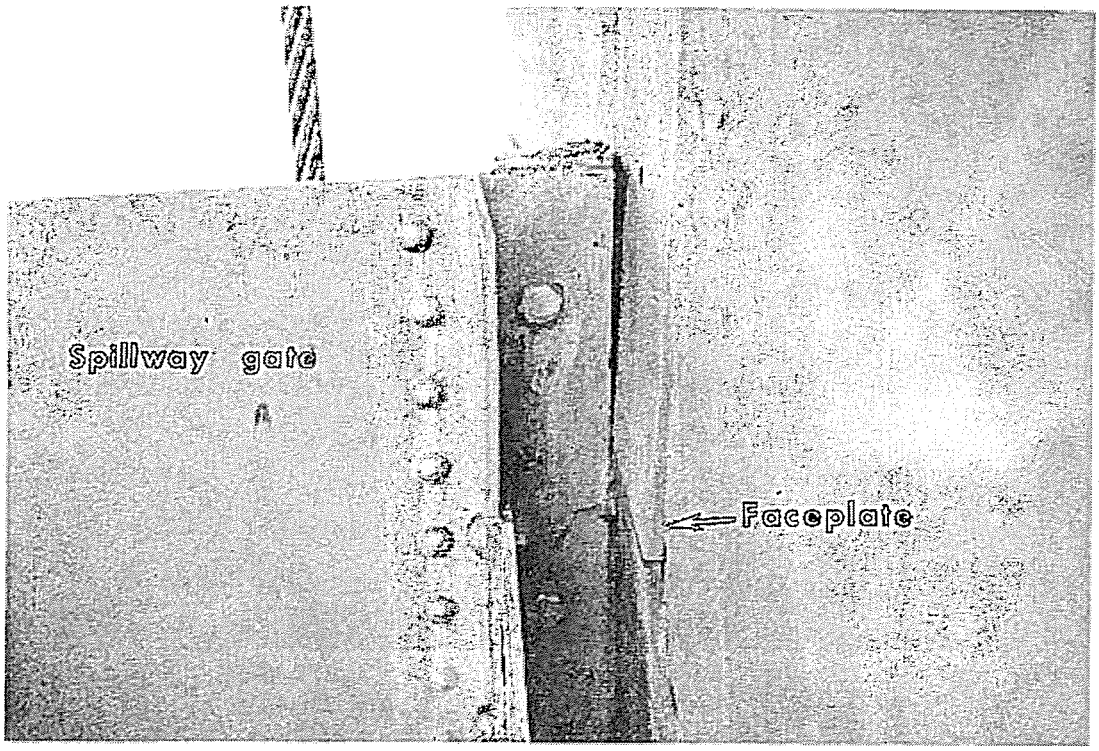
b. Purposes

The existing dam must be replaced in order to avoid further operating restrictions or the possibility of dam failure. The dam no longer meets Bureau of Reclamation safety standards. This decision by Reclamation has been corroborated by a board of private consultants.

Replacement or major rehabilitation is mandatory because:



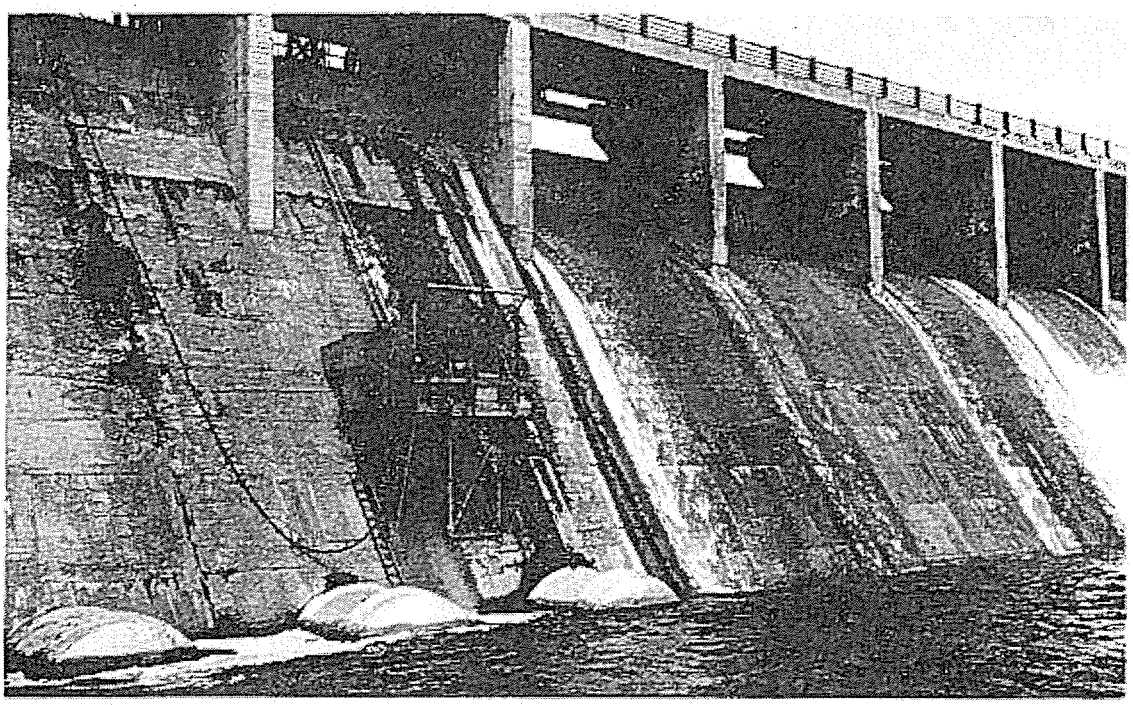
Cracks similar to these on spillway gate pier adjacent to gate No. 14 are typical alkali reactance cracks which are representative of large areas on the existing American Falls Dam.



The "growing" concrete in the pier at the right of the spillway gate has pushed the steel faceplates outward, thus binding the gate.



The poor bond or lack of bond at some of the construction joints in the dam is of particular concern. The photograph above shows concrete separation along a construction joint near the entrance to the dam's inspection gallery; the joint has been partly patched.



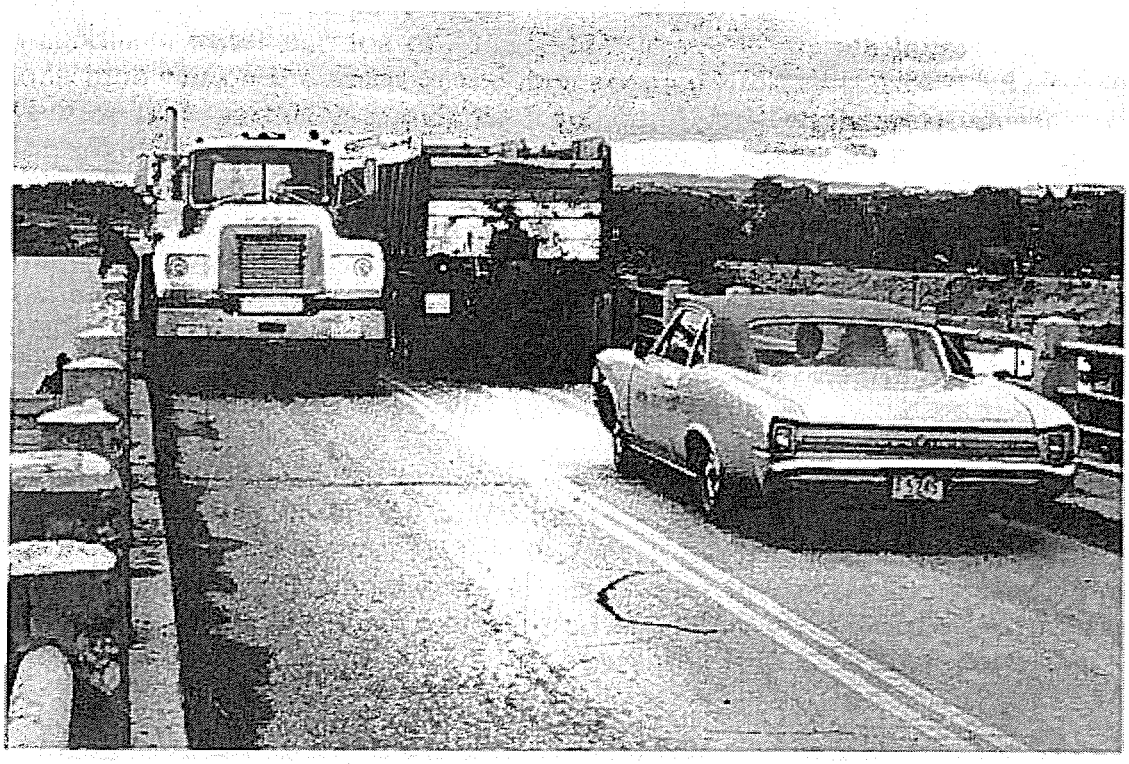
The vegetation growing on the downstream face of the dam in the right penstock section next to the spillway shows where water has leaked through the dam along both horizontal and vertical construction joints. The platform was used during core-drilling operations on the dam in 1968.

1. Concrete in portions of the dam is in a relatively advanced state of deterioration (see photos following this page). In the 45 years since the dam was built by the Bureau of Reclamation, the concrete has gradually deteriorated, due to alkali-aggregate reaction in the dam's concrete. The occurrence and effects of alkali-aggregate reaction were unknown at the time the dam was built. In recent years, low-alkali cement has been developed to prevent this reaction.

2. There is a lack of cohesion or bond at some of the concrete joints.

3. Because of the weakened condition of the dam, reservoir filling has already been restricted to 66 percent of total capacity to avoid excessive pressures on the dam. Further storage restrictions may be necessary if the dam is not replaced. Such a situation could cause financial hardship for hundreds of farm operators. These events would, in turn, seriously affect the upper Snake River basin's overall economy, which is heavily based on irrigation agriculture. In addition, important flood control, recreation, and other benefits would probably be reduced or lost.

4. 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 vehicular traffic and recommended that all traffic be taken off that portion of the bridge immediately. The Idaho Department of Highways has found it necessary to restrict use of the highway crossing to alternating one-way traffic as an interim step toward reducing the dangerous conditions.

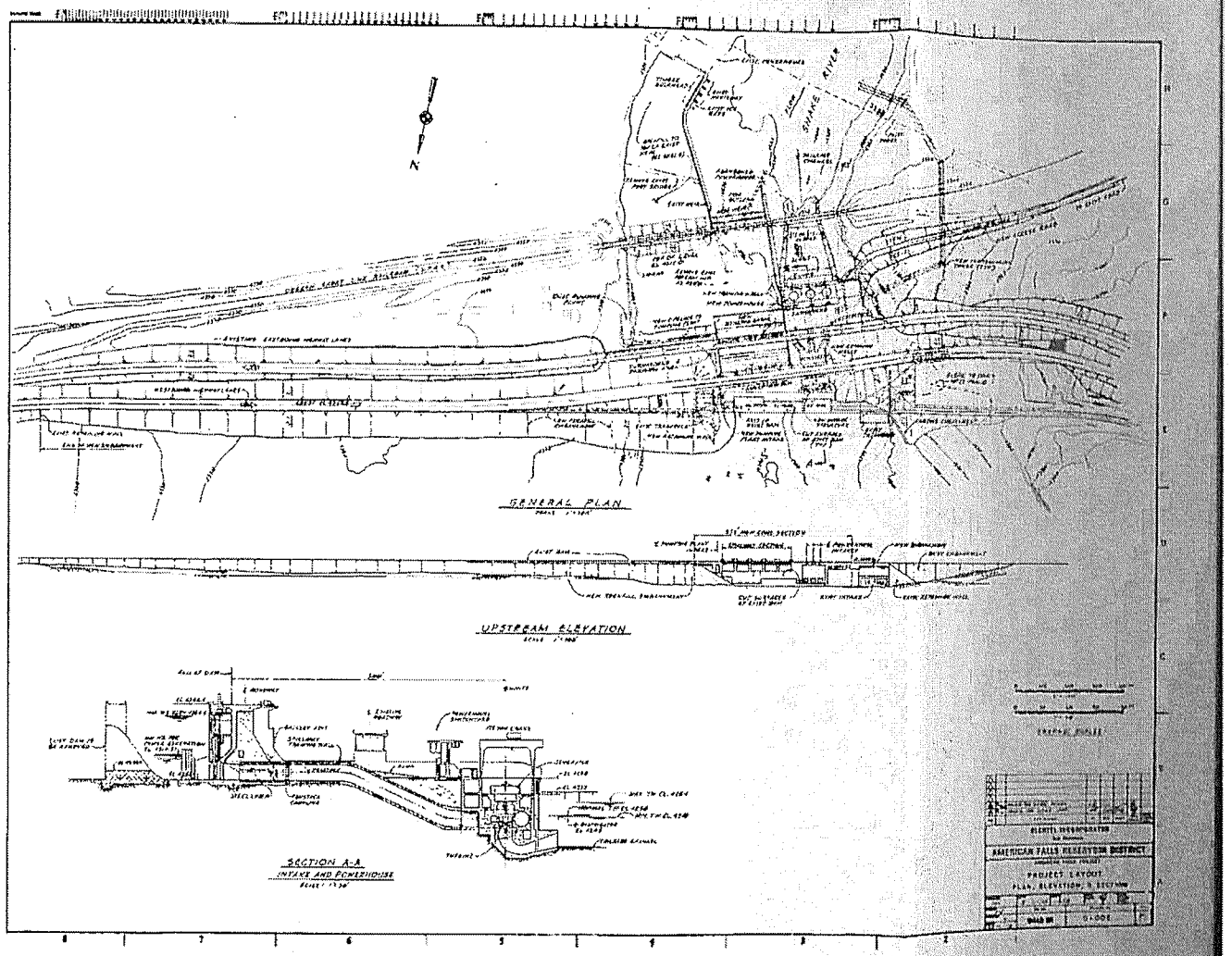
The need for a safe modern crossing has been recognized by the State of Idaho to be of sufficient importance that it has proceeded with construction of a two-lane highway and bridge section just below the existing dam. A negative determination (73-39-(PN)) of environmental impacts on a U. S. Government permit for rights-of-way to allow the Idaho Department of Highways to construct the project (Idaho State Highway Project No. ST-1721 (518)) was prepared in November 1973. Construction was started in November 1973 and is expected to be completed in the fall of 1974. With the construction of the two-lane highway on the crest of the replacement dam, four lanes of safe, modern highway will cross the Snake River at American Falls.

c. Features and Functions Served

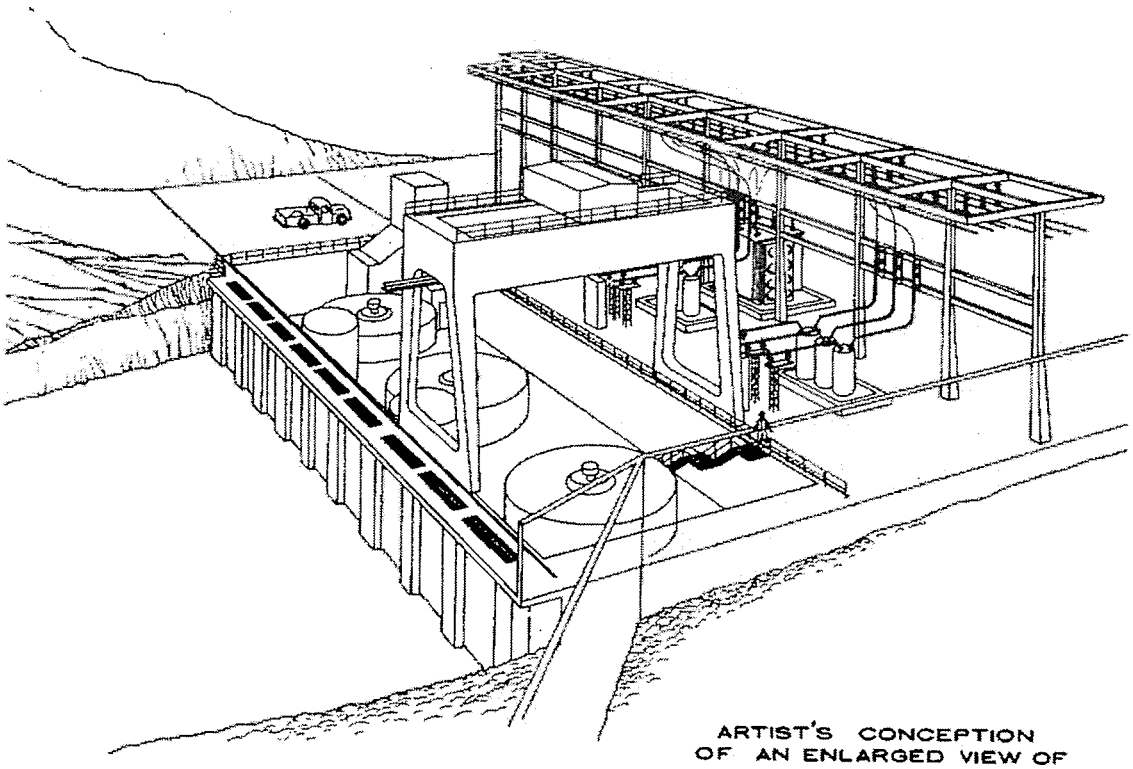
The major features of the plan (see drawings following this page) are the American Falls Replacement Dam and related facilities and a new powerplant. The replacement dam will have (a) reservoir with an active capacity of 1,700,000 acre-feet, (b) a spillway, outlet works, and power penstocks capable of passing an approved design flood without exceeding a maximum water surface of 4354.5 feet above mean sea level, (c) a two-lane highway on the crest of the dam adequate to meet 1974 U. S. Department of Transportation Standards for Federal-Aid Secondary Highway Two-Lane Traffic, and (d) appropriate controls of the intake and sluiceway gates for operation of the dam.

The construction of related facilities will include a warehouse, shop, and office building. This 2,000-square-foot structure will be of either frame or masonry construction and located immediately upstream from the dam on the right abutment. A scenic overlook, health and safety facilities and stream gages will also be constructed.

The new powerplant will include a reinforced concrete powerplant structure containing three adjustable blade turbines and three 34,200 KVA semi-outdoor-type generators. Three 18-foot steel-lined penstocks will connect the powerplant to the downstream face of the replacement dam. The generating facilities will be connected to Idaho Power Company's interconnected system by one 138-KV transmission line extending down the


GENERAL PLAN
UPSTREAM ELEVATION
SECTION A-A
INTAKE AND POWERHOUSE
AMERICAN FALLS RESERVOIR DISTRICT
PROJECT LAYOUT
PLAN, ELEVATION & SECTION

right bank of the river crossing the tailrace to connect with the present 138-KV switchyard approximately one-quarter mile downstream. The existing American Falls generating plant and associated facilities will be eliminated.



ARTIST'S CONCEPTION OF AN ENLARGED VIEW OF THE POWERHOUSE DESIGN

Other facilities planned for construction are (1) water quality facilities for the purpose of injecting oxygen into the water to maintain the Idaho State Water Quality Standards of water downstream from American Falls Reservoir, (2) measures to enhance wildlife and recreation in and around the reservoir, and (3) facilities to mitigate fish losses resulting from construction of the powerplant.

The replacement dam will be operated by the United States in a manner so that (1) the storage rights of the spaceholders shall not be altered or changed, (2) the water surface elevation of the replacement dam shall not exceed a maximum of 4354.5, and (3) the irrigation purposes of the Minidoka Project shall not be impaired by the utilization for power production of the water leaving the replacement dam. The incidental purposes (recreation, fish and wildlife, and flood control) of the project will be affected to varying degrees, as noted in later parts of this statement.

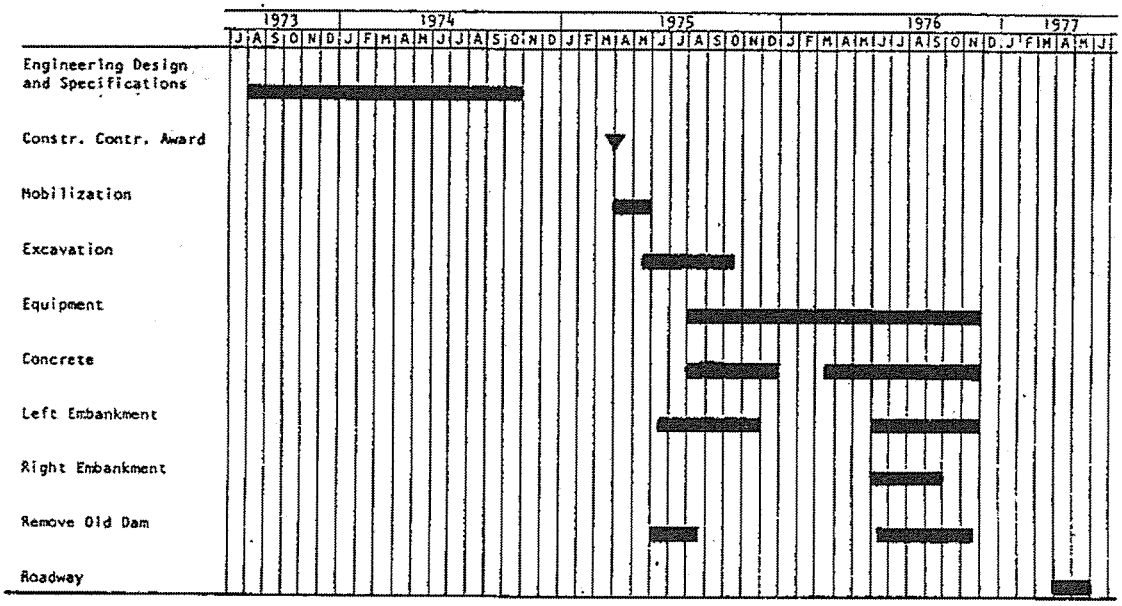
The United States is not obligated to operate the replacement dam in a manner to have water in the replacement dam at elevations for power generation or to operate to increase the head in the replacement dam for power generation. To facilitate the use of water released for power generation, the Bureau of Reclamation will provide the Idaho Power Company schedules of anticipated water releases. In turn, the power company will inform the Bureau of Reclamation when situations arise in which all the water cannot be passed through the turbines so that other outlets from the dam can be adjusted accordingly.

The Idaho State Department of Highways constructed a cofferdam at the toe of the existing dam in December 1973 to facilitate the construction of a new two-lane highway located downstream from the dam. The Idaho Department of Highways and the Idaho Fish and Game Department have agreed that all cofferdams will be removed upon completion of the bridge and the forebay dam restored to its original condition. The concurrence of these two agencies would be required to retain the cofferdams for future construction use.

Because of the urgency of getting the reservoir back into full service, it has been assumed that construction of the new dam will begin at about the middle of 1975. The initial activity will be the excavation for the

AMERICAN FALLS PROJECT

DAM CONSTRUCTION SCHEDULE



dam and stilling basin foundations. By September 1976 the concrete section of the new dam will be completed sufficiently to allow discharges to be made through the new outlets. Most of the left and right embankments will be completed, thus allowing the impervious zone between the new concrete abutment and left embankment to be placed before the end of 1976.

Diversion of river flows during construction of the new dam will occur during two stages. During the first stage, flows will be diverted through some of the existing 5-foot-diameter outlets in the left abutment section. During May and June 1975 and 1976, additional discharges over the spillway may be required.

During the first stage, the new concrete section will be completed sufficiently to store water and provide completed outlets and intakes for the pumping plant and powerhouse. The right embankment and most of the left embankment will be completed. Also, the stilling basin and afterbay area protected by the cofferdam will be completed.

The second stage of river diversion begins when flow is diverted through the newly constructed outlets. During the second stage, the left embankment will be completed. When the powerhouse is completed, the flow will be diverted through the units and the outlets will be closed. The portion of existing weir within the forebay will then be removed in the dry.

Excavation for the powerhouse and tail race will start in July 1975 and continue through September 1975. The construction of tailrace cofferdam and completion of tailrace excavation will be done during the months of September and October 1975 when releases are low. Construction of the powerhouse will be completed by February 1977 and the units will be tested and placed in commercial operation by March 1977.

The project features would serve six functions:

(1) Irrigation.--All the space in American Falls Reservoir is active. Irrigators use a total of 1,655,000 acre-feet, and the remaining 45,000 acre-feet is used by the Idaho Power Company. A total of 892,650 acres of land is now irrigated from American Falls Reservoir, either directly or through exchange. With the proposed program, these lands, which extend the length of the upper Snake River basin, would receive the same water supplies they have in the past. On the average, these lands receive about 25 percent of their total irrigation water supply from American Falls Reservoir. Supplies to specific lands range from less than 1 percent to 90 percent of their total diversion requirement.

(2) Power.-- The replacement dam would include three penstocks to permit passage of water through the dam to the new powerplant immediately downstream. The powerplant would contain three turbines and generators, having a total (nameplate) capacity of about 92.3 MW. Full utilization of the falling water available at the American Falls site will increase the maximum generation capacity of the power installation from 27,500 KW to about 106,000 KW. The average annual energy production will be increased from 146,081,000 KWH (about 16.8 average MW) to about 339,900,000 KWH (about 38.8 average MW). The increased capacity and energy will coincide with Idaho Power Company's annual peak load which occurs each summer due to the nearly 750,000 horsepower of irrigation pumping installations served by Idaho Power Company. This additional generating capacity will aid serving customers' needs, improve the system reliability, and aid in meeting regional power generation needs.

(3) Flood Control.-- Replacement of the dam would insure continued flood control along the Snake River downstream. However, flood control operation would be incidental to other project purposes.

(4) Fish and Wildlife.-- Public Law 93-206, which authorizes construction of the replacement dam, powerplant, and related facilities, provides funds for specific facilities for fish and wildlife enhancement and public recreation.

The Idaho Fish and Game Department has indicated an intent to enter in a cost-sharing agreement for the wildlife enhancement plans. This would be for development of waterfowl nesting islands in the reservoir and acquisition of wetlands adjacent to the west and north shore of the reservoir for waterfowl habitat.

Fifty nesting islands would be constructed in the upper portion of the reservoir to develop production of geese; geese would be provided by the Idaho Fish and Game Department to start the nesting program. Though food and cover are available in the brushy, spring-fed bottom lands along the upper end of the reservoir, no geese now nest there.

Measures will be provided to mitigate the loss of the highly productive fishery in the forebay area. Additional fish production facilities are also to be built to compensate for fish killed passing through the turbines of the new powerplant. These measures are described in detail in Part D, Mitigating Measures.

(5) Recreation.--The authorizing act will permit construction of Reclamation facilities through Public Law 89-72, the Federal Water Projects Recreation Act. This act provides Federal assistance in the

amount of 50 percent of the total costs for planning and development of outdoor recreation areas and facilities. In addition, specific facilities for public recreation may also be provided in accordance with the Land and Water Conservation Fund Act of 1965. Non-Federal public agencies are planning to develop two extensive recreational areas at the reservoir.

The American Falls Shoreline Parkway recreation area adjacent to American Falls near the east end of the dam will be developed by the city of American Falls, American Falls Highway District, Bannock and Power Counties, and the State of Idaho. This planned regional park includes 120 acres of leased Federal land. Planned facilities include camping and picnic units, a swimming beach, a boat harbor, and a boat-launching ramp and moorage facilities.

Existing Aberdeen Sportsman Park, near Aberdeen on the west shore of the reservoir, will be improved and expanded by Bingham County. This planned regional park includes 715 acres of leased Federal land. Improvements will include camping and picnic units, a boat ramp, and beach development.

In addition to these areas, a Pocatello boating club has developed a recreational area at Seagull Bay with boating, picnicking, and other facilities; and the Shoshone-Bannock Tribes have developed a recreational site at Rainbow Beach on the east shore of the reservoir.

The recreational developments listed above will meet the initial outdoor recreational needs at the reservoir. It is assumed that the above non-Federal or similar public agencies will provide any additional recreational facilities needed at the reservoir in the future.

(6) Highway Improvement.--The replacement dam program will include a modern two-lane highway crossing on the crest of the new dam; this crossing would meet the current traffic standards of the Idaho Department of Highways (photo overlay following Table of Contents).

The embankment sections will accommodate two 12-foot lanes, a 5-foot shoulder downstream, and a 5-foot sidewalk upstream. The concrete section of the replacement dam will also accommodate two 12-foot lanes plus a 9-foot service lane-sidewalk on the upstream side, and a 5-foot sidewalk downstream.

A new two-lane highway and bridge section is being constructed about 150 feet downstream from the proposed replacement damsite by the Idaho State Department of Highways. Ultimately, the downstream highway will carry the eastbound traffic, and the highway on the crest of the dam will carry westbound traffic.

2. Actions Required to Implement the Plan

Public Law 93-206, 93rd Congress, December 28, 1973, authorizes the Secretary of the Interior to enter into agreements with the American Falls Reservoir District, or another appropriate agency representing the present spaceholders, for the replacement of the existing American Falls Dam, related facilities, and the sale of falling water to a non-Federal agency. Prior to initiation of the above activities, the following items will be required:

1. Filing with the Council on Environmental Quality of the Final Environmental Impact Statement.
2. Approval by the Spaceholders of bonding arrangements.
3. Issuance of Federal Power Commission license.
4. Execution of a "Falling Water" contract between American Falls Reservoir District and Idaho Power Company and approval of that contract by the Secretary of the Interior.
5. Execution of a contract among the United States, the American Falls Reservoir District, and the 35 entities and individuals presently having water storage contracts in the American Falls Reservoir.
6. Execution of contract between the American Falls Reservoir District and the United States.
7. Approval of designs and specifications by the Secretary of the Interior.

3. Interrelationships with Other Projects

The 1.7 million acre-foot American Falls Reservoir is a key element in the highly developed upper Snake River storage system. The reservoir provides nearly half of the usable main stem storage in the upper Snake River basin. The upper Snake River reservoirs are operated as a system to provide irrigation water to lands throughout the basin as well as for flood control, recreation, fish and wildlife, and power production. There are four main-stem reservoirs:

	Active Capacity	
	Acre-feet	Percent
Jackson Lake	847,000	22
Palisades Reservoir	1,200,000	31
American Falls Reservoir	1,700,000	45
Lake Walcott (Minidoka Dam)	95,000	2
Total	3,842,000	100

The map at the front of this statement shows the location of these reservoirs.

Since American Falls Reservoir is located near the lower end of the basin, it can capture Henrys Fork and other tributary inflows that are not storable in either Jackson Lake or Palisades Reservoir. The yield from American Falls Reservoir storage is high because of its early storage right and its favorable location with respect to winter return flows from upstream irrigation. Yield from the reservoir averages 98 percent of capacity; that is, each 100 acre-feet of reservoir space yields an average of 98 acre-feet of water annually.

The coordinated operation of Palisades Reservoir and American Falls Reservoir is a good example of the interrelated upper Snake River operation. If irrigation releases had to be made from Palisades Reservoir to meet all demands of owners of Palisades Reservoir storage, the resulting flows would exceed the present safe channel capacity in the Heise-to-Roberts reach for sustained periods in most years. By releasing water from American Falls Reservoir to meet part of these demands, Snake River flows in the reach below Palisades can be controlled to within the safe channel capacity.

American Falls Reservoir is operated in coordination with the large number of irrigation operations which depend heavily on the reservoir for critically needed components of water supply. If American Falls Reservoir were to cease functioning, many of these operations would fail.

The construction process proposed will result in the use of a major portion of excavated material for construction of dam embankments and fill activities downstream (forebay area, etc.). Excess excavation will be placed upstream of the left abutment or at other approved sites. Surfaces of these disposal areas will be contoured and sloped to drain. Seeding and reforesting will be the same as specified for borrow areas. The small area of the present "forebay" which will remain will be designed to drain so there will be no standing water.

The existing Idaho Power powerplant will be completely removed from the site. Portions that are above ground will be knocked down and the portions below ground will be backfilled. Then the area will be graded to match the adjacent topography.

B. Description of the Environment

This section describes the environment of the existing American Falls Dam and Reservoir area and the environment in areas which would be affected by this project.

American Falls Reservoir is located on the Snake River in southeastern Idaho. When full, this 1.7 million acre-foot reservoir has a surface area of 87.5 square miles (56,000 acres). The reservoir is 22 miles long, and its width varies from 1 mile at the dam to 10 miles at the upper end.

The reservoir is impounded by American Falls Dam, located just upstream from the site of rapids called American Falls. These falls, now partly dewatered, have a vertical drop of 40 feet. The mile-long dam is a concrete-gravity structure with earthfill embankments at each end. A photograph of the dam and the nearby features is shown on the next page.

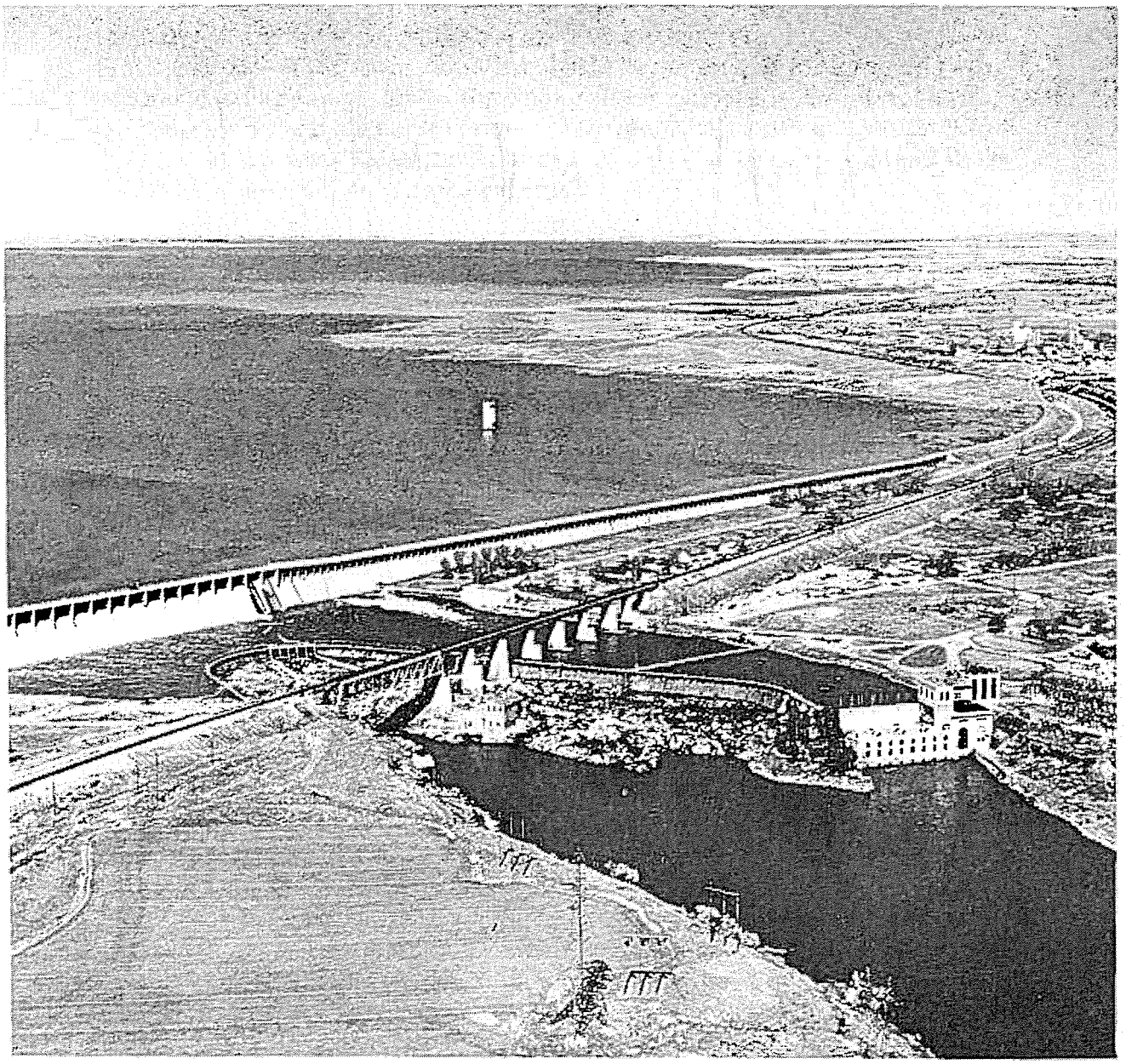
1. Geography and Geology

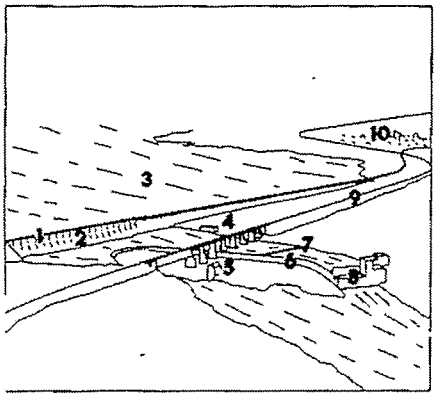
The project site is on the southeastern edge of the Snake River Plain. This broad, flat lava plain is generally covered by a layer of loess (wind-laid silt); but north and west of American Falls Reservoir and in some other areas, recent lava flows are still exposed.

The Snake River Plain, a section of the Columbia Plateaus physiographic province, extends from near the eastern boundary of Idaho downstream to the town of Bliss, a distance of about 200 miles. The plain's width ranges from about 40 to 65 miles. Elevations on the plain range from about 6000 feet at the upper end to 3200 feet at the lower end near Bliss. Elevations in the American Falls Reservoir area generally range from 4300 to 4600 feet. At full pool, the reservoir water surface elevation is 4354.5 feet.

North and west of the reservoir, the terrain is flat for 50 miles or more, but several ranges of mountains lie immediately to the southeast. These north-south trending mountains and hills extend to within a few miles of the reservoir. They include the Sublett, Bannock, and Portneuf Ranges and the Deep Creek Mountains.

Lava flows from the north have crowded the Snake River against the southeast flank of the Snake River Plain. Beds of sedimentary materials are thick and extensive along the present course of the Snake River; these beds are thin or absent toward the central part of the plain. These





1 - American Falls Dam. 2 - Spillway.
3 - American Falls Reservoir.
4 - American Falls Pumping Plant.
5 - Abandoned Powerplant. 6 - Forebay Dam. 7 - Footbridge. 8 - Idaho Power Company Powerplant. 9 - Union Pacific Railroad. 10 - Town of American Falls

lava flows and sediments form a vast ground water aquifer--the Snake Plain aquifer--that stores and transmits large amounts of water. The aquifer discharges water to the Snake River chiefly in two reaches: the American Falls Reservoir reach (between the mouth of the Blackfoot River and American Falls) and the reach between Milner Dam and Bliss (including the Thousand Springs area).

Most of the reservoir is bounded by fine-grained lakebed sediments termed the American Falls Lake Beds and Raft Formation. Beneath these sediments, at the southwest end of the reservoir, is the basaltic lava formation.

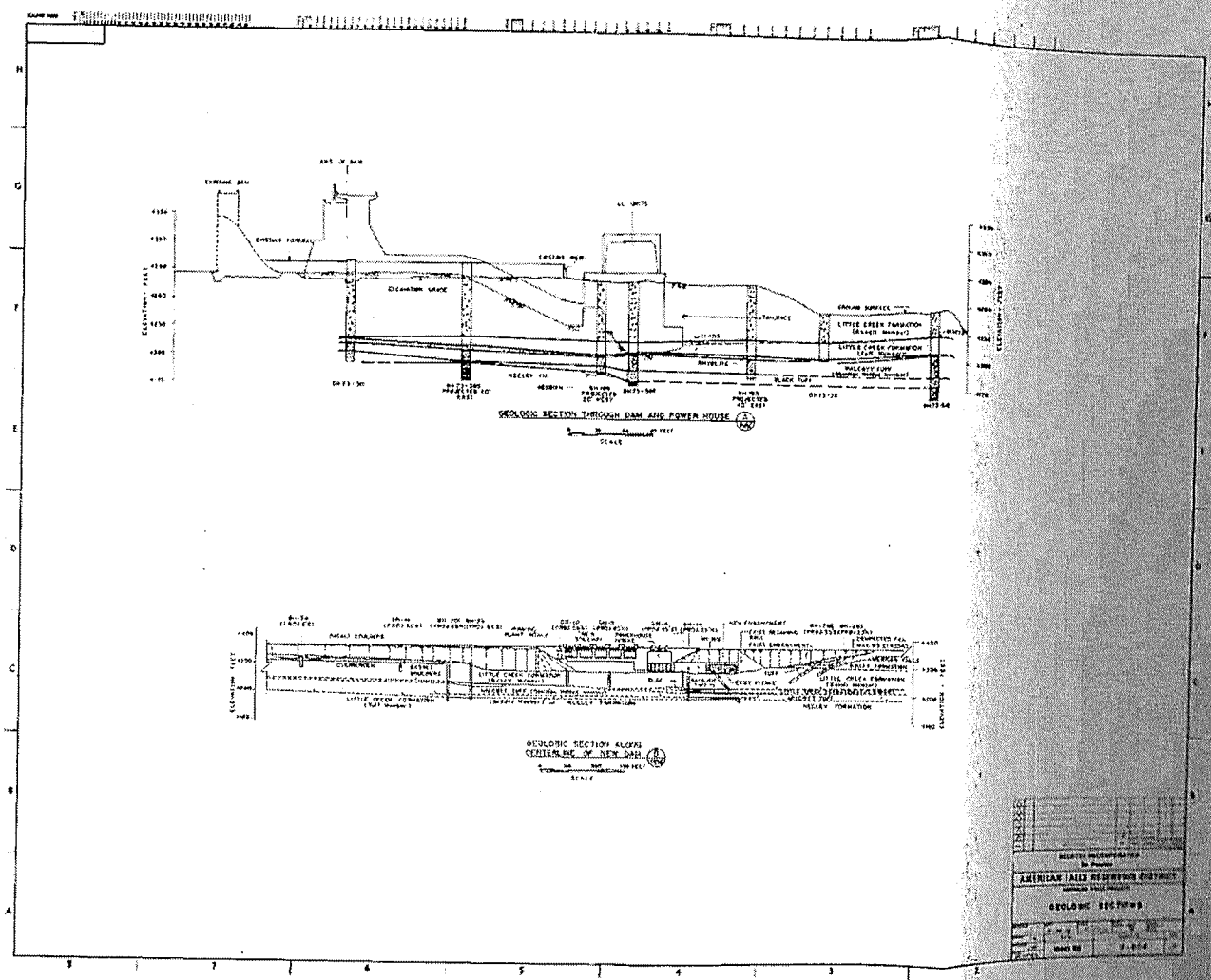
The project structures are founded upon or are within a geologic sequence of lakebed materials, basalt, tuff and obsidian rocks, occurring between elevations 4400 and 4200 feet (see drawing following this page).

Bluffs of basalt of the Little Creek formation form the most prominent geologic feature visible at the site. The basalt is exposed downstream of both dam abutments and is the bedrock on which the river flows. The basalt varies from a vesicular material with random, steeply dipping joints to a dense, relatively unjointed material.

Underlying this basalt is the tuff member of the Little Creek formation. It varies in color from reddish brown to brick red and contains scattered particles of obsidian and basalt. The only exposure of the tuff member occurs on the west side of the valley. It is poorly to moderately consolidated at the river. Toward the west, it reduces to a thin bed of hard, brittle rhyolitic tuff, varying in thickness between 5 and 10 feet.

Underlying the Little Creek formation is the obsidian member of the Walcott Tuff. This unit is exposed at the base of the cliff on the west side downstream of the proposed powerhouse. Where it is exposed, it appears massive and resistant and contains scattered spheroidal concretions that are frequently eroded by weathering, leaving the rock with a "pock-marked" appearance. When core-drilled, the rock breaks into small, irregular pieces due to the brittle texture and difference in hardness between the obsidian and the encased concretions.

Under the obsidian member there is a bedded member in the Walcott Tuff. As seen in the outcrop on the west side of the river, it is a poor to moderately consolidated tuff, approximately 5 feet thick. In the cores, the material varies from hard, gray obsidian to coal black, lightweight tuff.


GEOLOGIC SECTION THROUGH DAM AND POWER HOUSE
GEOLOGIC SECTION ALONG CENTER LINE OF NEW DAM
AMERICAN FALLS RESERVOIR DISTRICT
GEOLOGIC SECTIONS

Underlying the tuff is the Neeley Formation. It is exposed on the west side of the valley just downstream from the proposed powerhouse. The Neeley Formation is a well to poorly consolidated, tuffaceous sandstone. The upper few feet locally contain angular fragments of basalt and obsidian.

The Neeley Formation exposed in the cliff face downstream of the proposed powerhouse is about 100 feet higher in elevation than the Neeley Formation encountered in drilling. This elevation difference may be due to structural flexure or, more likely, to deposition on an uneven surface.

Geologic exploration has been performed at the site by the USBR from 1924 to 1964. The most recent geological investigation was performed under the direction of Bechtel Incorporated. Work began August 10, 1973, and was completed September 28, 1973. The core drilling was performed by subcontract.

The results of the 1973 core drilling correlate well with the results of the previous explorations by the USBR. No unusual or surprising geologic conditions were revealed by the explorations. The information obtained from the drilling is incorporated in the geologic sections shown on the drawing.

The concrete section of the replacement dam, penstocks, stilling basin and bridge will be founded entirely on the basalt member of the Little Creek formation. There is little or no overburden and the rock is fresh and has few joints.

The following sources of materials were examined for the project:

Aggregate - Patton & Linton commercial plant about 3 miles northwest of Pocatello. This aggregate has been tested by USBR for alkali reactivity and found suitable for use in concrete, provided that low alkali cement is used.

Shell, Filter, and Drain Material for Left and Right Embankments - Processed material excavated from basalt outcrops located on the west side of the river about 4 miles southwest of the dam in section 16, R. 30 E., T. 8 S., or processed material from commercial plant.

Core Material - Lakebed silts located on the east and west sides of the reservoir, about 0.5 mile upstream of the dam.

A study was conducted by the USBR to determine location of the epicenter and magnitude of the maximum credible earthquake which could affect the American Falls area. The results of the study indicated that the maximum credible earthquake would have a magnitude of 7.5 on the Richter Scale. The epicenter would be approximately 60 miles east of the dam area along the East Great Basin seismic belt and the focal depth would be approximately 15 miles. The resulting ground acceleration at the dam would be about 0.08g. A study by Bechtel confirmed the results obtained by USBR.

2. Climate

The climate in this area is semiarid. There is less rainfall on the Snake River Plain north of American Falls Reservoir than in the hills and mountains south of the Snake River. Precipitation at the town of Aberdeen north of the Snake River, averages 8 inches annually; at American Falls near the foot of the hills it averages 12 inches. Little of the precipitation falls during the growing season. At American Falls, for example, less than 3 inches of precipitation falls during the June through September period. The remainder of the precipitation at American Falls is fairly evenly distributed throughout the rest of the year.

The mean annual temperature of the area is 45 degrees. The average temperature range at American Falls is shown below.

	Average Maximum	Average Minimum
January	33°	15°
July	89°	52°

The highest recorded temperature at American Falls is 106°; the lowest is -38°. At American Falls, there are about 130 days between killing frosts.

The annual average relative humidity is 70 percent at 5:00 a.m., and 42 percent at 5:00 p.m. Lowest humidities are in July and August, with approximately 60 percent at 5:00 a.m., and 22 percent at 5:00 p.m. The prevailing wind is from the southwest, averaging 10 miles per hour.

The standard Weather Bureau Class A pan evaporation is between 40 and 55 inches per year, with 80 percent or more occurring from May through October. Based upon the pan evaporation data, net mean annual reservoir evaporation is estimated to be 30 to 40 inches per year.

3. Water Supply and Quality

Snake River runoff from the 13,600 square-mile drainage area above the reservoir has averaged nearly 5 million acre-feet per year. Annual runoff has ranged from a minimum of 2.8 million acre-feet to a maximum of over 7 million acre-feet. Because of its relatively early storage rights and its location near the lower end of the basin, American Falls Reservoir has filled nearly every year since it was built.

Major storage facilities which regulate the flow of the river upstream from American Falls include Jackson Lake, Palisades Reservoir, Island Park Reservoir, and Blackfoot Reservoir, with active storage capacities of 847,000 acre-feet, 1,200,000 acre-feet, 127,000 acre-feet, and 350,000 acre-feet, respectively.

The annual snowmelt flood usually begins in April or May and lasts through July. Local flooding has occurred occasionally in February. The discharge from American Falls Dam is measured immediately downstream at the Neeley Gage, which is operated by the USGS. The flow record at Neeley Gage is complete for the period 1906 to the present. The mean annual flow is 6,080 c.f.s, with a maximum annual flow of 9,240 c.f.s. and a minimum annual flow of 4,550 c.f.s.

Water quality is a problem in American Falls Reservoir. In the past, this problem has been aggravated by inadequately treated municipal and industrial wastes entering the reservoir, particularly potato-processing and phosphate-processing wastes. A severe problem was first noted in 1967 when heavy algae growths reduced dissolved oxygen concentrations enough to cause a fish kill within the reservoir.

The combined efforts of the Idaho Department of Health and Welfare, municipalities, and private industries have resulted in a substantial reduction of untreated wastes reaching the reservoir in recent years. Reservoir water quality will continue to improve as additional secondary treatment plants are completed and operating properly. Because of the broad, relatively shallow reservoir basin and the remaining wastes and nutrients which still enter the reservoir, however, algae growth and other undesirable conditions will likely recur at times in the future.

A tabulation of the temperature and dissolved oxygen levels and other water quality data for the 1968 irrigation season, are enclosed at the back of this statement.

Mercury levels in excess of the U. S. Food and Drug Administration's guidelines have been detected in some fish taken from American Falls Reservoir. The Food and Drug Administration considers fish with mercury concentrations of more than 0.5 parts per million (ppm) unsafe to eat. In November 1971, the Idaho Fish and Game Department and the Idaho Department of Health and Welfare reported that samples of large trout averaged 0.8 to 0.9 ppm of mercury and perch averaged 0.9 ppm. Smaller trout averaged less than 0.3 ppm, and other game fish contained less than the 0.5 ppm limit.

As a result of these findings, the Department of Health and Welfare recommended that human consumption of fish from the reservoir be limited; the Fish and Game Department made no recommendations. Since the same study reported that some nongame fish also contained mercury in excess of the 0.5 ppm level, the use of nongame fish as trout feed at commercial hatcheries has been reduced. The source of the mercury has not been identified. The proposed project would have no effect on the level of mercury in the reservoir.

4. Vegetation

The lands of the project site are vegetated by sparse desert grasses and small shrubs on the west side of the Snake River. On the east side of the Snake River channel, areas have been planted to grass and are bordered by small and moderately sized Juniper trees. Vegetative species which occur within the desert-Juniper ecosystem include big sagebrush, low sagebrush, bottlebrush, squirreltail, cheat grass, and thistle. The vegetation indicated has no commercial importance other than for livestock grazing.

In their natural state, most of the lands around American Falls Reservoir and most of the lands served from the reservoir are semiarid desert; and their natural vegetation is sagebrush, juniper, and bunchgrass. Willows, cottonwood, hawthorne, and wild rose grow along the streams and in the Fort Hall Bottoms at the upper end of the reservoir. The Fort Hall Bottoms are a unique river-bottom area which is covered by trees, brush, and grass. This area, a part of the Fort Hall Indian Reservation, is watered by numerous springs.

The irrigated lands which surround the reservoir and the areas served from the reservoir provide green areas which are inviting contrasts to the desert areas and dryland farms. The irrigated lands produce diversified crops, and groves of trees have been planted on many farms. Rows of Chinese elms and Lombardy poplars are planted for shelter from winds; and black locust, cottonwood, and Russian olive are popular shade trees.

5. Fish

The U. S. Fish and Wildlife Service studied the fish and wildlife aspects of the area in cooperation with the Idaho Fish and Game Department. Three locations are important with regard to fish: (a) American Falls Reservoir, (b) the forebay area immediately downstream from the existing American Falls Dam, and (c) the tailwater area downstream from the existing Idaho Power Company powerplant.

The reservoir, forebay, and river are all popular fishing spots, as evidenced by the amount of fishing pressure each receives. Generally, trout caught from these waters are desirable because of their large size.

Those game and nongame fish species considered in the American Falls area are:

Coho Salmon	Oncorhynchus kisutch
Rainbow Trout	Salmo gairdnerii
Cutthroat Trout	Salmo clarkii
Brown Trout	Salmo trutta
Kokanee	Oncorhynchus nerka
Mountain Whitefish	Prosopium williamsoni
Bullhead Catfish	Ameirus nebulosus
Yellow Perch	Perca flavescens
Black Crappie	Pomoxis nigromaculatus
Carp	Cyprinus carpio
Utah Chub	Gila atraria
Utah Sucker	Catostomus sp.

a. Reservoir Fishery.-- American Falls Reservoir has developed a good sport fishery. Cutthroat trout and mountain whitefish are the only native game fish in the reservoir; but introduced game fish include rainbow and brown trout, kokanee, yellow perch, black crappie, and brown bullhead. Various nongame species are also present, including carp and suckers, which are harvested commercially. The nongame species are sold in the commercial market for human consumption and fish food.

The fishery in American Falls Reservoir is largely the result of annual plants of fish by the Idaho Fish and Game Department; however, the reservoir is gradually becoming more eutrophic with a buildup of algae occurring in late July and August. Periodic dieoffs of the algae, resulting in reduced O_2 levels, along with high water temperatures, cause many of the fish present to seek more favorable conditions elsewhere. Consequently, many migrate downstream into the forebay and river, creating a fishery in these areas.

Summer fish kills in the reservoir probably occur annually. As most fish leave before conditions get extremely bad and because of its large size, these dieoffs are small and most go undetected.

Fishing pressure and catch vary at the reservoir, depending on the time of year and specific conditions. Peak pressure occurs during June and July, when large numbers of the anglers are trolling. From late August through December, a small number of anglers are normally present near the dam. Ice fishing occurs from January through March and is becoming more popular every year. A gradual increase in fishing pressure occurs in April and May. Although no precise estimates of angling pressure at the reservoir are available, it is generally agreed that between 15,000 and 25,000 angler days (one fishing trip by one angler in one day) and between 45,000 and 75,000 angler hours occur annually.

b. Forebay Fishery.--An Idaho Power Company powerplant is located on the Snake River one-fifth of a mile downstream from American Falls Dam. The forebay for this powerplant is formed by a low-head diversion dam and wall which extends upstream from the powerplant in a horseshoe shape to the west side of the river channel.

The forebay provides good habitat for trout, partially because the water provides higher dissolved oxygen levels. Stocking is rarely necessary because fish migrate into the forebay from the reservoir. The forebay area is accessible to fishermen who use a walkway on top of the forebay wall and a footbridge which crosses the central part of the channel and joins the walkway. Fishing from the bank is also popular.

From May 29 to December 5, 1971, forebay anglers fished 37,517 hours to catch 12,054 rainbow, 1,650 coho, 11 cutthroat, and 12 whitefish. During this same time period, 48.5 percent of the fishing pressure occurred from July 19 through August 29 (estimates from February 1974 report by Idaho Fish and Game).

c. Tailwater Fishery.-- The tailwater area includes all waters downstream from the American Falls to and including the tailrace of the Idaho Power Company powerplant. This area provides a good sport fishery in the early summer and late fall. The area attracts fishermen because of the presence of large trout. In August and early September, water temperatures in the river exceed 70° F., and many fish migrate to the cooler waters of the deep pools in the tailwater. Rough shorelines restrict bank fishing to the west bank and below the powerhouse tailrace, but boat fishermen can reach practically all of

the tailwater area. From May 29 to October 30, 1971, anglers in the Snake River from the Lake Walcott flowline to American Falls forebay fished an estimated 71,947 hours to catch 21,087 rainbow, 268 cutthroat, 24 brown trout, 582 coho, and 87 whitefish.

Water which is released from the reservoir in late summer is now oxygenated both by spilling over the dam and as it passes through the forebay. The diversion of that water through the new powerplant would create oxygen problems in the river downstream, resulting in an additional loss of fish habitat.

The waters in the American Falls area contain no known rare or endangered fish species as listed in the Federal Register by the Bureau of Sport Fisheries and Wildlife. Idaho State University reported a unique species of sucker (Catostomus pocatello) in Ross Fork Creek at the upper end of the reservoir. The project would not affect this stream.

6. Wildlife

No data are available on the population densities of terrestrial animals and birds present within the project construction site; however, observations indicate that there are a few desert animals such as rabbits and field mice and a few birds such as sparrows, blackbirds, and seagulls, and that along the riverbank a few reptiles have been observed, such as lizards and water snakes.

Due to the proximity to the city of American Falls, the State highway and the fact that the site is crossed by the Union Pacific Railroad, no large wildlife species utilize areas within the project site for habitat.

The U. S. Fish and Wildlife Service reported that waterfowl is the most important wildlife group in the American Falls Reservoir area. A variety of ducks nest on the bottom lands and along the Snake River at the upper end of the reservoir. Canada geese do not now nest in this area. The wide, shallow, upper part of American Falls Reservoir provides an outstanding resting area for migratory waterfowl. During the migration season, tens of thousands of ducks and geese use the reservoir at a time. The Shoshone-Bannock Tribes sell permits for migratory waterfowl hunting on the Fort Hall Indian Reservation lands.

Upland game, principally ring-necked pheasants and a few Hungarian partridges, inhabit both the irrigated lands of the area and the Fort Hall Bottoms. Other birds found in the Fort Hall Bottoms area include whistler and trumpeter swans, golden eagles and white pelicans. A few mule deer are found in the Fort Hall Bottoms; an elk is occasionally seen; and a few buffalo are kept in the area.

The American Falls area contains no known rare or endangered wildlife species as listed in the Federal Register by the Fish and Wildlife Service.

The Fish and Wildlife Service and the National Park Service reported that project development in this area would not affect any wildlife refuges.

7. Recreation

The existing American Falls Reservoir, with its surface area of 87.5 square miles at full pool, is large enough to support all recreational use which can reasonably be expected to develop at the reservoir. However, access to the reservoir is now somewhat limited. Annual drawdowns tend to decrease recreational activity, also.

Existing recreational use is concentrated primarily at Aberdeen Sportsman Park, at sites near the town of American Falls, at Seagull Bay, and at Rainbow Beach on the Fort Hall Indian Reservation. Most of the existing facilities have been provided by local groups. Some boating facilities are available. Swimming is limited by a lack of suitable areas, and overnight campers make little use of the area because of the lack of trees for shade and protection. In the past, the Idaho Department of Parks and Recreation administered recreation at the reservoir, but this arrangement was terminated in 1970.

The current shortage of facilities limits the recreational use of the reservoir. In recent years, use has ranged from 40,000 to 65,000 recreation days per year.

The existing landscaped park of Idaho Power Company, located adjacent to the existing American Falls Powerplant, will be retained under the proposed action.

The National Park Service has indicated that development in the project area would not affect any wilderness areas, State parks, or other areas of high scenic value. The National Registry of Natural Landmarks lists no landmarks in the area which would be affected by the project. Further, the National Park Service's National Parks and Landmarks lists no sites in the American Falls area eligible for registration as national environmental education or natural landmarks.

8. Historical and Archeological Sites

The National Park Service contracted in 1963 with Idaho State University to evaluate the historical and archeological values associated with replacement of American Falls Dam. Based on these studies, the

National Park Service concluded that the proposed plans for replacement of American Falls Dam as then proposed would not affect any areas of high scientific, archeological, or historical values. Since the proposed replacement project would not inundate more lands or accelerate shoreline erosion, the National Park Service concluded that no further historical or archeological studies or salvage would be required with the dam replacement plan.

The proposed plan for construction of a replacement dam and powerplant affects areas downstream not considered in the Idaho State University study. According to the Idaho State Historical Society, the old Island Powerplant in the middle of the Snake River below American Falls Dam is included in the Idaho Historical Preservation Plan, and is being considered for listing in the National Register of Historic Places.

The Island Powerplant (photo below) was constructed in 1902 by the American Falls Power, Light, and Water Company to serve the electrical needs of the cities of Pocatello and American Falls. The Bureau of Reclamation acquired title to the structure in 1923 in conjunction with construction of American Falls Dam.

The Bureau of Reclamation has taken the position that the powerplant must be preserved. Consideration of the various restoration possibilities will be discussed with the State Historical Society and others.



One site in the vicinity of American Falls Reservoir is listed in the National Register of Historic Places -- the site of old Fort Hall, a major supply station on the Old Oregon Trail. Fort Hall is listed as a "national historic landmark." The exact location of old Fort Hall is not certain, since none of the original buildings are now standing. However, the site defined by the National Park Service and the Idaho State Historical Society and marked by a monument is near the south bank of the Snake River one-half mile upstream from American Falls Reservoir ($NW\frac{1}{4}$ of $NW\frac{1}{4}$ of sec. 5 and $NE\frac{1}{4}$ of $NE\frac{1}{4}$ of sec. 6, T. 5 S., R. 33 E.). As a result, the proposed American Falls Dam Replacement project would not affect the Fort Hall site. A commemorative trail monument erected by the women of American Falls in 1931 is located adjacent to the access road to the existing powerplant. This monument will also be preserved under the proposed action.

The Idaho State University study identified a number of archeological sites in the reservoir area. No sites were identified in the area which would be affected by dam and powerplant construction.

9. Land Use Patterns

The lands adjacent to the existing American Falls Dam which would be used for the construction of the replacement dam and powerplant, consist of a small area from the existing dam to just beyond the Union Pacific Railroad Company bridge immediately downstream. Most of these lands are now used for activities involved in the operation and maintenance of the American Falls Dam and the American Falls Pumping Plant. The Snake River portion of this area includes most of the Idaho Power Company powerplant forebay, which is heavily used for fishing.

Most of the lands around American Falls Reservoir are irrigated. Many of these lands receive at least part of their water supply from American Falls Reservoir, either directly or through exchange. Included are the lands of the Aberdeen-Springfield tract west of the reservoir, irrigated lands in the Fort Hall Indian Reservation, and the lands in Reclamation's Michaud Flats Project. The Fort Hall Indian Reservation owns about 50,000 acre-feet of irrigation storage space in the reservoir. The Michaud Flats Project, which irrigates 10,000 acres around the town of American Falls, obtains most of the water supply from the Snake River via the American Falls Pumping Plant, which is located just downstream from American Falls Dam. The lands in these areas are generally used for family farms which produce row and forage crops.

The Fort Hall Bottoms area at the upper end of the reservoir is valuable for livestock grazing and for fish and wildlife habitat. The high value

placed on these uses by the Indians of the Fort Hall Indian Reservation was the main reason for rejecting the possible enlargement of American Falls Reservoir which would inundate part of this bottomland area.

The irrigated lands which receive water from American Falls Reservoir extend virtually the entire length of the upper Snake River basin from the American Falls area to the Idaho-Wyoming border. A highly successful diversified agriculture has developed in this area during the more than half a century irrigation has been practiced. Farms are typically small, diversified, family-sized units.

The principal crops grown in this area are alfalfa hay and pasture; cereals; and the intensive crops of potatoes, beans, and sugar beets. Forage, grown in rotation with cash crops, is used to support the area's important livestock industry. Current land use is not expected to change as a result of dam replacement because the water users would have the same water rights and supplies after replacement as they have had in the past.

U. S. Bureau of Mines studies indicate that American Falls Dam replacement would have no impact on the mineral resources of the area.

10. Present and Projected Economic Development

Irrigation agriculture is by a wide margin the dominant element of the economy of the American Falls area, and it is the principal contributor to the social well-being of the area. The agricultural production from the area's irrigated lands directly or indirectly supports most of the people living in the area.

The lands served from American Falls Reservoir make up one of the most productive irrigated areas in Idaho. These lands represent half of the acreage irrigated from surface water supplies in the entire upper Snake River basin.

Business activity in this area, aside from service and supply facilities, consists primarily of enterprises required to process, store, and market farm products. Food-processing industries have become increasingly important throughout the upper Snake River basin in recent years; food-processing plants employ large numbers of workers and generate needed income. These plants depend on an uninterrupted supply of high-quality production from the irrigated farms.

Much of the area's labor force is directly engaged in the full-time operation of the irrigated farms, most of which are small, family-sized

units. Many other workers are employed in supporting, service, and processing industries and in seasonal work on the farms.

In the six-county area downstream from American Falls Dam (Cassia, Gooding, Jerome, Lincoln, Minidoka, and Twin Falls Counties), for example, agricultural and food processing employment accounted for 35 percent of the total employment in 1970. In addition, many are employed in agriculture-related service and supporting businesses. By comparison, on a state-wide basis, only 20 percent of Idaho's total employed labor force was working in agriculture and food processing in 1970.

Tourism is also a significant economic factor in the area. Northeast of the American Falls Dam is the vast Snake River Plains basin. Because of extensive prehistoric volcanic activity, the area offers many scenic attractions which draw a large number of visitors. The dominant feature of the area is the Great Rift, a huge 40-mile crack in the earth's crust. Within the Great Rift National Landmark are the Crystal Ice Caves and the Craters of the Moon Lava Fields. In 1969, 15,000 people visited the Crystal Ice Caves. In 1970, 219,000 tourists visited the Craters of the Moon Monument. In 1971, that number increased to 250,000 visitors. There are other places in this vast area of volcanic activity which have future potential as seenic attractions.

The American Falls Reservoir has grown in significance as a recreational area. In 1958, 17,000 visitors used the reservoir. By 1969, there were 62,689 visitors and with additional recreational facilities which are being considered, attendance should increase.

The population of the general American Falls area -- Bingham, Bannock, and Power Counties -- totaled 86,000 in 1970. The city of Pocatello (1970 population 40,000) represents nearly half of this total. Located about 10 miles east of the reservoir, Pocatello is the area's commercial center. Other towns in the American Falls area include:

Town	1970 Population
Aberdeen	1,500
American Falls	2,800
Chubbuck	2,900
Fort Hall	600
Springfield	100
Sterling	70

These smaller towns depend almost exclusively upon the local farms for their economic stability.

Filling restrictions on American Falls Reservoir have been in effect for several years to avoid excessive pressures on the dam. Storage is now limited to 66 percent of the 1.7 million acre-foot capacity. In a lengthy dry period, this storage restriction would cause serious water shortages on many of the lands served from the reservoir.

If American Falls Dam is not replaced in the near future, further operating restrictions might be required if the deterioration of the dam continues. Such water shortages could mean financial hardship for hundreds of farm operators. This would in turn seriously affect the upper Snake River basin's overall economic and social structure which is heavily based on irrigation agriculture.

C. Environmental Impacts of Planned Action

The environmental impacts of the proposed project are described below. More discussions of some of the impacts may be found in Part D, Mitigating Measures, and Part E, Unavoidable Adverse Effects.

1. The existing American Falls Dam will be replaced by a new concrete and earthfill structure. Construction of the new dam will remove a potential threat to human safety and well-being in downstream areas by replacing the unsafe existing structure. The left (east) side of the dam will be incorporated in the new dam embankment.

2. Construction of the powerplant and use of the falling water for power production will result in elimination of the forebay. The forebay presently provides the primary fishery in the project area. As an example, it is estimated that from May 29, 1971 to December 5, 1971, forebay anglers fished 37,517 hours and caught 13,700 fish. A portion of the 14-acre forebay area will be filled in and used as a parking lot. A prime element of a way of life for many local citizens, many of them retired, will be removed with the elimination of the forebay. These individuals use the handy and rewarding "fishing hole" as a social gathering place, as well as for sport and hobby.

3. River system manipulation during the construction period may affect flows from upstream reservoirs. Such actions could in turn affect goose nesting upstream on the Snake River and early season irrigation to some degree. For example, at Palisades Dam a constant flow (approximately 10,000 c.f.s.) during April and May is necessary to assure a good nesting season. Fluctuations would cause severe nest losses.

4. The construction area will be disturbed. The new dam and powerplant 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.

5. The borrow areas (80 acres) for construction materials will be disturbed during construction. Designated borrow areas for core material for the dam are located on the east and west sides of the reservoir about one-half mile upstream from the dam. Material may be obtained from other areas, if approved. Rockfill for the dam will be obtained from basalt outcrops located on the west side of the river about six miles southwest of the dam in $SE\frac{1}{4}$ Sec. 8, $SW\frac{1}{4}$ Sec. 9, $NW\frac{1}{4}$ Sec. 16, and $NE\frac{1}{4}$ Sec. 17, R. 30 E., T. 8 S., or other approved locations. Slag from

a local phosphate plant may be used for the downstream portion of the rockfill embankment.

6. Portions of the existing American Falls Dam will not be used in the new structure and will not be removed. Project layout drawing following page 5 indicates height of remaining segments of old dam. These will be visible when the water level decreases in the reservoir and at the lowest water levels some of the rubble from the portions removed will also be exposed.

7. The construction process will require removal of a large quantity of "mucky" soil built up on the reservoir bottom at the base of the existing dam and embankment. The excavation process may cause turbidity problems in the reservoir waters. The excavated material will be placed near the toe of the new embankment and smoothed with a dragline.

8. Temporary impacts of construction activities will include stream turbidity, noise, landscape scarring, additional traffic, and dust. Possible construction-related accidents and natural catastrophes would have an adverse effect on life and property and on construction progress of the project. The extent and degree of the impact will be dependent on the incident and could range from a temporary stoppage of a specific job and little or no economic loss to life or property damage with complete shutdown of construction activities.

9. Construction procedures proposed for building the replacement dam and powerplant will require complete drawdown of American Falls Reservoir at the end of at least one irrigation season during October, November, and December. While there is a good possibility that the reservoir could fill again during January, February and March prior to the next irrigation season, a poor water year could result in inadequate water supplies in the reservoir in that irrigation season and perhaps longer. This could also result in adverse effects on the reservoir fishery, reservoir recreation, upstream storage operations, and downstream flows. Delay of construction due to a labor dispute or other uncontrollable factors could also increase the impact.

Reduction of the reservoir to 4310 level will have an adverse effect on the reservoir fishery, both for sport and commercially. At this level, some cool spring holes and seeps within the reservoir that attract and hold fish are either exposed or become overcrowded, and force fish to move into the shallow reservoir pool. Tons of carp and other game and nongame fish would be concentrated in the pool and create excessive turbidity, crowding, and reduce dissolved oxygen.

Some fish from the reservoir move downstream when this occurs and are essentially lost. In 1961 and 1966, following maximum drawdown, fish which migrated downstream did not appear in fishermen's catches. It is assumed many fish entered Lake Walcott (a shallow, warm reservoir downstream from American Falls Reservoir) and did not survive.

Restocking of American Falls Reservoir will provide a fishery for relatively small fish within three months following a large drawdown, but it requires several years for large fish to again appear in the creel. A reduction of nongame fish numbers also results from maximum drawdown of the reservoir.

Without extreme drawdown, there should be a good carryover of fish in the American Falls Reservoir.

10. Current operating restrictions on American Falls Reservoir will be removed when construction is complete. This will safeguard the extensive investments of close to 20,000 individual farm operators and insure the continued stability of the established agriculture-based economy of the area and its associated social and cultural institutions. The related processing industries will continue along with the associated environmental impacts.

11. The highly compacted construction schedule for the dam and powerplant and the small crowded working area will result in considerable truck and equipment activity in the vicinity of American Falls for about two years. Any slippage in the schedule could intensify impacts on fisheries and water quality by requiring longer drawdowns, completion of work in the water, or diversion of water for extended periods. Such a slippage could also seriously affect delivery of water to irrigators and other users.

12. The diversion of a major portion of the water passing the dam through the powerplant will result in significant decrease in the quality of the water released downstream. During the summer months, the dissolved oxygen levels in the reservoir go well below acceptable levels for fish and the original state standards (currently 6 mg/l or 90% saturation, whichever is greater). Under current operations, releases through the dam are generated through a churning effect as they enter the forebay. Elimination of forebay releases and passage of reservoir water directly downstream through the penstocks and the powerplant will result in the passage of water having dissolved oxygen levels downstream, which would be insufficient to sustain fishlife (less than 4-5 mg/l). The Idaho Water Quality Standards have been reduced (June 20, 1974) to

6 mg/l only for that stretch of the river. This was done in response to a petition from the American Falls Reservoir District and applies to the Snake River from American Falls Dam to the backwaters of Lake Walcott (approximately 9 miles).

13. Construction of a new American Falls Dam will permit use of the full 1.7 million acre-foot capacity of the reservoir and will thus remove limited American Falls operating levels as a possible cause for frequent and excessive drawdown of the upstream Jackson Lake and Palisades Reservoirs during the summer recreation period. Under present American Falls filling restrictions, Jackson Lake and Palisades would have to be drafted heavily in dry years. The adverse effects would be particularly serious at Jackson Lake, a key feature of Grand Teton National Park, which is enjoyed by millions of visitors each year. If the filling restrictions at American Falls become more severe, the adverse impacts on Jackson Lake and Palisades would likewise become more serious.

14. Shoreline erosion will continue on some 85 miles of the 155-mile-long reservoir shore. The remainder of the reservoir shore has been stabilized or is not subject to erosion because of the shoreline configuration or erosion resistance of the shoreline materials. The proposed project will not affect the rate of erosion. An estimated 1,500 acres of additional land is expected to erode in a 100-year period. Most of this land is now used to produce crops and pasture. Within a 100-year period, a section of canal and sections of two county roads will probably have to be relocated, and parts of State Highway 39 may require slope stabilization.

15. Facilities for public health and safety will be improved or increased at the existing access points at and below the dam. This will reduce pollution, esthetic deterioration, and safety hazards which will result from public use of the area.

16. Nearly all of the fish coming out of the reservoir after construction of the new dam and powerplant will pass through the turbines. This will substantially increase mortality from downstream passage. The mortality rate for smaller fish (12 inches long or less) will be approximately 5-10 percent (report prepared by Milo Bell for Idaho Power Company). For 16- to 20-inch fish, the mortality rate will increase slightly according to that report. Larger fish would experience an extremely high death and injury rate.

17. A total of 50 islands will be built in the upper end of American Falls Reservoir; the islands will be about 10 yards in diameter. These islands will be developed for goose nesting, resulting in goose production in an area where no geese now nest.

18. Flood control will continue to be provided on the Snake River in the same manner as accomplished prior to storage restrictions.

19. The safety hazards associated with the narrow and dangerous highway crossing across the existing dam will be eliminated.

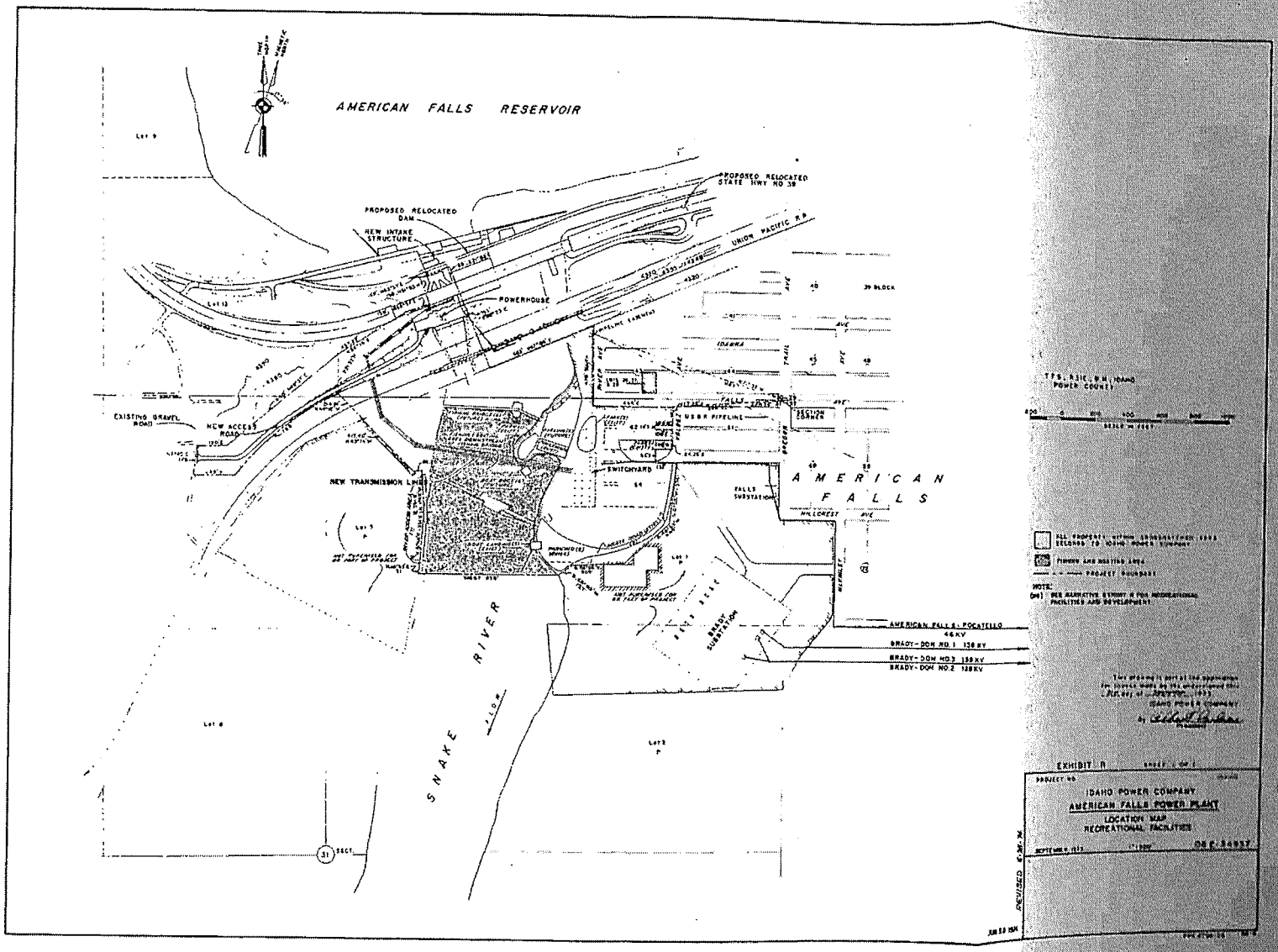
20. The location of the new State highway bridge and the outlets on the dam are such that during certain periods of the year water spray and icing may cause a hazardous traffic condition.

21. 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 temporarily. This population increase will be accompanied with the needs for temporary housing, temporary increase on the existing educational facilities, additional water supplies, increased load on the city's 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 of American Falls has a 400,000-gallon-per-day secondary sewage treatment plant which discharges into the Snake River downstream from the existing powerplant. 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.

22. The new transmission line running downstream from the powerplant and across the river to the existing switchyard may be visually distractive and may impinge upon recreational sites. See drawing on following page.

23. The development of an off-site fishery which may be some 50-75 miles away to mitigate for the loss of this forebay area, will probably require construction of a small earthfill dam and inundation of presently dry lands. Access will be more difficult for American Falls vicinity residents.


AMERICAN FALLS RESERVOIR
PROPOSED RELOCATED STATE HWY NO 39
PROPOSED RELOCATED DAM
NEW INTAKE STRUCTURE
POWERHOUSE
UNION PACIFIC R.R.
39 BLOCK
IDAHO
EXISTING GRAVEL ROAD
NEW ACCESS ROAD
USBR PIPELINE
SWITCHYARD
NEW TRANSMISSION LINE
FALLS SUBSTATION
AMERICAN FALLS
T.7 S., R.31 E., B.M., IDAHO POWER COUNTY
SCALE IN FEET
ALL PROPERTY WITHIN BOUNDARIES THUS DESIGNATED BELONGS TO IDAHO POWER COMPANY
POWER AND MEETING LINES
PROJECT BOUNDARY
NOTE:
(See) SEE NARRATIVE EXHIBIT R FOR RECREATIONAL FACILITIES AND DEVELOPMENT.
AMERICAN FALLS - POCATELLO 46 KV
BRADY - DOW NO. 1 138 KV
BRADY - DOW NO. 3 138 KV
BRADY - DOW NO. 2 138 KV
BRADY SUBSTATION
SNAKE RIVER
EXHIBIT R
IDAHO POWER COMPANY
AMERICAN FALLS POWER PLANT
LOCATION MAP
RECREATIONAL FACILITIES
DRAWING NO. 84937
REVISED

D. Mitigating Measures and Air and Water Quality Aspects

This section describes the features and actions included in the plan which would enhance the environment and minimize adverse impacts.

1. Specifications for the construction of the new American Falls Dam, Powerplant, and all associated features will include provisions to prevent or minimize water and air pollution during construction. The contractors will be required to comply with all State and Federal laws and regulations regarding the control and abatement of water and air pollution. All waste materials and sewage resulting from construction activities will be disposed of as specified by State and Federal health and pollution-control regulations. Specifically, the design, operation, and maintenance of the proposed facilities will conform to the provisions of Executive Order 11752 of December 17, 1973, concerning air and water pollution control, noise abatement, and solid waste management.

2. Construction specifications for the project will include provisions to minimize the probability of accidents and property damage. The contractor will be responsible for being cognizant and insuring compliance with the established requirements for safety and health during construction.

3. Construction activities will be restricted in order to avoid scarring the landscape or disturbing a larger area than absolutely necessary. Materials excavated to prepare the foundation of the new dam would be used in the new structure. Excess material will be placed in approved disposal areas, sloped to drain, and covered with topsoil and seeded.

Borrow areas and the quarry will be stripped only to the extent necessary to obtain the required quantity of material. The final average slopes in the borrow excavation will be not steeper than 2 horizontal to 1 vertical. The bottom surface of borrow areas and the quarry will be sloped to drain. Excavations will be protected where persons or animals are likely to be injured.

Upon completion of the work, all rubbish, equipment and structures will be removed. Borrow areas will be contoured, as nearly as possible, to the original contour of the area. Waste piles will be leveled and all areas disturbed by the operation will be dressed to present a natural appearance.

Topsoil will be placed on the pit floors and slopes and other disturbed areas. Seeding will be in accordance with the State of Idaho Standard Specifications for Highway Construction.

4. Any pools that become isolated in the reservoir area during the construction dewatering period will be channeled to the river to allow for fish escapement.

5. During construction, access to the river will be maintained to at least one of the three existing parks and the recreational area developed by local service organizations on lands located outside of the project boundary downstream from the project area on the east bank of the river.

6. As mitigation for the adverse impacts of the replacement of the existing dam on the fishery in the forebay below the dam and for the physical loss of the forebay as a fishing site, the American Falls Reservoir District will pay the Idaho Fish and Game Department for some or all or a combination of the following facilities:

a. Three 400' x 12' x 3' concrete raceways at the Department's American Falls Hatchery on land provided by Idaho Fish and Game Department and using water from the Department's water rights at the site.

b. Acquisition, construction, and improvement of an off-stream site fishing area.

c. A fishing access bridge across the Snake River below American Falls Dam.

d. Improved access to the river below American Falls Dam downstream to Lake Walcott.

The American Falls Reservoir District and the Idaho Fish and Game Commission signed a memorandum agreement July 2, 1974 covering these mitigation features. The District is to provide $575,000 for construction and a $300,000 lump sum for maintenance and operation. The specific features to be built or improvement to be made will be determined by the Fish and Game Commission.

7. The water quality in the Snake River below American Falls will be maintained throughout the year at the Idaho State Standards (which is now 6 mg/l) for that stretch of the river. The expected primary deficiency in the water quality will be dissolved oxygen during the late summer months. The dissolved oxygen levels will be maintained by some means of mechanically injecting oxygen, by passing of the water

released from American Falls Dam around the turbines through outlets which will provide greater aeration potential, or a combination of these.

The three systems for mechanical injection of oxygen being considered most strongly are:

1. Direct penstocks injection
2. Upstream injection by coarse bubble diffusers
3. Upstream injection by fine bubble diffusers

Based on available data, direct penstock injection will be installed and utilized initially. This method may be replaced at a later date if either of the other two systems proves through testing to be better. A brief description of each process follows.

a. Direct Penstock Injection

This system is given primary consideration based on comparatively low installation cost, accessibility for maintenance and adjustments as found necessary. Oxygen is injected into the penstock by means of an array of diffusers. Each diffuser consists of a series of small holes, with provision for modification of the diffuser system, if necessary. Liquid oxygen may be brought to the site by rail or truck or by means of on-site plant and stored in the proximity of the dam The liquid oxygen is passed through an evaporator, emerges as a gas at a pressure of approximately 250 psi. The oxygen travels via supply line from the storage site to a common manifold along the downstream face of the dam and from here, the oxygen is distributed to each penstock as required. With the exception of the embedded pipes to the penstocks, all parts of the oxygen injection system are easily accessible for maintenance and modification. The system has been designed to add oxygen to the total water flow of about 13,500 c.f.s. for 6 ppm concentration.

b. Upstream Injection by Coarse Bubble Diffuser

This system would be considered as a backup system to the direct penstock injection system and would be adopted if tests show that its performance is superior and more economical. The basic arrangement of this system would consist of a series of holes 40-50 feet deep with a total cross section area of about 400 square feet. These holes would be partitioned to form a U-tube. About 400 to 800 c.f.s. of low DO water would circulate this system, mixing with oxygen injected at the bottom of the hole to a DO level of 30-40 ppm. This highly oxygenated water would then mix with water passing over the holes before it enters the penstocks.

c. Upstream Injection by Fine Bubble Diffuser

This system would also be considered as a backup system to the direct penstock injection system and will be evaluated with the system described in (b) above on the basis of cost and performance. This system would consist of a large bank (2,600 square feet) of extremely fine bubble diffusers (200-400 microns). The diffusers would be located in the areas of the existing dam which has been excavated to elevation 4290 and 4295.

8. A continuous water quality monitoring system will keep track of the temperature of and dissolved oxygen concentration in the reservoir releases, the dissolved oxygen at the intake, and the oxygen injection rate. The oxygen injection rate will be au tomatically controlled to satisfy the State water quality requirements and to ensure efficient system operation.

9. The Idaho Fish and Game Department and the Fish and Wildlife Service concluded that wildlife enhancement would be possible in connection with the project and recommended that 50 goose nesting islands be built in the upper part of American Falls Reservoir. At present, no geese nest in this area. These goose nesting islands are included in the plan. The islands would be 10 yards in diameter and would be designed to withstand wave erosion. The Idaho Fish and Game Department will provide geese to start the nesting program and has agreed to administer and to share in the costs of developing these islands.

Further wildlife enhancement is planned by acquisition and development of wetlands adjacent to the west and north shore of the reservoir for wildlife habitat.

10. The plan will provide needed basic facilities for public health and safety at existing access points near the right (west) abutment of the dam and on the left bank of the river just downstream from the dam. Facilities would include adequate water and sanitation systems and parking areas. These facilities will improve the human environment at the dam by reducing pollution and safety hazards.

11. The plan will insure continued operation of the reservoir, comparable to preproject conditions. Non-Federal public agencies are planning to develop recreational areas at the reservoir. These areas will be adequate to meet anticipated recreational use at the reservoir. Two areas are planned for development through the Federal Water Project Recreation Act and the Land and Water Conservation Fund.

a. The American Falls Shoreline Parkway recreation area adjacent to American Falls will be developed by the city of American Falls, American Falls Highway District, Bannock and Power Counties, and the State of Idaho. This area contains 120 acres of leased Federal land and will include camping and picnic units, a swimming beach, and boating facilities.

b. Aberdeen Sportsman Park, near Aberdeen on the west shore of the reservoir, will be improved and expanded by Bingham County. This recreation area includes 715 acres of leased Federal land. Improvements will include camping and picnic units, a boat ramp, and beach development. In addition to the above areas, a Pocatello boating club has developed a recreational area at Seagull Bay, and the Shoshone-Bannock Tribes have developed a recreational site at Rainbow Beach on the east shore.

12. The existing buildings near the dam will be rehabilitated or replaced as necessary, and a new warehouse-workshop would be built. The new building will be situated on the upstream side of the right abutment of the dam and the final design will consider not only utility but also compatibility with the surrounding environment. Appropriate landscaping measures will accompany construction of the new buildings and around the existing buildings.

13. A modern, two-lane highway crossing will be built on the crest of the new dam to replace the narrow, dangerous crossing on the existing dam. The existing two-lane, mile-long roadway is only 18 to 21 feet wide, far below current design standards, and is presently restricted to alternating one-way traffic. Heavy traffic, including many trucks hauling farm produce, causes hazardous conditions--especially when workers are doing required maintenance work on the dam. Construction of another two-lane bridge and highway crossing is underway by the Idaho Department of Highways just below the existing dam. Ultimately, the downstream highway will carry eastbound traffic and the crest highway will carry westbound traffic.

14. Current efforts to stabilize sections of the shoreline will continue. This work is now being performed by the Bureau of Reclamation under other programs. In the past, brittle willows were planted along the reservoir shore; this effectively retarded erosion in some areas. This program is being expanded and presently about six miles of shoreline has been protected in this manner. If more efficient methods of shore stabilization are identified, they will be considered for use at the

American Falls Reservoir. The only required relocations of existing facilities around the reservoir shore would be those caused by the future bank erosion. Within a 100-year period, a section of canal and sections of two county roads will probably have to be relocated, and parts of State Highway 39 may require slope stabilization.

15. Water quality is sometimes a problem in American Falls Reservoir. However, there has been a substantial reduction of untreated wastes reaching the reservoir in recent years. Reservoir water quality will likely continue to improve as additional secondary waste-treatment plants are completed and operating properly. Because of the broad, relatively shallow reservoir basin and the remaining wastes and nutrients which still enter the reservoir, however, algae growth and other undesirable conditions will likely recur at times in the future. The proposed project would have no effect on these conditions.

16. Mercury levels in excess of the U. S. Food and Drug Administration's guideline have been detected in some fish taken from American Falls Reservoir. As a result, the Idaho Department of Environmental Protection and Health recommended that human consumption of fish from the reservoir be limited; the Idaho Fish and Game Department made no recommendations. The use of nongame fish as trout feed at commercial hatcheries has also been curtailed. The source of the mercury has not been identified; the project will have no effect on this situation.

17. Nitrogen supersaturation is not expected to be a problem at the new dam and powerplant. No problems have been reported at the existing dam, and the design of the spillway at the new dam is similar to that of the existing spillway.

18. If additional historical or archeological sites are discovered during construction, the National Park Service and the Idaho State Liaison Officer will be notified; and the required steps will be taken to evaluate the importance of the sites and determine appropriate action. These procedures are outlined by the National Park Service and the Advisory Council on Historic Preservation in accordance with the National Historic Preservation Act of 1966 (Public Law 89-665).

E. Unavoidable Adverse Effects

This section defines the adverse impacts which would be unavoidable with the implementation of the proposed plans.

1. The existing forebay area (14 acres) and the forebay fishery will be eliminated. This is the primary fishery in the project area and a prime part of a way of life for many local citizens. The area provides a unique trophy fishery and also serves as a "fishing hole" for many area citizens.

2. Most of the fish leaving the reservoir will pass through the turbines of the new powerplant. Fish mortality will be increased during downstream passage. The larger fish which have contributed substantially to the uniqueness of the fishery downstream, would experience the highest death and injury rates.

3. Shoreline erosion would continue on some 85 miles of the 155-mile-long reservoir shore at the same rate as under existing operations.

4. Construction activities would cause some environmental disturbance in the damsite and powerplant areas and in the construction material borrow areas.

5. Portions of the existing American Falls Dam not used in the new structure will be visible at lower reservoir water levels.

6. Because of its low elevation and location downstream from the outlet tubes, the new State highway bridge may be subject to water spray and icing during certain periods of the year, causing a hazardous traffic condition.

7. Dewatering the reservoir will drastically reduce fishlife that is unable to move upstream or downstream during the dewatering period.

8. There is the possibility that filling of the reservoir prior to the next irrigation season would be inadequate due to a poor water runoff year. This could result in adverse impact on that year's irrigation water supply, reservoir fishing, recreation, upstream storage operations, and downstream flows.

9. River system manipulation during the construction period would alter flows from upstream reservoirs. Such actions would in turn affect goose nesting and early season irrigation, to some degree.

10. The water quality standards immediately downstream from American Falls Dam will probably be decreased.

11. The off-site fishery which is to be developed by Idaho Fish and Game as part of the mitigation, will probably require construction of a reservoir and will be a much longer distance (50-75 miles, possibly) for American Falls residents to travel.

F. Short- and Long-Term Environmental Uses

The construction of the replacement dam and new powerplant will assure the maintenance of the irrigated farming culture in the region and bring about a significant long-term effect on the fishery potential in the American Falls vicinity. A reduction in the quality of water passed downstream will result and means to mitigate this condition will be established. Both of these effects will endure for the life of the project. Specific elements of this general picture are:

Construction of temporary facilities in or across the river will cause a short-term increase in turbidity downstream from the dam. Quality of water could be reduced in the immediate area during periods of turbidity, and fishing where allowed could be impaired. The temporary disturbance of vegetation and wildlife will be eliminated soon after construction is completed.

The effect of construction on the air quality (dust and heavy equipment operation) will be temporary and will occur primarily on the west side of the river on and near the access road in the construction area. It is expected that the noise level in the project area will be moderate from operating equipment and excavation noise.

The highly compacted construction schedule for the dam and powerplant and the small crowded working area will result in considerable truck and equipment activity in the vicinity of American Falls. Any slippage in the schedule could intensify impacts on fisheries and water quality by requiring longer drawdowns, completion of work in the water, or diversion of water for extended periods. Possible construction-related accidents and natural catastrophes would have an adverse effect on life and property and on construction progress of the project. The extent and degree of the impact would be dependent on the incident. It could range from a temporary stoppage of a specific job and little or no economic loss to complete shutdown of construction activities.

The damsite, powerplant, and borrow areas would be disturbed during the construction period. These areas would be rehabilitated immediately following construction.

Other short-term environmental impacts will result from construction activities associated with the project such as reduced irrigation storage, reservoir recreation and fishery, and effects upon upstream storage operations and downstream flows. In the long term, there will be a full

irrigation water supply, increased power production, removing the threat to human safety and well being, and providing a safe, modern highway crossing.

Construction activities will require a force of up to about 500 workers during the peak construction period, lasting about 2 years. Some of these workers will come from the local area; the rest will probably move to this area temporarily. This population increase will be accompanied with the needs for temporary housing, a temporary increased load on the existing educational facilities, additional water supplies, increased load on the city's sewage treatment facilities, and other services.

With construction activities, it would be expected that a portion of the payrolls of the workers employed on the project will be spent in American Falls and in the cities of Pocatello, Blackfoot, and Idaho Falls, all of which are located within 75 miles of the proposed construction site, increasing business activity on a short-term basis.

Construction procedures proposed for building the replacement dam and powerplant will require complete drawdown of American Falls Reservoir at the end of one irrigation season during October, November, and December. While there is a good possibility that the reservoir would fill during January, February, and March prior to the next irrigation season, a poor water year could result in inadequate water supplies in the reservoir in that irrigation season and perhaps longer. This could also result in adverse effects on the reservoir fishery, reservoir recreation, upstream storage operations and downstream flows.

The city of American Falls has a 400,000-gallon-per-day secondary sewage treatment plant which discharges into the Snake River downstream from the existing powerplant. 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.

A prime element of a way of life for many local citizens, many of them retired, will be removed with the elimination of the forebay. These individuals use the handy and rewarding "fishing hole" as a social gathering place, as well as for sport and a hobby.

The provision of unrestricted American Falls Reservoir storage will insure the future productivity of nearly 900,000 acres of irrigated land which depend on this storage. This will maintain the upper Snake River basin's well-established economic and social systems and rural culture which are heavily based on irrigation agriculture.

The safety hazards associated with the narrow and dangerous highway crossing across the existing dam will be eliminated by providing a wider highway on the new dam, together with the new two-lane highway bridge being constructed just downstream from the dam by the State.

The natural flows and stored water released past American Falls Dam represent an opportunity for additional power production, using the head developed at this site. The construction of a powerplant will provide for appropriate utilization of this potential to serve the needs of the population in the area.

Flood control on the Snake River will be continued in the same manner as prior to storage restrictions.

The enhancement features proposed would help to insure the long-term productivity of the wildlife resources of the reservoir and adjacent lands. The U. S. Fish and Wildlife Service has estimated that the goose production program will provide 675 hunter-days (average annual use) in the first year, increasing to 1,350 hunter-days in the twentieth year.

It has been estimated that the 56,000-acre surface area of the reservoir can support anticipated recreational use. Adequate lands are available to insure future public access for recreation, in accordance with the Federal Water Project Recreation Act of 1965 (Public Law 89-72). Public non-Federal agencies have leased a total of 835 acres of Federal land for long-term recreational use. Existing and planned recreational developments will provide facilities for the anticipated recreational use of the reservoir.

Sedimentation has not significantly reduced the capacity of American Falls Reservoir in the 45 years since water was first impounded. Even if most of the material resulting from bank erosion is deposited in the reservoir over the next 100 years, the reduction in storage capacity would be negligible when compared to the total storage capacity of 1.7 million acre-feet.

Shoreline erosion will probably continue on some 85 miles of the 155-mile-long reservoir shore. However, an intensified program of planting willows to stabilize the shoreline has been initiated. The remainder of the reservoir shore has been stabilized or is not subject to erosion because of the shoreline configuration or erosion resistance of the shoreline materials. The proposed project would not affect the rate of erosion. Within a 100-year period, a section of canal and sections of two county roads will probably have to be relocated, and parts of State Highway 39 may require slope stabilization.

G. Irreversible and Irretrievable Commitments of Resources

Irreversible and irretrievable commitments of resources by the project would be principally (1) the area involved in the construction of the new dam, and (2) the construction materials, labor, and capital used in building the new dam, powerplant, and related features in the proposal.

The existing dam and reservoir involved the commitment of 23 miles of Snake River channel and an 87.5 square-mile reservoir area. The proposed plan would continue this commitment. Implicit in this commitment is the existing commitment of the lands around the half of the reservoir shore which is subject to continued erosion from wave action; a total of 1,500 acres of land is expected to erode in the next 100 years.

The present uses of the water stored in American Falls Reservoir are well established. These uses could only be modified in the future with the concurrence of spaceholders in order to meet changing long-term environmental and human needs.

Construction and operation of the new powerplant will eliminate the existing 14-acre forebay and the fishery therein. A portion will be filled in and used as a parking lot.

Nearly all of the fish coming out of the reservoir, after construction of the new dam and powerplant, will pass through the turbines. This will increase mortality from downstream passage. The mortality rate for smaller fish (12 inches long or less) will be about 5-10 percent. The mortality rate for 16 to 20-inch fish is expected to be higher.

H. Alternatives to Proposed Action

Possible alternatives or sets of alternatives to this plan are:

1. Build nothing.

2. Replace existing dam without powerplant.

3. Repair existing dam.

4. Enlarge the dam and reservoir.

5. Develop storage at other sites.

6. Other power sources.

The following sections describe the alternatives considered, with emphasis on their economic and environmental aspects.

1. Build Nothing

Serious operating restrictions are already in effect on American Falls Reservoir to avoid pressures on the thin upper part of the dam. Reservoir storage is now limited to 1,125,000 acre-feet, thus precluding the use of 575,000 acre-feet (34 percent) of the 1,700,000 acre-foot reservoir capacity. In dry years, this restriction may cause serious water shortages on many of the lands served from the reservoir.

Failure of the dam could endanger human lives and cause much property damage. In order to avoid this possibility, further operating restrictions may be required. This would cause severe water shortages in much of the American Falls Reservoir service area which extends the length of the upper Snake River basin. An estimated half-million acres could be returned to a dry or very water-short basis and cause harmful water shortages on thousands of acres of additional lands.

These water shortages would mean financial failure for hundreds of farm operators and severe economic hardship for many others. This would damage the upper Snake River basin's overall economic and social structure, which is so heavily based on irrigation agriculture. Failure of irrigation operations would create unemployment for farm operators and seasonal workers, as well as unemployment and other adverse economic impacts in supporting, service, and processing industries.

Operating flexibility in the upper Snake River storage system would be seriously limited since American Falls Reservoir provides 45 percent of main stem upper Snake storage capacity. Since the reservoir is located farther downstream than the other major storage reservoirs in the system, it can store runoff which cannot be captured at the other sites. If American Falls Reservoir were lost from the upper Snake River system, flood problems would be aggravated from Palisades Reservoir downstream to Brownlee Reservoir on the Idaho-Oregon border, and the opportunity to provide additional flood control on the lower Columbia River would be lost.

The loss of American Falls Reservoir storage would cause adverse esthetic and environmental impacts at Jackson Lake, Palisades, and other reservoirs because they would have to be drawn down more during the summer recreation season when demands could not be met from American Falls Reservoir. These adverse effects would be particularly serious at Jackson Lake, an important and heavily used recreational resource in Grand Teton National Park in Wyoming. Some boating facilities would become inoperative, and mud flats would be exposed around the lake which is located at the base of the scenic Teton Mountains. This would detract from the recreational and esthetic experience of visitors to Grand Teton National Park.

As further operating restrictions are placed on American Falls Reservoir, its recreational value will be reduced because of increased drawdown. Complete loss of reservoir storage would seriously limit water-based recreational opportunities for residents of this area. The loss of American Falls Reservoir storage would also reduce power production at downstream and Federal powerplants and power which would have been generated by the new plant would have to be produced by an alternative power source.

2. Replace Existing Dam Without Powerplant

The major feature of this plan would be the construction of a concrete and earthfill replacement dam just downstream from the existing American Falls Dam.

Other facilities could include (1) flood forecasting facilities, (2) fish and wildlife enhancement and fishery mitigation features, (3) a highway crossing on the new dam, and (4) basic facilities for public health and safety near the new dam. It would not include construction of a powerplant. Following construction of the replacement dam, the existing dam would be removed.

A project for replacing the American Falls Dam could serve the functions of irrigation, flood control, fish and wildlife enhancement, recreation, and highway improvement. Existing power production would be maintained.

Primary environmental impact of this plan would be the reduction in size of the forebay and a related decrease in the forebay fishery.

3. Repair Existing Dam

The possibility of repairing American Falls Dam was investigated in detail. Repair was rejected, however, because it would be nearly as costly as replacement, would not last as long as replacement, and could cause severe water shortages during construction. Since rehabilitation would require evacuation and controlled filling of the reservoir during construction, serious water shortages could result.

The other environmental impacts of the rehabilitation alternatives would be similar to those of the replacement plan without a powerplant since the entire concrete section of the existing dam (which makes up most of the structure) would have to be replaced or extensively repaired under the rehabilitation schemes. This would involve inundation of part of the existing forebay pool, the commitment of similar amounts of construction materials, and the disturbance of the damsite and borrow areas. In addition, rehabilitation could require temporary cofferdams, both upstream and downstream from the existing dam. The forebay would be retained in its present size and the existing fishery would remain unchanged. Power production facilities would be unchanged.

4. Enlarge Dam and Reservoir

The possibility of enlarging American Falls Dam at the time it is replaced was investigated. Though enlargement of American Falls Reservoir represents a good opportunity for developing new storage, it was rejected because of the environmental damage it would cause, particularly through inundation of lands in the Fort Hall Indian Reservation at the upper end of the reservoir. No new powerplant would be built and the needed power would be generated by an alternative power source.

To meet the projected basin's water needs, new storage is needed in the upper Snake River basin. An annual average of more than 900,000 acre-feet of Snake River water now spills over Milner Dam where it is no longer usable within the upper Snake River basin. Storage regulation is needed

because the amount of storable water varies from nothing in dry years to well over a million acre-feet per year in wet years. An enlarged American Falls Reservoir, because of its location at the lower end of the basin, could capture substantial amounts of tributary inflows and irrigation return flows which enter the Snake River downstream from other good potential storage sites.

If American Falls Dam were to be replaced, a large amount of new storage could be added economically at the time of replacement. Because the reservoir covers such a large area, each foot of increase in dam height would add a large amount of new storage capacity. As a result, an acre-foot of enlargement space represents the least costly potential new storage available in the Snake River basin.

Two sizes of reservoir enlargement were studied--an enlargement of 334,000 acre-feet (a 6-foot increase in water surface elevation) and an enlargement of 790,000 acre-feet (a 13-foot increase). The dam and reservoir site could physically permit an enlargement of up to 20 feet. Because of the increasingly severe adverse effects at the higher elevations, a 13-foot enlargement was judged to be the largest that should be considered.

Enlarging American Falls Reservoir would cause a number of adverse environmental impacts. The major impacts would include inundation of lands; increased bank erosion; waterlogging of lands; and fish, wildlife, archeological, and other losses.

A 6-foot enlargement would inundate 6,000 acres of additional land, and a 13-foot enlargement would inundate 11,600 acres of additional land. Although most of these lands have already been acquired for the existing reservoir, some added lands would have to be acquired. Most of the lands which would be needed are in the Fort Hall Bottoms of the Fort Hall Indian Reservation.

Raising the reservoir's water surface would aggravate the existing bank erosion problem, although a moderate enlargement would not bring stored water into contact with different types of shoreline materials. A 13-foot enlargement, for example, would more than double the projected shoreline erosion from 1,500 acres to an estimated total of 3,600 acres in a 100-year period. Enlargement would also require relocation or protection of such existing facilities as highways and roads, railroad fills, communication and power lines, and recreational facilities.

Studies have shown that enlargements of up to 10 feet would only slightly increase the waterlogging of lands in the Aberdeen to Springfield area west of the reservoir. Above that level, however, waterlogging would become more serious. With a 13-foot enlargement, it is estimated that as much as 4,000 additional acres would be waterlogged. With enlargements much in excess of 13 feet, waterlogging would become much more extensive.

Though there has been concern that enlargement could cause increased reservoir leakage or interfere with ground water inflows, studies showed that both of these problems would be minor with enlargement. According to U. S. Geological Survey findings, reservoir leakage would increase slightly in proportion to the amount of enlargement, but most of the increased seepage would return to the Snake River above major downstream diversion points and would therefore be reusable.

Enlarging of American Falls Reservoir would inundate part of the Snake River and other streams tributary to the reservoir, thus reducing spawning areas and fish production. Because reservoir drawdown would be increased, access to the reservoir would be more difficult. Enlargement would also inundate upland game and waterfowl habitat, particularly in the Fort Hall Bottoms at the upper end of the reservoir.

Under contracts with the National Park Service, Idaho State University studied the archeological values that would be affected by enlargement. Concentrating on the Fort Hall Bottoms, the Idaho State University study concluded that enlargement would seriously damage archeological and paleontological resources. In addition, the study listed potential damage to the plants, animals, and overall ecology of the area. A sizable enlargement of the reservoir would also inundate the generally accepted site of old Fort Hall, which is listed in the National Register of Historic Places. None of the original Fort Hall buildings are now standing.

The potential damages to the Fort Hall Bottoms were a major factor leading to the conclusion that American Falls Reservoir should not be enlarged. The Fort Hall Bottoms contain about 16,000 acres above the flowline of the existing reservoir and between the Snake and Portneuf Rivers on the Fort Hall Indian Reservation. This river bottom area is valuable as fish and wildlife habitat and for livestock grazing.

Any enlargement would inundate part of the Fort Hall Bottoms, though adverse effects from bank erosion in this area would be minor. A 6-foot enlargement would inundate 22 percent (3,550 acres) of these lands at full pool; a 13-foot enlargement would inundate 43 percent (6,850 acres)

of the bottoms. More than 80 percent of the lands that would be inundated by a 6-foot enlargement and more than 50 percent of the lands that would be inundated by a 13-foot enlargement have already been acquired as right-of-way in connection with the existing reservoir. The Indians now have the right to use these existing right-of-way lands for hunting, fishing, and livestock grazing.

The Indians place high traditional and cultural values on the Fort Hall Bottoms and the loss of part of this area could not be fully compensated by money, and other means of compensation also appear to be unacceptable. For example, it has been suggested that the Indians be given valuable lands in place of the lands which would be inundated. This suggestion was rejected by the Shoshone-Bannock Tribes, however, principally because there are no other large land areas in the vicinity which are identical to the bottom lands.

A December 1966 information report outlining the results of Reclamation's 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 local interests oppose enlargement for the reasons outlined above.

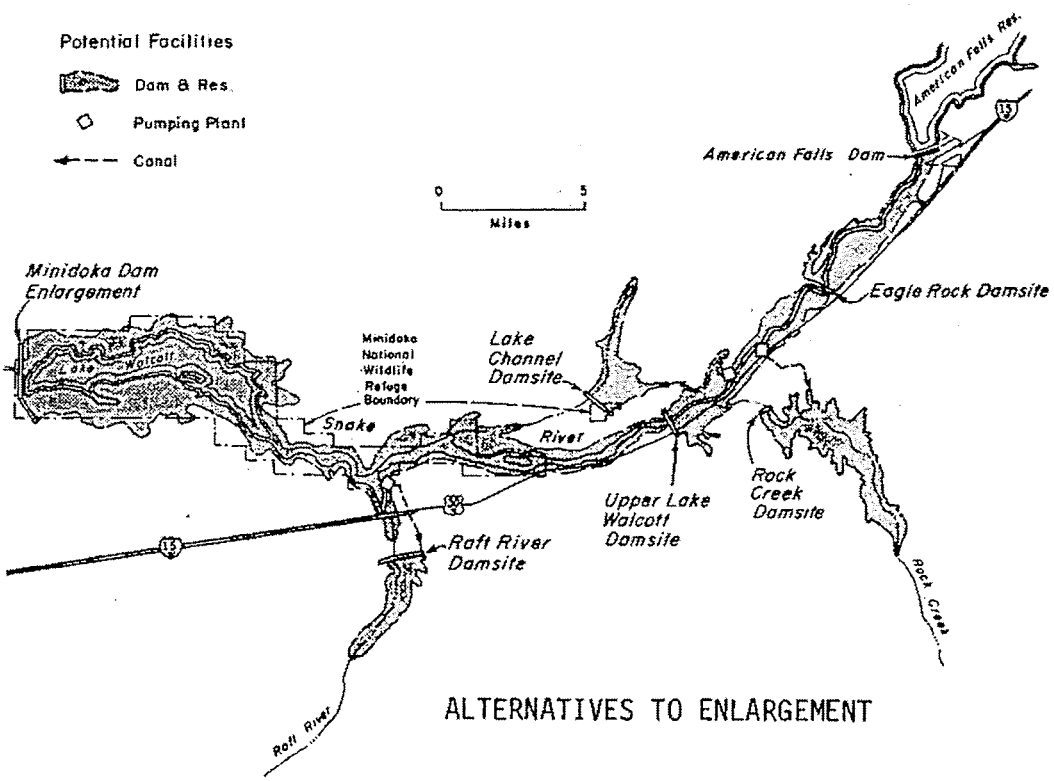
5. Develop Storage at Other Sites

Several potential storage sites in the American Falls area were examined as possible alternatives to enlarging American Falls Reservoir. Storage is needed in this area to capture flows which cannot be stored at potential upstream sites.

The six storage possibilities in the American Falls area are shown on the map on the following page; these alternatives are in two categories:

Substitutes for American Falls Dam Replacement.--A high dam at either the Eagle Rock site or the Upper Lake Walcott site would extend American Falls Reservoir downstream, covering the existing American Falls Dam and increasing the reservoir's capacity without raising its normal water-surface elevation. Once American Falls Dam replacement is built, these possibilities would be precluded.

New Storage after American Falls Dam Replacement.--One or more of these developments could be built in the American Falls area at any time conditions warrant. Possibilities include



enlarging the existing Minidoka Dam to increase storage in Lake Walcott and constructing offstream storage on Rock Creek, Lake Channel, and Raft River for water pumped from the Snake River.

In addition to these alternatives in the American Falls area, other possibilities for developing new water supplies elsewhere in the basin include new storage at the upstream Lynn Crandall and Palisades storage sites on the Snake River and new ground water pumping from the Snake Plain aquifer north of the river.

With the enlargement of American Falls Reservoir foregone, there appears to be little prospect for new storage in the American Falls area in the foreseeable future. Based on these rough reconnaissance studies, the costs of these six alternatives exceed their benefits by large amounts.

The Idaho Water Resource Board has also had a preliminary study made on alternative storage sites in the American Falls area. The study

evaluated all the above sites except the enlargement of Minidoka Dam. The findings of the Idaho Water Resource Board study agree closely with those cited here.

a. Substitutes for American Falls Dam Replacement

The potential Eagle Rock and Upper Lake Walcott Dams were considered as possible substitutes for American Falls Dam replacement, A high dam at either of these sites downstream from American Falls would enlarge American Falls Reservoir without raising its maximum water level, thus avoiding the adverse effects on the Fort Hall Bottoms and other areas.

Eagle Rock Site.--A high Eagle Rock dam would be located about 6 miles downstream from American Falls Dam. There are three possible sites in the Eagle Rock vicinity. The upper site (the so-called "tunnel site") was used in this analysis because it appears to be the most economical site for a high dam. Further geologic studies would be required to determine the best site. At the upper site, there could be serious leakage through the basalt ridge at the right abutment of the damsite and from the reservoir. However, losses would probably return to the Snake River above Minidoka Dam where they would be reusable.

A dam 138 feet high and 8,600 feet long (including a dike on the left abutment) would be required to back water up to the normal water surface elevation of American Falls Reservoir, thus flooding out the existing American Falls Dam. Eagle Rock Dam would increase American Falls Reservoir capacity by 228,000 acre-feet to a total of 1,928,000 acre-feet.

No additional lands would be flooded around the existing American Falls Reservoir. However, a major environmental impact would be the inundation of about 3,000 acres downstream from American Falls Dam, including 6 miles of Snake River channel, part of the town of American Falls, Idaho Power Company's powerplant and related facilities below American Falls Dam, some facilities and irrigated lands of the Michaud Flats Project, and railroad and other facilities.

Upper Lake Walcott Site.--The Upper Lake Walcott site is near the upper end of Lake Walcott about 13 miles below American Falls Dam. A dam 185 feet high and 5,500 feet long would back water up to the normal water-surface elevation of American Falls Reservoir, thus flooding out the existing American Falls Dam. Upper Lake Walcott Dam would increase the American Falls Reservoir capacity by 640,000 acre-feet to a total capacity of 2,340,000 acre-feet.

While no additional lands would be flooded around the existing American Falls Reservoir, downstream environmental impacts would include inundation of all of the area that would be flooded by a high dam at the Eagle Rock site plus a 7-mile reach from Eagle Rock to the Upper Lake Walcott site. Below Eagle Rock, the extended reservoir would inundate farmlands and homesites along the river, part of the new Massacre-Register Rocks State Park, and parts of U. S. Highway 30N. The highway would have to be relocated around the south side of the reservoir.

b. New Storage After American Falls Dam Replacement

The replacement of American Falls Dam would preclude both enlargement of that dam and construction of the Eagle Rock and Upper Lake Walcott alternatives. Remaining possibilities for new storage in the American Falls area after replacement is built include the enlargement of Minidoka Dam and pumped storage at three offstream sites near the Snake River. The potential enlargement of Minidoka Dam has several drawbacks in addition to its poor benefit-cost ratio, however, and the three other storage possibilities would not only be expensive to construct but would require the costly pumping from the Snake River of the water to be stored.

Minidoka Dam Enlargement.--Minidoka Dam, on the Snake River 39 river miles below American Falls, impounds Lake Walcott. Minidoka Dam, one of the first dams built by the Bureau of Reclamation, was completed in 1906. A 25-foot higher dam would increase Lake Walcott's capacity from 210,000 acre-feet to 680,000 acre-feet, providing 470,000 acre-feet of new storage. This enlargement would require a dam 82 feet high and about 3 miles long; the existing dam is 4,475 feet long. Because the existing dam would have to be kept intact during construction to maintain irrigation diversions, a completely new dam would probably have to be built downstream at a less favorable site.

If the normal water surface were raised 25 feet, the reservoir area would be more than doubled from 11,800 acres to 27,000 acres. This would create a shallow reservoir with increased evaporation losses. Reservoir leakage would be severe since U. S. Geological Survey studies show that the regional water table is below the level of the Snake River channel in this area. Since leakage from an enlarged reservoir might not return to the Snake River above Milner Dam, it could be lost to further use within the upper Snake River basin. Because of the probable leakage and other adverse effects associated with the possible enlargement of Minidoka Dam, it was excluded from the study made for the Idaho Water Resource Board.

A 25-foot increase in the water surface elevation of Lake Walcott would inundate most of the Minidoka National Wildlife Refuge . The U. S. Fish and Wildlife Service has stated that any increase in water surface elevation of more than 2 to 4 feet would harm the waterfowl nesting islands on the lake. A 25-foot increase would also inundate parts of the interstate highway and parts of U. S. Highway 30N.

Offstream Pumped Storage.--Sites on Rock Creek, Lake Channel, and Raft River offer physical possibilities for the offstream Snake River storage. Since there is little or no uncommitted runoff from the streams on which the reservoir would be located, it was assumed that the reservoirs would be filled entirely by pumping water from the Snake River. This would require large pumping plants and canals with enough capacity to fill the reservoirs during the relatively short periods when Snake River flows exceed all existing rights. The annual pumping costs on these alternatives would be substantial. In this analysis, the cost of pumping power was assumed to be 2.35 mills per kilowatt-hour, including wheeling.

Rock Creek Site.--Rock Creek damsite is located 2 miles upstream from the mouth of Rock Creek, a south-side tributary of the Snake River. A dam 250 feet high and 1,460 feet long would create a 312,000 acre-foot reservoir. A pumping plant with a capacity of 1,400 cubic feet per second would lift water 450 feet from the Snake River to a canal which would carry water to the reservoir.

Lake Channel Site.--Lake Channel is an old riverbed which was once the channel of the Snake River; the channel roughly parallels the Snake River for several miles between American Falls Dam and Lake Walcott. Lake Channel damsite is located about 6 miles up this channel from the Snake River. A dam 110 feet high and 6,400 feet long would create a 183,000 acre-foot reservoir; the reservoir would inundate a small area of the Minidoka National Wildlife Refuge. A pumping plant with a capacity of 1,050 cubic feet per second would lift water 190 feet from the Snake River to a canal which would carry the water to the reservoir.

Raft River Site.-- Raft River damsite is located 2 miles upstream from the mouth of Raft River, a south-side tributary of the Snake River. A dam 75 feet high and 600 feet long would create an 80,000 acre-foot reservoir. A pumping plant with a capacity of 500 cubic feet per second would lift water 130 feet from an arm of Lake Walcott to a canal which would carry the water to the reservoir.

6. Alternative Power Sources

a. Exotic - Exotic alternatives such as fusion power, solar power, and magnetohydrodynamics (MHD) are not considered to be realistic at this time because they are either not commercially available or of sufficient size, or both.

b. Hydroelectric - Thousand Springs Project, located on the Snake River near Hagerman, Idaho, is probably the next most feasible alternative hydroelectric project in the area. The Thousand Springs reservoir would inundate approximately 22 miles of the Snake River which currently supports a good trout fishery and would also inundate the existing Thousand Springs and Clear Lake powerplants.

The estimated annual cost of producing 339,900,000 KWH and 92,340 KW at the Thousand Springs Project would be $6,916,000, which is $774,000 more annually than the cost of American Falls power production.

c. Nuclear Power - Incremental power from a baseload nuclear steam electric generating plant equivalent to the power to be generated by American Falls Project would cost about $7,247,000 per year, approximately $1,104,000 more than the proposed American Falls plant, and would require consumption of a nonrenewable energy source. Because of the 9 to 11 year leadtime required for planning and constructing a nuclear generating plant, nuclear power could not be considered a realistic alternative to American Falls, which can be constructed in 1.5 to 2 years.

d. Gas Turbine - A gas turbine plant would be required to operate for long periods of time during the irrigation season. Gas turbines are fueled by natural gas or oil. There appears to be an increasing scarcity of natural gas and of oil of the quality needed to operate gas turbine plants.

It is estimated that the gas turbine would consume about 810,000 barrels of distillate-type fuel per year to produce the equivalent amount of power which would be produced by the proposed American Falls powerplant.

Power from the gas turbine alternative, equivalent to power to be generated by the new American Falls plant, would cost approximately $9,000,000 per year, or $3,374,000 more annually than the power from the proposed American Falls Plant.

e. Combined Cycle - A combined cycle combustion turbine electric plant would consume approximately 494,000 barrels of distillate-type fuel annually in producing the equivalent power output of the American Falls plant. The equivalent power would be produced at a cost of approximately $7,180,000 per year or approximately $1,038,000 more annually than the power produced at the proposed American Falls project.

f. Coal-fired Steam - A baseload coal-fired steam electric plant would consume an estimated 129,000 tons of coal per year to provide the equivalent amount of power as the proposed American Falls plant at a cost of $6,628,000 per year, or $485,000 more than the American Falls plant. A large coal-fired steam plant requires from 5-7 years to plan and construct; therefore, it is not a realistic alternative to American Falls which can be constructed in from 1.5 to 2 years. This alternative would consume an irretrievable resource. The alternative steam plant with its larger building, smokestack, cooling towers, and its coal stockpile would be visually more obtrusive than the proposed hydro plant.

g. Geothermal - While there are "wet-steam" geothermal sites in the State, there are no known "dry-steam" geothermal sites. Technology for producing geothermal electric energy from "wet-steam" has not advanced sufficiently to predict its cost.

CONSULTATION AND COORDINATION

(1) Consultation and coordination during development of the proposal and during preparation of the draft environmental statement

A large number of Federal, State, and local organizations and agencies and many individuals were consulted and they provided important input during investigations of the project by the Bureau of Reclamation.

Included were the U. S. Bureaus of Indian Affairs, Land Management, Outdoor Recreation, Public Roads, Mines, and Sport Fisheries and Wildlife (now U. S. Fish and Wildlife Service); the Idaho Water Resource Board; the Idaho Departments of Fish and Game, Highways, Parks and Recreation, and Water Administration; the Idaho State Historical Society; Idaho State University; Bannock, Bingham, and Power Counties; the city of American Falls; the watermaster of Snake River District No. 1; the Committee of Nine; and water users and their representatives throughout the upper Snake River basin. A number of meetings have been held with local interests to explain study findings, and to get public reaction and input on various issues involved. Much information obtained from the above coordination was used as a basis for developing the draft environmental statement.

The proposed project would be constructed by the American Falls Reservoir District or other appropriate agency representing the spaceholders, under an agreement with the Secretary of the Interior. The spaceholders intend to arrange with Idaho Power Company to carry out the work.

(2) Coordination during review of the draft environmental statement

This draft environmental statement was sent for review and comment to all agencies, organizations, and individuals involved in the proposed project and to other interested groups and individuals. A listing of those receiving a copy of the statement is provided at the beginning of this statement. Copies of the letters of comment received are enclosed at the end of this section and actions taken are noted alongside the letters.

The Federal Power Commission has worked closely with the Bureau of Reclamation in preparing this statement and has participated in the evaluation of and seeking of solutions for environmental problems.

During the period from May 1973 when the draft legislative environmental impact statement was made available to the public and governmental agencies for review until June 1974 when this final legislative EIS began to be prepared, considerable contact was made with individuals and groups concerned with environmental impacts. On the following page is a partial list of the meetings held, giving the date, place, and groups, agencies, or individuals represented.

On June 29, 1973 the Regional Director, Pacific Northwest Region, USBR, sent a letter and attachments to all reviewers indicating new information on project design which covers significant changes on the environmental impact of the project. A copy of the letter and attachments are enclosed following the meetings list.

Coordination Meetings
American Falls Dam and Powerplant EIS
April 1973 - May 1974

April 12, 1973 - Boise -- Bureau of Reclamation (USBR), Spaceholders, Idaho Power Company.

June 6, 1973 - Boise -- Spaceholders, USBR, U.S. Fish and Wildlife Service, Idaho Department of Fish and Game, and Idaho Power Company.

June 12, 1973 - Boise -- Spaceholders, USBR.

July 13, 1973 - Boise -- Idaho Department of Highways, Federal Highway Administration, USBR.

July 16, 1973 - Public Meeting in American Falls -- Bridge Committee, Public, USBR, Bechtel Sponsor, Idaho Power Company, Spaceholders, Idaho Fish and Game.

August 27, 1973 - Boise -- USBR, IdahoF Fish and Game, Fish and Wildlife Service.

August 28, 1973 - Boise -- Spaceholders, USBR, Idaho Power Company.

September 4, 1973 - Boise -- American Falls Bridge Committee, Department of Interior Solicitor's Office, Spaceholders, Idaho Fish and Game Department, Fish and Wildlife Service, and USBR and Idaho Power Company.

September 5, 1973 - Boise -- Department of Highways, USBR.

October 1, 1973 - Boise -- Idaho Highway Department and USBR.

October 2, 1973 - Boise -- Idaho Water Administration, Idaho Fish & Game, Idaho Highway Department, Bechtel Corporation, U. S. Fish & Wildlife Service, USBR.

October 9, 1973 - Boise -- Idaho Water Administration, Bechtel Corporation, Idaho Highway Department, Department of Fish and Game, USBR.

October 22, 1973 - Portland, Oregon -- Special Asst. to Secretary of Interior, U. S. Fish & Wildlife Service, USBR.

November 19, 1973 - Boise -- Idaho Fish and Game Department, USBR.

November 27, 1973 - Boise -- Spaceholders, USBR.

November 30, 1973 - Boise -- USBR, Idaho Fish and Game Department.

December 10, 1973 - American Falls -- USBR, FPC, Idaho Fish and Game Department, U. S. Fish and Wildlife Service.

December 11, 1973 - Boise -- Idaho Fish and Game, USBR, FPC, U. S. Fish and Wildlife Service.

December 11, 1973 - Boise -- FPC, Idaho Power, U. S. Fish and Wildlife Service, Spaceholders, Idaho Fish and Game, USBR, American Falls Bridge Committee.

January 18, 1974 - Boise -- Bechtel Corporation, USBR, Idaho Power Company, Spaceholders.

January 24, 1974 - Boise -- USBR, U.S. Fish and Wildlife Service, Idaho Fish and Game, Spaceholders.

February 26, 1974 - Pocatello -- Idaho Governor's Office, Idaho Power Company, Spaceholders, Bechtel Corporation, USBR, and American Falls Bridge Committee.

March 13, 1974 - Boise -- Idaho Fish and Game, USBR.

March 27, 1974 - Boise - Bechtel Corporation, Spaceholders, Idaho Power, USBR.

April 11, 1974 - Boise -- FPC, Idaho Fish and Game, U.S. Fish and Wildlife Service, USBR.

April 12, 1974 - Boise -- Idaho Statesman, USBR, Power County Press, U.S. Fish & Wildlife Service, Idaho Wildlife Federation, FPC, Idaho Conservation League, Idaho Fish and Game, Idaho Department of Environmental and Community Services, Environmental Protection Agency, Spaceholders, Idaho Power, and Bechtel Corporation.

April 17, 1974 - Boise -- Robert Rudeen, Boise architect concerned with historical buildings at American Falls, USBR.

April 30, 1974 - Boise -- Idaho Bicentennial Commission, USBR, Idaho Historical Society, Idaho Historical Preservation Council.

May 3, 1974 - Boise -- U.S. Fish & Wildlife Service, Idaho Fish & Game, EPA, DECS, USBR, and Spaceholders.

May 6, 1974 - Boise -- USBR, FPC.

May 16, 1974 - Boise -- Idaho Power Company, USBR, Bechtel Corporation, Spaceholders, and Solicitor's Office.

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: 160
510.

June 29, 1973

Attached to this letter is a copy of a letter recently received from the Legal Counsel for the American Falls Reservoir Spaceholders. This is the group which is seeking approval from Congress to construct the American Falls Replacement Dam and negotiate a "falling water" contract for power development at the American Falls site. The letter presents recent findings concerning possible fisheries mitigation and impact of these findings on the forebay fishery at American Falls Dam. The information differs from that provided in our draft legislative environmental statement, particularly in respect to the forebay fishery. We feel it appropriate to transmit the letter to you as reviewers in order that you may take this new information into account in preparing your comments concerning this statement. In view of the limited area and general nature of the new information, we feel that extending the date for return of comments to August 8, 1973, will permit the reviewer to make a thorough assessment of the statement.

Comments received as a result of review of the draft environmental statement and consideration of the information in the attached letter will be considered and utilized in our efforts to prepare a final legislative environmental statement concerning the American Falls Dam Replacement and Powerplant.

Thank you for your interest.

Sincerely,

E. F. Sullivan
Regional Director

Attachment

PARRY, ROBERTSON, DALY & LARSON
LAWYERS
THE IDAHO FIRST NATIONAL BANK BUILDING
P O BOX 3 5
TWIN FALLS, IDAHO 83301

June 15, 1973

Mr. E. F. Sullivan
Regional Director
Bureau of Reclamation
P.O. Box 8008
Boise, Idaho 83707

Re: American Falls Dam Replacement

Dear Mr. Sullivan:

After the issuance of the Bureau's draft Environmental Statement relating to the replacement of American Falls Dam, we gained some information relative to the impact of the project on the fishery in the forebay below the dam and upstream of the existing power plant. As you know, the concept which we were investigating involved screening the intakes to the penstocks and providing a by-pass to take fish from the reservoir into the forebay with a flow of water of the magnitude of fifty c/f/s maintained in the forebay to maintain water quality. This, it was hoped, would preserve the fishery in the forebay.

As presently constituted, the west side of the forebay is essentially dead water, and non-game species predominate in that area, with the best sports fishery located from just upstream of the railroad bridge, downstream to the power plant. Release of water from the dam presently flows through this area to the power plant, and relatively high water velocities are present during the irrigation season, as well as during times water is spilled from the reservoir. We are informed by officials of the Idaho Fish and Game Department that these velocities are the effective cause of the separation of game and non-game species.

In order to maintain present velocities in the area upstream of the existing power plant, it would be necessary to by-pass 3,000-5,000 c/f/s flow around the proposed power plant. A flow of 5,000 c/f/s would result in a loss of 88% of the additional power gained by construction of the proposed power plant, while a flow of 3,000 c/f/s would result in a loss of 58% of the power gained. It is obvious that by-pass flows of this magnitude render the project uneconomical.

As a point of reference, 50 c/f/s would provide essentially still water in the forebay, even though the water in the forebay would be replaced once every 24 hours at a flow of 40 c/f/s. With small velocities in the forebay, the game and non-game fish species would intermingle, and the quality of the fishery would be substantially lessened.

The particular turbines projected for use in the new power plant are such that large fish can pass through them with no significant mortality, in the opinion of a well-known expert in the field. An alternative to providing screens on the intakes and a by-pass into the forebay would be to leave the screens off the intakes and pass the fish through the turbines. By improving the access to the tail waters of the proposed power plant, it is felt an accessible replacement fishery could be developed in that area.

Information is still being gathered, but we wanted to keep you fully advised of developments in the study being conducted. As more information becomes available, we will pass it on to you.

Sincerely,

Thomas G. Nelson
THOMAS G. NELSON

TGN:ddm

(3) Bibliography

American Falls Dam Replacement, Idaho, Upper Snake River Project, Idaho-Wyoming, U. S. Department of the Interior, Bureau of Reclamation, Pacific Northwest Region, Boise, Idaho, Regional Director's Special Report of December 1972.

American Falls Dam Replacement, Idaho, Upper Snake River Project, Idaho-Wyoming, U. S. Department of the Interior, Bureau of Reclamation, Region 1, Boise, Idaho, Information Report of December 1966.

DES Project S-1721(16), American Falls Bridge-Highway, Power County, Southeastern Idaho, prepared for State of Idaho Department of Highways, Bechtel Corporation, August 1973.

Exhibit W (revised), Environmental Statement, American Falls Powerplant Project No. 2736-Idaho, Idaho Power Company, March 11, 1974.

Fort Hall, 1834-1856, Idaho Historical Series No. 17, Idaho Historical Society, Boise, Idaho, August 1968.

Gebhards, Stacy, and others, "Mercury Levels in Idaho Fishes and Aquatic Environments, 1970-71," Idaho Fish and Game Department and Idaho Department of Health, November 1971.

Heimer, John T., 1974, American Falls Reservoir, Forebay, and Snake River Fishery Investigations, Idaho Fish and Game Department.

Idaho State Historical Society, letter regarding Island Powerplant, April 25, 1974.

Idaho Historic Preservation Council, letter regarding Island Powerplant, April 25, 1974.

National Parks and Landmarks, U. S. Department of the Interior, National Park Service, Washington, D. C., January 1, 1972.

National Register of Historic Places, U. S. Department of the Interior, National Park Service, Advisory Council on Historic Preservation, Washington, D. C., printed in Federal Register of February 28, 1973.

National Registry of Natural Landmarks, U. S. Department of the Interior, National Park Service, Washington, D. C., printed in Federal Register of January 29, 1972, plus "Additions" in Federal Register of September 1, 1972.

Negative Determination (NDN 73-39(PN)) of Environmental Impact U. S. Government Permit for Rights-of-Way to Allow Idaho Department of Highways to Construct Idaho State Project No. ST-1721 (518), American Falls, Power County, Southeastern Idaho, November 21, 1973.

Project Report on the Recreation Resources of the Proposed American Falls Dam Replacement, Upper Snake River Project, Idaho-Wyoming, U. S. Department of the Interior, National Park Service, San Francisco, California, report of July 1968.

Rare and Endangered Fish and Wildlife of the United States, U. S. Department of the Interior, Bureau of Sport Fisheries and Wildlife, Washington, D. C., 1968.

Roche, Joseph M., Mineral Resources at the American Falls and Eagle Rock Dam and Reservoir Sites, U. S. Department of the Interior, Bureau of Mines, Spokane, Washington, July 1964.

Summary Engineering Report for American Falls Dam, Bechtel, Incorporated, San Francisco, March 1974.

Swanson, Earl H., Jr., The American Falls Reservoir: A Report to the National Park Service Concerning Archeological and Other Scientific Resources Within and About the American Falls Reservoir, Idaho State University, Pocatello, Idaho, June 1963.

Trimble and Carr, 1963, Geology of the American Falls Quadrangle, Idaho, U. S. Geological Survey Bulletin 1121-G.

Upper Snake River Project, American Falls Dam Replacement, Idaho (BR)--enlargement of American Falls Dam by 6 feet or 13 feet; inclusion of a Federal powerplant, U. S. Department of the Interior, Bureau of Sport Fisheries and Wildlife, Boise, Idaho, memorandum of May 14, 1968.

Upper Snake River Project, Idaho-Wyoming, American Falls Dam Replacement, Snake River, Power and Bingham Counties, Idaho, U. S. Department of the Interior, Bureau of Sport Fisheries and Wildlife, Portland, Oregon, memorandum report of August 29, 1968.

LETTERS OF COMMENT

ON

DRAFT ENVIRONMENTAL STATEMENT

United States Department of the Interior

BONNEVILLE POWER ADMINISTRATION
P.O. BOX 3621, PORTLAND, OREGON 97208

OFFICE OF ADMINISTRATOR

In reply refer to: EEP - SJ

JUL 19 1973

Memorandum

To: Commissioner of Reclamation

Through: Assistant Secretary—Energy and Minerals

From: Administrator

Subject: Draft Environmental Statement -- American Falls Dam Replacement, Idaho

Thank you for giving us the opportunity to review the above draft environmental statement. We have reviewed the subject material and have no comments.

Donald Paul Hodel

United States Department of the Interior

GEOLOGICAL SURVEY
WASHINGTON, D.C. 20244

August 22, 1973

-31

ıdum

Commissioner of Reclamation

Deputy Assistant Secretary--Energy and Minerals AUG 27 1973

Director, Geological Survey

t: Draft environmental statement--American Falls Dam Replacement, Idaho, dated May 17, 1973

: reviewed the subject draft environmental statement as you re- l in a memorandum of June 4. Our comments are as follows:

Geology

ıft statement indicates that the proposed action has not been leveloped and the environmental statement is, of necessity, l in nature (p. 1).

ır to properly assess the geologically related implications of ıposed project, more data on the engineering-geology conditions project area, with particular detail on the damsite (including le data), should be provided in the statement.

ch as the existing dam suffers from concrete decomposition, and m and bonding problems (p. 2), it would be suitable to include iled discussion of the material to be utilized in the proposed ıction.

ld be appropriate to offer more information on powerplant con- lon in the proposed project.

gh the existing problem of shoreline erosion will not be accel- by the project, the Bureau of Reclamation's efforts to mitigate ızard should received added consideration (p. 26, 34).

Hydrology

ıral, the conclusions concerning the impact of the replacement dam on the water resources of the area appear adequate and ac- . However, potential impacts of a serious operational failure gates or control structure, as the dam deteriorates further, : discussed in detail. For example, are floods from failure of ı possible, or could gate failure prevent water deliveries in ıigation season?

Acting Director

Detailed geologic conditions added to Description of the Environment

More information added in Description of Project

It is presently assumed that the planting of willows is the most practical and effective means for shoreline erosion control. The Bureau of Reclamation is intensifying their efforts in this direction (see Section D).

These general possibilities are considered in the "build nothing" alternative. Gate failures of the magnitude which would prevent river control do not appear to be a significant possibility.

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20242

Quality

JUL 16 1973

ANDUM

Commissioner, Bureau of Reclamation

Chief, Division of Environmental Quality

:t: Review of draft environmental statement for American Falls Dam Replacement and Powerplant, Minidoka Project, Idaho (DES 73/31)

llowing comments are submitted in response to your memorandum e 4, 1973.

ee with not increasing the capacity of the dam, and therefore, ving the Fort Hall Bottoms which has historical, traditional ltural value to the Shoshone-Bannock Tribes.

not believe the overall erosion abatement measures proposed for rt Hall shoreline to be adequate. This shoreline holds many of historical interest including parts of the Old Oregon Trail. items will be lost if the shoreline continues to erode. Con- tion should be given not only to the planting of willows but the uction of modified sea walls or riprap.

It is presently assumed that the planting of willows is the most practical and effective means for shoreline erosion control. The Bureau of Reclamation is intensifying their efforts in this direction (see Section D).

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

1792 (911)

Idaho State Office
Room 398, Federal Building
550 W. Fort Street
P. O. Box 042
Boise, Idaho 83724

July 27, 1973

E. F. Sullivan
Regional Director
Bureau of Reclamation
P. O. Box 043
Boise, ID 83724

Dear Mr. Sullivan:

We have reviewed your Draft Environmental Impact Statement for the American Falls Replacement and Powerplant. We feel the statement is well prepared and have no comment to offer for its improvement.

Sincerely yours,

William L. Mathews
State Director

United States Department of the Interior

BUREAU OF OUTDOOR RECREATION
WASHINGTON, D.C. 20240

to:
127 - CNP
S 73-31
er ref 123.5

JUL 11 1973

morandum

Commissioner of Reclamation

m: Assistant Director, Bureau of Outdoor Recreation

ject: Draft Environmental Statement — American Falls Dam Replacement, Idaho, dated May 17, 1973 (DES 73-31)

response to your June 4 request, we have reviewed the subject ft environmental statement and have the following comments:

The description of the environment on page 14, (6) Recreation, icates that limited public access may constrain present and ure recreational use of American Falls Reservoir. No further cussion regarding means to resolve this problem is presented. ce recreation is a project purpose and hence serves as one project tification, it would be appropriate in the final statement to cuss any proposed means of improving public access to the reservoir.

Recreation discussion rewritten to reflect public non-Federal plans and funding.

In the discussion of mitigating measures on page 29, item 2., it stated that, "borrow areas would be reshaped and revegetated where ctical." Considering the significant adverse aesthetic impacts of row activity, a more precise definition of the qualifying term ere practical" is warranted.

Discussion expanded, item number 3, Section D.

G. L. Castman

IRECTOR

United States Department of the Interior

BUREAU OF MINES
WASHINGTON, D.C. 20240

July 12, 1973

DES 73-31

)randum

Commissioner of Reclamation

JUL 19 1973

ugh: Assistant Secretary --Energy and Minerals

: Director, Bureau of Mines

ect: Draft environmental statement - American Falls Dam replacement and powerplant, Minidoka Project, Bannock, Bingham, and Power Counties, Idaho

Western Field Operation Center, Spokane, has reviewed the draft environmental nent for the replacement of the existing American Falls Dam and construction of powerplant. The Bureau of Reclamation is proposing the replacement of the ng American Falls Dam and the construction of a new 100-MW capacity power- in Power County, Idaho. Under the proposal, the new dam would be located diately downstream from the present dam. There would be no increase in the illion acre-foot water storage reservoir.

4, our Spokane office investigated the mineral resource potential of the ican Falls Dam and reservoir site. This reconnaissance study was conducted request of the Bureau of Reclamation in conjunction with a proposal to ge the American Falls Dam. The report is mentioned in the text and is listed bibliography in the environmental statement.

964 study concluded that no significant mineral deposit would be affected a proposed enlargement. We have no new information that would alter ssessment and, therefore, no suggested changes for the environmental ent.

Director

7620

United States Department of the Interior

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

17-OCC

JUL 12 1973

Memorandum

To: Commissioner of Reclamation

Through: Assistant Secretary for Fish and Wildlife and Parks

From: Assistant Director, Park Management

Subject: Draft Environmental Statement -- American Falls Dam Replacement, Idaho (DES 73-31)

We have reviewed the subject statement which was enclosed with your memorandum of June 4, 1973.

The proposed action will not adversely affect any existing, proposed, known potential units of the National Park System, nor any historic, natural, or environmental education sites eligible or considered potentially eligible for the National Landmark Programs.

We have no substantive comments on the environmental statement.

Lawrence C. Merriam

eau of Sport Fisheries and Wildlife
ents on draft environmental statement
rican Falls Dam Replacement, Idaho

5, Recreation: The first sentence states the plan would insure inued operation of a reservoir with enough water surface to mmodate anticipated water-based recreational demands. It implies there could be full use of the reservoir at all times. This does agree with the last paragraph on page 11, which says "In average s the main fishing period for boat fishermen on American Falls rvoir begins in May and ends about mid-July when reservoir drawdown icts boat launching...". This latter statement best describes sectional conditions on the reservoir. No change in the operation ne reservoir is contemplated with the new plan, and annual drawdowns continue to restrict boating activities. The same conflict in ght appears on page 14, item 6, Recreation.

First sentence deleted and remainder of discussion rewritten.

25, last sentence: The reduction in water quality of Snake River stream from the sewage outfall as described would not meet water ity standards and, therefore, would not be permitted. It is not in this specific point is covered on page 25, paragraph 1, because not directly involved with construction activities.

Complete fish and wildlife enhancement plans as originally developed by BSFW and IF&G are not in current plan.

The outfall is discussed in Section C, item 22. The construction operators will be responsible for meeting water quality standards (Section D, item 1).

29, I. - Mitigating Measures and Air and Water Quality Aspects:

ded under this heading are some of the recommendations prepared e Bureau of Sport Fisheries and Wildlife in conjunction with the Fish and Game Department, and provided in a detailed report on ederal plan to replace American Falls Dam. The recommendations be stated in their entirety, either under this heading or as ied material, if they are to be part of the statement. The ing measure should be added: Any pools that become isolated in eservoir area during the dewatering period should have channels g to the river for fish escapement.

Suggested sentence added.

3, C. - Environmental Impact of Planned Action, paragraph 2:

percent of the forebay that would be eliminated is ially lentic water, and nongame fish predominate. The remaining n has a high velocity and supports game fish. The influence that the f the lentic water area would have, should be discussed.

Under current plan, the entire forebay will be lost, including both game and nongame fish.

4, paragraph 6: The stream turbidity resulting from construction ties can and should be avoided. The use of settling ponds to silt would be required to meet State and Federal water quality rds.

Comment accommodated, Section D.

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

1973

bert G. Stamm
ioner
of Reclamation
ent of the Interior

. Stamm:

in response to your letter of June 4, 1973, transmitting review and comment the draft environmental statement on rican Falls Dam Replacement and Powerplant, Minidoka , Idaho. The draft statement covers the anticipated mental impact of replacing the existing American Falls a new structure which will maintain the design storage of the existing structure.

ft statement would be strengthened if it provided more l information on the specific plans for revegetation of d areas.

Section D, item 3, covers these plans.

ement notes that there are plans to develop two extensive ct recreational areas in the reservoir area, but does not the environmental impacts associated with construction tor use. Facility development, waste disposal, increased ger, etc., would all have some impact on the environment ld be recognized in the statement.

Section C, items 8 and 11.

ronmental statement does not mention transmission lines. re to be installed from the proposed power plant, the ental impact should be assessed.

Section C, item 23

ciate the opportunity to review this material.

y,

SCHRILEY
rdinator
tal Quality Activities

DEPARTMENT OF THE ARMY
WALLA WALLA DISTRICT, CORPS OF ENGINEERS
BLDG. 602, CITY-COUNTY AIRPORT
WALLA WALLA, WASHINGTON 99362

WEN-PL 27 June 1973

/
:LLEY PROJECT

. W. H. Kealing
ting Commissioner
reau of Reclamation
shington, D.C. 20240

ar Mr. Kealing:

e draft environmental statement for American Falls Dam Replacement
d Powerplant, Minidoka Project, Idaho, inclosed with your letter of
June 1973 (Ref. 739 500.1-CVP) to the Office, Chief of Engineers,
s been forwarded to the Walla Walla District for review and comment.

note that the draft environmental statement was not sent for review
any private citizen conservation groups which may have an interest
commenting on the proposed project. It is likely that groups such
the Izaak Walton League, Audubon Society, Idaho Environmental Council,
ho Chapter of The Nature Conservancy, and others would desire the
ortunity to comment.

erwise, our review has not uncovered any other sections of the state-
t within our area of interest requiring comment. Thank you for the
ortunity to comment.

Sincerely yours,

Carlos W. Hickman

CARLOS W. HICKMAN
Major, CE
Acting District Engineer

The Sierra Club, Trout Unlimited, the Federation of Western Outdoor Clubs, and the Idaho Environmental Council all received a draft statement in the original distribution. In addition, other such groups were involved in the deliberations since then. The suggested organizations and several others have been added to the distribution list for the Final EIS.

OFFICE OF THE ASSISTANT SECRETARY OF COMMERCE
Washington, D.C. 20230

16, 1973

. H. Keating
ɜ Commissioner
)epartment of the Interior
ı of Reclamation
ıgton, D. C. 20240

ır. Keating:

'aft environmental impact statement for the American
Dam Replacement and Powerplant Minidoka Project,
which accompanied your letter of June 4, 1973, has
eceived by the Department of Commerce for review and
t. The statement has been reviewed and the following
ts are offered for your consideration.

eral, we believe that this statement does not include
actory detail concerning the established commercial
y for non-game fish in the American Fall Reservoir.
llowing comments and suggestions are offered for the
ɜ of correcting this deficiency.

ɔtion of the Project

:he Fish and Wildlife part of this section, it is stated
: 5 that "The plan would enhance both the fish and wild-
ısources of the area." This statement may be true for
ırt fisheries; however, it is not correct relative to
ive commercial fishery in the reservoir.

The proposed project does not include any fish enhancement features. This is reflected in the Final EIS.

tion of the Environment

he Reservoir Fishery part of this section, it is stated
ll that "Various non-game species are also present,
ng carp and suckers, which have been harvested commercially."
h this statement is accurate, it certainly does not fully
that commercial harvest of non-game species of fish is a

ntinuing operation that has been carried on for many
ars. The non-game species are sold in the commercial
rket for human consumption, and the operation contributes
the livelihood of the commercial fisherman. The commercial
ndings average 200 tons per year, valued at over $150,000
the market.

Refernce to nongame catch re-written to reflect commercial significance (Section B, item 5a).

vironmental Impacts of Planned Action

rt 8, page 25, second paragraph, indicates that "Reduction
the reservoir to 4310 level would have an adverse effect
the reservoir and forebay fishery, primarily from a loss
quality." However, later in the same paragraph it is
ated that "Tons of carp and other non-game fish would be
ncentrated in the pool and create excessive turbidity,
owding, and reduce oxygen levels." The statement should
knowledge, therefore, that such conditions will probably
sult in mortality and loss of a large quantity of commer-
ally important fish.

Suggestion accommodated, item 9 , Section C.

the fourth paragraph on page 25, it is asserted that
reduction of non-game fish numbers also results from
ximum drawdown of the reservoir, but this is only a short-
m benefit." This statement is true if one considers
ly the sport fishery; however, it should be indicated that
duction of the numbers of non-game fish would result in an
verse impact on the commercial fishery.

Reference to short-term benefit deleted.

part 15 of this section, on page 27, the conclusion is
ached that "The fishery resources of the reservoir area
uld be enhanced." Here again, such a statement is true
only the sport fishery is considered. However, the
oted statement should be qualified to reflect the fact
at the commercial fishery resources would not benefit from
e proposed reservoir operation.

The implication corrected wherever appropriate throughout statement. Note last sentence in third paragraph of item 9, page 30.

voidable Adverse Effects

e first paragraph on page 37 indicates that dewatering
the reservoir would eliminate much of the fish life that
ains in the reservoir pools. Although this statement is
rect as far as it goes, it should also be indicated that
e fish that will be lost include commercially harvestable
n-game species, the loss of which would result in adverse
ects on the commercial fishery.

In Section E, item 7, reference is to "fishlife." Also any pools which may occur will be channeled to the river in an effort to reduce fish losses.

ppreciate the opportunity to provide these comments and
they will be of assistance to you in the preparation of
final statement. We would appreciate receiving a copy of
final statement.

erely,

dney R. Galler

ey R. Galler
ty Assistant Secretary
Environmental Affairs

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION X
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101
July 19, 1973

IN REPLY REFER TO: 10M - M/S 325

. W.H. Kealing, Acting Commissioner
S. Department of the Interior
ireau of Reclamation
ishington, D.C. 20240

ar Mr. Kealing:

We have reviewed the draft environmental impact statement for the oposed American Falls Dam Replacement.

We foresee no major adverse environmental impacts in our areas of sponsibility. We do foresee, however, a potential adverse impact ich will possibly be imposed on the existing sport fishery habitat. ile it is not an area of EPA's designated responsibility, we strongly ge that the Bureau of Reclamation initiate a cooperative program h the appropriate fishery agencies to ensure that the overall efits to be realized from this project justify the tradeoff involved h sport fish habitat.

Thank you for the opportunity to review this draft statement.

Sincerely,

Hurlon C. Ray

Hurlon C. Ray
Assistant Regional Administrator
for Management

The U. S. Fish and Wildlife Service and the Idaho Fish and Game Department have been actively involved in developing plans for fisheries mitigation.

ADVISORY COUNCIL
ON
HISTORIC PRESERVATION
WASHINGTON, D.C. 20240

June 20, 1973

Mr. W. H. Keating
Acting Commissioner
Bureau of Reclamation
U.S. Department of the Interior
Washington, D.C. 20240

Dear Mr. Keating:

This is in response to your request of June 4, 1973, for comments on the environmental statement for the American Falls Dam Replacement and Minidoka Project, Idaho. Pursuant to its responsibilities under Section 102(2)(C) of the National Environmental Policy Act of 1969, the Advisory Council on Historic Preservation has determined that your draft environmental statement appears adequate regarding our area of expertise and we have no further comment to make.

Sincerely yours,

Ken Tapman
Compliance Officer

THE COUNCIL, an independent agency of the Executive Branch of the Federal Government, is charged by the Act of October 15, 1966, with advising the President and Congress in the field of Historic Preservation, commenting on Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in the National Register of Historic Places, recommending measures to coordinate governmental with private activities, advising on the dissemination of information, encouraging public interest and participation, recommending the conduct of special studies, advising in the preparation of legislation, and encouraging specialized training and education, and guiding the United States membership in the International Centre for the Study of the Preservation and the Restoration of Cultural Property in Rome, Italy.

OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

23.5-

JUN 20 1973

Mr. W. H. Keating
Acting Commissioner
Bureau of Reclamation
U. S. Department of the Interior
Washington, D. C. 20240

Dear Mr. Keating:

Thank you for your letter of June 4, 1973, to former Assistant Secretary John E. Hirten, enclosing a copy of a draft environmental impact statement on the American Falls Dam Replacement in Idaho.

We have furnished this material to the Federal Highway Administration for comment.

Sincerely,

M Convisser

Martin Convisser, Director
Office of Environmental Affairs
Office of the Assistant Secretary for
Environment, Safety and Consumer Affairs

FHWA-1214 (REV. 4-70)
ED STATES GOVERNMENT
emorandum

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
3010 West State Street
Boise, Idaho 83703

DATE: August 7, 1973

U.S. Department of the Interior
Bureau of Reclamation
P.O. Box 043
Boise, Idaho 83724

In reply refer to: 10-10.5A1

Omar L. Homme
Division Engineer
Boise, Idaho

BY: C. C. Hallvik
Asst. Division Engineer

Draft Legislative Environmental Statement
American Falls Dam Replacement

We have reviewed the subject Draft Environmental Statement and the subsequent letter on the forebay fishery at American Falls Dam.

Basically, the highway portion of the draft is not treated in sufficient detail for a meaningful review. The highway and dam are so interrelated that we suggest a combined statement for both phases be prepared in cooperation with Idaho Department of Highways input. As a minimum, we feel the highway portion should be treated as a supplemental section to the statement.

At a recent meeting with the Highway people, it is our observation the decision has not been made as to whether the roadway will be on top of the dam, at its base, or both to accomplish a four-lane development. It was also noted that there is a small recreation area available to the public. Does this introduce a 4(f) situation?

It would be well, through the Highway Department, to coordinate your EIS with that being prepared by the Consultant.

BUY U.S. SAVINGS BONDS REGULARLY ON THE PAYROLL SAVINGS PLAN

The relationship between the highway bridge and the proposed dam and powerplant is discussed in the Final EIS. Initiation of Idaho State Highway No. St-1721(518) for construction of a two-lane bridge crossing immediately below the dam changed the complexion of this statement considerably. A negative determination was prepared for the State bridge in Nov. 1973. NDN 73-39 (PN). Discussions with State and Federal highway representatives indicated no 4(F) situation was involved.

FWA-121A (REV. 4-70)
D STATES GOVERNMENT

:morandum

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
3010 West State Street
Boise, Idaho 83703

DATE: August 7, 1973

In reply refer to: 10-10.5A1

U.S. Department of the Interior
Bureau of Reclamation
P.O. Box 043
Boise, Idaho 83724

Omar L. Homme
Division Engineer
Boise, Idaho

BY: C. C. Hallvik
Asst. Division Engineer

Draft Legislative Environmental Statement
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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
ARCADE PLAZA BUILDING, 1321 SECOND AVENUE
SEATTLE, WASHINGTON 98101
June 13, 1973

Community Planning
Management

IN REPLY REFER TO:
MS 307

W. H. Keating
ng Commissioner
. Department of the Interior
iau of Reclamation
ington, D.C. 20240

Mr. Keating:

ect: American Falls Dam Replacement and Powerplant, Minidoka Project, Idaho

ave reviewed the draft Environmental Impact Statement submitted with June 4, 1973 letter.

proposed project is the replacement of the existing American Falls construction of a new powerplant, and development of related facilities ted on the Snake River in southeastern Idaho.

e this is principally a replacement project, we do not feel that there ld be any significant changes resulting from the completed project on human environment. However, as the statement indicates, construction vities will result in population increases and will be accompanied by s for temporary housing, temporary increase on existing educational lities, additional water needs, increased load on the city's sewage tment facilities and other public facilities. These potential problems mentioned but nothing is said about how these problems will be handled. statement covers in considerable detail mitigation measures to minimize cts on fish and wildlife. We suggest equal consideration be given to ntial impacts on people and the neighboring communities, even though impact may be temporary.

ks for the opportunity to comment on your statement.

Sincerely,

for John R. Merrill
Assistant Regional Administrator
for Community Planning and Management

CEQ (10)
Dawson
Miller
Safranski
Ward

Potential problems not expected to be critical and will be resolved within normal facilities and services (Section C, item 22).

FEDERAL POWER COMMISSION
WASHINGTON, D.C. 20426

October 5, 1973

ilbert G. Stamm
ssioner
of Reclamation
Department of the Interior
ngton, D. C. 20240

r. Stamm:

is is in response to Mr. W. H. Keating's letter dated
, 1973, requesting comments on the Bureau of Reclamation's
Environmental Statement, (INT-DES-73-31) relating to
ed legislation (S.1529) which would allow construction
ew dam, contractual arrangements with an appropriate
deral entity for use of the falling water for power
tion, and for other purposes. The new dam would replace
isting Bureau of Reclamation's American Falls Dam,
ka Project, Idaho. By letter dated May 24, 1973,
an Nassikas transmitted a Report on S.1529 - 93d Congress
irman Henry M. Jackson of the Senate Committee on
or and Insular Affairs. A copy of this report is
ed. The proposed power plant to be constructed by the
Power Company would replace an existing unlicensed
pment on the Snake River (below the existing dam) which
of three constructed power developments included in an
ation for license pending before the Commission and
fied as Project No. 2258.

September 25, 1973, the Idaho Power Company filed an
ation with the Commission for authorization of the
uction, operation, and maintenance of the American Falls
Plant which would replace the existing plant. This
ation (copy enclosed) will be processed under existing
sion Regulations under the Federal Power Act, including
tions issued in Order 415-C on December 18, 1972,
enting the National Environmental Policy Act of 1969.
mission will give due consideration to environmental
ner issues in arriving at its decision on the pending
ation. Accordingly, we are submitting no comments on
raft environmental statement.

e will follow our normal procedures in handling the
y's application. Therefore, copies of the application
e sent to the Department of the Interior for comments
n as staff review is completed to ensure that it is
ite for processing.

Very truly yours,

T. A. Phillips
Chief, Bureau of Power

ures

ANDRUS
:NOR

GLENN W. NICHOLS
DIRECTOR

STATE OF IDAHO

STATE PLANNING AND COMMUNITY AFFAIRS AGENCY
BOISE, IDAHO 83720

July 27, 1973

Ref: 160
120.1

Mr. E. F. Sullivan
Regional Director
U. S. Department of the Interior
Bureau of Reclamation
Pacific Northwest Regional Office
Box 043-550 West Fort Street
Boise, Idaho 83724

Dear Mr. Sullivan:

The State Clearinghouse, State Planning and Community Affairs Agency, has completed its review of the draft environmental statement for the American Falls Dam.

We appreciate the opportunity to review the proposed project, but have no specific comments to offer. We recognize the need to replace the Dam in a timely fashion, and offer our assistance for providing any necessary coordination among State and local agencies.

If we can be of any help, please let us know.

Sincerely,

Karl Tueller

Karl Tueller
Associate Director for
Intergovernmental Coordination

KT:jm

Boise, Idaho

ɔ
ER RESOURCE BOARD

daho 83720 Phone 208-384-2170
LLRED, Director

August 23, 1973

Edwin F. Sullivan
ɔnal Director
Department of the Interior
au of Reclamation
fic Northwest Regional Office
ral Building & U.S. Courthouse
Box 043 - 550 West Fort Street
e, Idaho 83702

Mr. Sullivan:

RE: Environmental Impact Statement - American Falls

se forgive our tardiness in replying to the Draft Environ-
al Statement for American Falls. We realize that the
line has passed for such statements. Our technical
ents are intended for use of your staff as you may see
and are not necessarily intended to affect the environ-
al impact statement. As you are aware, the Water
ırce Board is on record as favoring replacement of
ican Falls.

age 20, we would suggest more discussion regarding
ible sources of mercury contamination and the affect,
ıy, that the project may have.

Additional information is not available. Project will not affect reservoir mercury levels.

age 43, we would suggest additional discussion regard-
the consequences of the "do nothing" alternative.
redistribution and increased efficiencies might
ase some water from other lands to in part compensate
reduced storage in American Falls. The affects of
increased consumptive use of available waters perhaps
ld be discussed to describe the resulting decrease in
ninimum flows and drastic changes in reservoir operating
ls throughout the system.

This possibility has been noted, but specifics to accomplish and resulting effects have not been established. Total water management studies presently underway with Federal and State participation should provide additional data on alternatives. The material included in Section H provides information on all alternatives considered to date.

ıge 47, we would suggest additional discussion of the
'native possibilities to construction of new storage
ıe Upper Snake to meet the basin's needs. Some of
: have already been identified in your studies and
: are perhaps others to be considered.

discussion perhaps could also be directed to the
ems that may or may not exist with water quality
waste and return flows. Questions have been raised
.her agencies with regard to the amount of water used
ıme areas of the Upper Snake and have identified this
·ss" use of water as contributing to the return flow
em. Some discussion as to how replacement will
t this item should be undertaken.

Replacement will not affect this item, however, water management studies are considering means to achieve the most efficiency in water use.

Sincerely yours,

C. STEPHEN ALLRED
Director

m

IDAHO FISH AND GAME DEPARTMENT

July 31, 1973

lson, President
r Company
0
83701

arlson:

uction of American Falls Replacement Dam represents a threat to
y resources of the Snake River. The present plan calls for
n of the forebay which presently supports the most important fishery
a. Your firm has recommended that angler access be provided to
ce area to compensate for the loss of the forebay fishery. The
of access below the new power house would be a feasible method for
the access presently enjoyed at the forebay however, the loss of
y pond and the forebay fishery would not be fully compensated in
ry.

on for the forebay fishery may have to be accomplished offsite as it
be impossible to accomplish the replacement of the forebay and its
low the new dam. We are presently inspecting potential sites for
y compensation effort.

t of passing fish through the turbines is unacceptable. Losses of
support the quality fishery below American Falls Dam would be
t. The turbine-caused mortality would vary with size of the fish,
sh emigrating from American Falls Reservoir range in size from less
ound to over 10 pounds. Mortality rates as low as 10 percent
unacceptable on the larger fish. We recommend complete screening
intakes and incorporation of a fish bypass system in the design of
m.

flow should be maintained below the project at all times. The
of flow that would be required has not been determined, but
studies could be conducted prior to completion of the project.

pment of a model of the dam and the tailrace area is encouraged to
best possible design of the fishing access facilities. Some
the channel below the new power house may be desirable, and
would eliminate guesswork in this area too.

ifident that losses of fishery resources at this project can be
through a cooperative effort by our organizations.

Sincerely,

IDAHO FISH AND GAME DEPARTMENT
Joseph C. Greenley, Director

Original Signed
by Robert L. Salter
Robert L. Salter
Assistant Director

f Basin Studies, Boise
Fisher
n V
u of Reclamation, Boise

Statement revised throughout to reflect impact of the current plan on fish and wildlife resources, as well as the mitigation proposals agreed to by the American Falls Reservoir District and the Idaho Fish and Game Department (page 35, item 6). Fish screens, a fish bypass, and minimum flows were considered thoroughly but were not included in the final mitigation agreement. Coordination and communication channels maintained with Idaho Fish and Game, F&WL Service, USBR, and American Falls Reservoir District.

A model test was perfomed to determine the effect of flow on the railroad bridge and the river channel immediately downstream from the spillway stilling basin. Shaping of the tailrace channel was not included among the final mitigation features and no studies were conducted for that purpose.

US

OF
TORS

CHAIRMAN
VICE CHAIRMAN
MEMBER

RETARY

STATE OF IDAHO

V. N. RICHARDSON
STATE HIGHWAY ENGINEER

DEPARTMENT OF HIGHWAYS

P.O. BOX 7129
BOISE, IDAHO 83707

July 26, 1973

. E. F. Sullivan
gional Director
reau of Reclamation
0 West Fort Street
ise, Idaho 83702

ar Sir:

The Department has reviewed the Draft Environmental atement for Legislative Action on the American Falls m. The following comments are offered for your consi-ration:

1. Page 5, Highway Improvement - The Department in a 1968 letter made a commitment for a four-lane highway facility at the time a new dam was constructed.

2. Page 16. National Historical Sites would be involved if alternatives to the planned action are to be given equal consideration. The Oregon Trail remnants could be affected by several plans.

3. Page 33, paragraph 11 - there are other alternatives for the highway location being studied besides the crest of the dam. They include:

   (1) a bench section on the downstream side.

   (2) a separate facility between the existing dam and the railroad bridge.

4. Page 40. The second paragraph comes close to defining the current status of the highway study.

5. Page 45 - the same comment applies to the second paragraph as indicated in item 1 above.

6. Page 55 - the reference to U.S. Highway 30N should be changed to include I-15W since Interstate funds have been used to some degree on this entire highway section.

The Department has retained Bechtel, Incorporated, to pare a highway location report and environmental statet in connection with the proposed highway facility. If s can be combined with the EIS for the dam without delay project development, some savings in cost could be obned. Please keep the Department informed as to future ns related to the preparation of environmental statements this project by your office.

Thank you for the opportunity to comment on this Draft ironmental Statement.

Yours very truly,

B. E. Sessions

B. E. SESSIONS, P.E.
Survey & Plans Engineer

Construction of two-lane bridge-highway between existing dam and bridge together with two-lane crossing on crest of replacement dam will ultimately accomplish four-lane facilities.

The relationship between the highway bridge and the proposed dam and powerplant is discussed in the Final EIS. Initiation of Idaho State Highway No. ST-1721 (518) for construction of a two-lane bridge crossing immediately below the dam changed the complexion of this statement considerably. A negative determination was prepared for the State bridge in Nov. 1973 - NDN 73-39 (PN)).

B. W. DAVIS
ATTORNEY AT LAW
SPAULDING BUILDING, PHONE 232-2772
POCATELLO, IDAHO 83201

10 July 1973

ited States Department of the Interior
reau of Reclamation
x 043
ise, Idaho 83702

Attention: E. F. Sullivan, Regional Director

Re: 160
510.

ır Mr. Sullivan:

was most kind of you to not only write to me but to send me the previous in-
mation concerning the American Falls Dam.

the first instance I am principally interested that the Dam not be raised
l there be no further encroachment in raising the water level to inundate
Indian Bottom Lands. Realize there is what I believe they call a Freeboard,
ever there is land over which the Reclamation Department has control but not
the purpose of inundating it. Am concerned something will happen that will
ult in further flooding.

Fort Hall Stockmen are greatly concerned and have retained counsel to watch
r this matter. If such a move should be made it will creat untold bitterness
there will be a fight such as was made over the proposal to raise the Dam.

h reference to the letter from counsel for the Power Company I don't see much
ning to the statement, " . . . large fish can pass through them with no sig-
icant mortality, . . .". You and I know that doesn't mean anything, neither
s the statement, "By improving the access to the tail waters of the proposed
:r plant, it is felt an accessible replacement fishery could be developed in
: area". We all know what those statements have meant in Hells Canyon and in
:r places.

writer went to American Falls in 1913, and there are times when I wish I did
know so much about the building of the first power dam and the American Falls
or about cement.

ullivan

ginal power dam was built under the supervision of Sam A. Forter and I
the work was done by the Kuhn Construction Company. If any of that
is still in existence, under water or above, I will wager that it is
n first class condition..

n Falls Dam was constructed under the supervision of Mr. Banks of the
tion Department and my former law partner, Spencer Baird, acted as the
y for the Department at American Falls and continued the remainder of
eer as an attorney in the Bureau of Reclamation.

ere many who objected to the width of the bridge at that time and to a
any other things. I am of the belief that when the Department first
red the deterioration of the cement, the Dam could have been refaced.

s has nothing to do with you, you are not responsible for any of it and
e been more friendly and courteous with me than anyone preceeding you.
cital is probably of no interest to you and certainly of no benefit now,
does account for some of my interest and the position I have taken in the

lly, I would much rather see the Bureau of Reclamation reconstruct the
the urgency of the farmers and others who are affected by it is greatly
ated.

ppreciate your assurance, in so far as you are allowed to express an opinion
ere is no part of the present planning that will result in the raising the
l water level. Am I correct in believing a dam of exactly the same height
obably not store as much water due to silt, erosion of banks and cliffs
er matter that may be in the back water that was not originally there.

personal antagonism in so far as the Idaho Power is concerned and have
iends in the Company's employ, they also render good service, however how
/ afford, or why should they, spending millions of dollars without acquir-
ditional water rights and isn't it correct they could not acquire those
/ithout constructing a dam. Surely someone will lose water rights.

orage rights that have been sold in American Falls and Palisades be protected
tin the same as now. The Power Company has been fortunate, apparently
their legal right, in tying up all of the feasible cites on the Snake River
er purposes. They are also fortunate in having a utility minded P.U.C. and
: charge anyone with dishonesty.

hat, the Bureau of Reclamation should build and maintain this dam and
t the unfortunate errors made in the first instance.

you for your kindness in the past and your cooperation.

Yours sincerely,

There is no proposal to raise the elevation of the reservoir. That alternative is presented in Section H.

Idaho Power will only use the water released from the American Falls Reservoir for irrigation or other purposes. Storage rights will remain intact.

ENVIRONMENTAL & ENERGY SYSTEMS, INC.

RANCISCO AREA:
H STREET, SUITE 429
SCO, CALIFORNIA 94109
PHONE 415—885 4643
774-0800

July 7, 1973

Mr. E. P. Sullivan
Regional Director
Bureau of Reclamation
U. S. Department of the Interior
P. O. Box 043-
Boise, Idaho 83702

Dear Mr. Sullivan:

Thank you for your letter of June 29, 1973 and a copy of the very forthright letter dated June 15, 1973 from T. Nelson, Esq., the counsel for the proposers of the American Falls Replacement Dam and hydro-power project.

The problems posed by recognition of the impact the proposed hydroelectric facilities would have on both game and non-game species of the Snake River are difficult. The fact that these problems are recognized and publically discussed is an impressive example of the value of the National Environmental Policy Act of 1969.

Your handling of this environmental review of the proposed project is commendable and I do not think that it should go by without recognition of that fact.

In my letter of May 31, 1973 I commented on the need to adequately evaluate and assess the alternatives to the hydro-power proposal and on the availability of geothermal energy resources in Idaho.

Supplementing the references to the professional literature set forth in my letter is an enclosed memorandum which provides information on the heat flow pattern of Idaho.

I hope this information is of use to you.

Sincerely,

Donald F.X. Finn

dfxfrcc

Section H of the statement includes a discussion of various power source alternatives.

IRONMENTAL & ENERGY SYSTEMS, INC.

CO AREA:
ET, SUITE 429
LIFORNIA 94109
5-885-6663

NEW YORK AREA:
44 EAST 53rd STREET
NEW YORK, NEW YORK 10022
TELEPHONE 212-371-1371

ector
clamation
ding
3
t Street

ubmit the following preliminary comments in respect of the mental statement prepared for the Proposed American Falls ant (please furnish us with a copy of the statement for our rther comment) :

We trust that the draft statement has adequately developed, objectively weighed the geothermal power alternatives to hydro-powerplant in compliance with Section 6.32 (d) of the ations of the Environmental Protection Agency and the gulations of the Bureau of Reclamation and the U. S. the Interior (we request that you furnish with a copy of icable regulations).

The geothermal resources of Idaho are quite substantial and lable and practical power supplies to consumers and industry neighboring States. See. e.g., Sylvia H. Ross, 1971, Geothermal Idaho, Idaho Bureau of Mines and Geology, Pamphlet No. 150; t al., 1972, Geothermal Water and Power Resource Exploration t for Idaho, Water Resource Research Institute, University of oung and J.C. Mitchell, Geothermal Investigations In Idaho, ion Bulletin No. 30, Idaho Department of Water Administration; of public lands valuable for geothermal steam, 1971, U. S. vey Circular 647.

Young and Mitchell (1973) report estimated geothermal aquifer f up to 370°C (i.e. over 650°F) which compare to 385°F temperatures eysers in Sonoma County, California where Pacific Gas and Electric rently operating 8 geothermal power plants which provide the st and least expensive electricity in the PG&E system.

Dry geothermal steam is used to generate electricity in northern cello; in northern Japan at Matsukawa and at Hachimantai as well .s. Wet geothermal steam is used in about 12 different locations attached memorandum) to generate electricity. In addition, a ystem is producing electricity in Mexico at Cerro Prieto as part l experiment.

The evaluation of alternative power sources on pages 56 and 57 have been supplied by the Federal Power Commission. This evaluation indicates that geothermal power is not a viable immediate substitute for increased hydroelectric power potential at the American Falls site.

nary-cycle system for geothermal power production has
ped by the Ben Holt Company of Pasadena, California and
has been developed by the U.S. Federal Manufacturing Company
rnia. The Bladeless Turbine is a new type of tangential flow
gential and radial flow impluse devices are recomended for
nomical utilization of flows of geothermal fluids. See, e.g.,
1973, The total flow concept for recovery of energy from
deposits: Lawrence Livermore Laboratory, University of
(AEC Contract No. W.-7405-Eng-48).

orations, including The Anchutz Corporation of Denver,
i Company of California and Phillips Petroleum Corporation
eothermal exploration and development or investigatory
is a clear commercial interest in developing the geothermal

hat a public hearing be held in view of the great public
n expressed in Idaho in carefully evaluating the need for
ts. As Governor Andrus stated on May 23, 1973: Geothermal
n seeing that we are not pushed into any hydro-electric
because of the energy crisis."

a us of any hearings scheduled on this project and please
vailable materials published with respect to it.

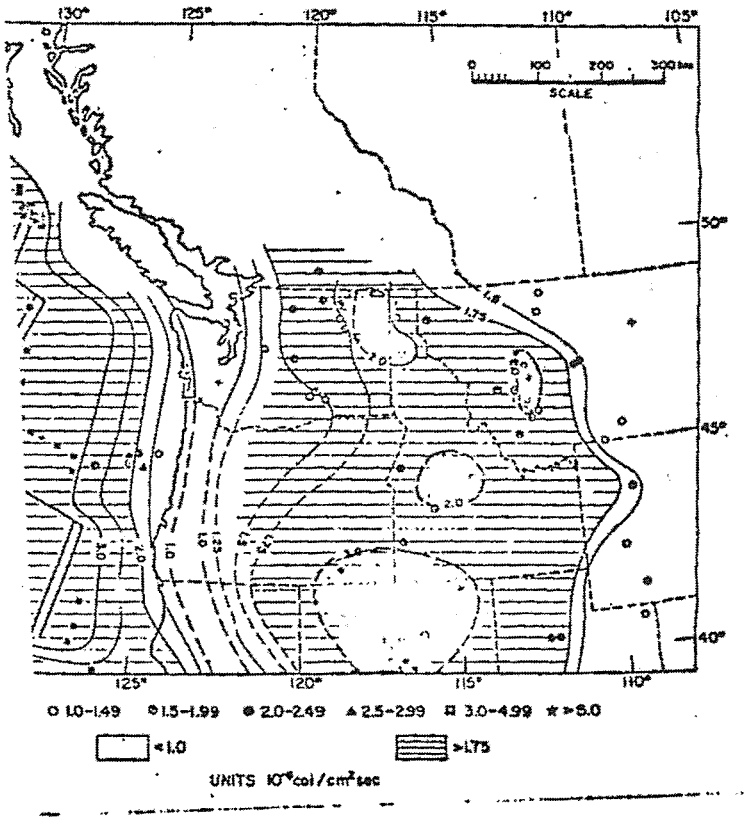
tection Agency

HEAT FLOW AND CENOZOIC TECTONIC HISTORY OF THE NORTHWESTERN UNITED STATES

David Blackwell

uthern Methodist University, Dallas, Texas 75222

heat flow pattern in the northwestern United States is related to Cenozoic tectonism. The Northern Rocky Moun- d Columbia Plateaus physiographic provinces have high heat flow (2.2 $\mu cal/cm^2$ sec) and have been tectonically including volcanism) during the Cenozoic. In the Pacific ovinces the heat flow appears to be low (<1.0 $\mu cal/cm^2$ tectonic activity has been less pronounced. The Cascade ie site of voluminous volcanism during the late Cenozoic, to lie along the transition in regional heat flow. Heat extremely high in the Pacific Ocean (>3 $\mu cal/cm^2$ sec) rmal (1.0 - 1.5 $\mu cal/cm^2$ sec) in the Middle Rocky Moun- i Great Plains. The regional heat flow pattern is the hat found in island-arcs (such as Japan) where heat flow r 100-300km behind the trench (over the subduction zone) in a region several hundreds of kilometers wide behind of low heat flow (but still over the subduction zone). volcanism and calc-alkaline intrusives are abundant in n of high heat flow behind the arcs. The first volcanic ly coincides with the transition in heat flow from high Thus the Cenozoic tectonic history of the northwestern tes can be explained as the product of conditions i with a subduction zone along the West Coast where an Plate overran the Farallon (Juan de Fuca) Plate. sent time the continent has almost reached the Juan de and the ocean plate being overrun is still very hot youth. The high temperature of the oceanic plate may e lack of deep focus earthquakes along the proposed zone.


130°
125°
120°
115°
110°
105°
0 100 200 300 km
SCALE
50°
45°
40°
125°
120°
115°
110°
1.0-1.49
1.5-1.99
2.0-2.49
2.5-2.99
3.0-4.99
>5.0
<1.0
>1.75
UNITS 10⁻⁶cal/cm²sec

PUBLIC LIBRARY
community information
POCATELLO, IDAHO 83201

July 16, 1973

Mr. E.F. Sullivan
Regional Director
Bureau of Reclamation
PO Box 8008
Boise, Idaho 83707

Ref: 160 (510.7)

Dear Mr. Sullivan:

Thank you for information regarding the American Falls Replacement Dam and current findings pertaining to fishery.

Not as a public official, but as a fisherman, I'd like to comment on fishing in that area of the forebay, and in general, the attitude that Idaho Fish & Game appears to take toward fishing in general.

Forebay fishing is an ornery sport; there is overcrowding, theft of equipment and tackle, poor traffic management and all combine to produce hazardous sport.

Idaho Fish & Game continues to allow depredation of the natural streams in the state, permitting out of state licensees to bait fish what are natural fly fishing waters, re-stocking planters in small streams to such an extent that it will be virtually impossible to catch a native fish in Idaho before this decade passes.

Personally, I am only concerned about the affects on agriculture in our area. Idaho has little enough water for its own use, and conservation of that resource is, in my mind, of the first priority.

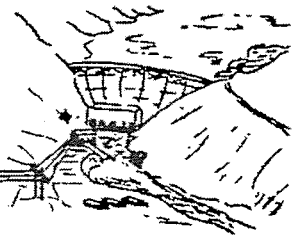
I am not expert in matters of water flow rates, but I have first-hand knowledge of my eating habits and those of my family, friends, neighbors and Americans in our country. We have a burgeoning population to feed, and I'll be more than happy to support any action in behalf of farmers and ranchers who need water, whether its production affects game fishing or not.

Cordially,

David S. Friend

RIVER POWER ASSOCIATION, INC.

BOX 7 HALTA, IDAHO



July 6, 1973

r. E. F. Sullivan, Regional Director
. S. Bureau of Reclamation
ox 043 - West Fort St.
oise, Idaho 83702

ear Mr. Sullivan:

I have reviewed the Environmental Statement of ay 17, 1973 for American Falls Dam Replacement. Also he copy of the letter from the Legal Counsel for the merican Falls Reservoir Spaceholders, regarding proposed hanges in the plans to preserve the forebay fishery and itigation measures to replace what losses of the forebay ishery as might occur.

I am very well acquainted with the aspects of the merican Falls Reservoir and forebay fishery, having ished there a considerable amount myself as well as a umber of friends that fish it more than I do.

I think the Legal Counsel's assessment of the situation s entirely correct.

Most certainly we cannot scarifice 58% of the power otential to try and maintain the forebay fishery as it ow exists.

I believe most people that use that fishery would lso agree to that.

While the forebay fishery is a very popular one it is ostly because of the access it provides.

The footbridge provides a place where the old timers an bring their chairs and sit all day waiting for a strike nd while the man-days of fishing there are relatively high n comparison to other places, a good survey would show hat the success ratio of fish per man hour would not be as igh as other places I know.

I think this would be completely mitigated by a ishing bride below the tail race of the proposed new lant.

The amount of fish available in the new tail race ould depend, of course, on whether screens were put on the ntakes or not.

I am inclined to believe that the turbines projected or this new plant could pass fish with relatively little arm, since the pressures encountered will not be high.

It would be helpful to make more positive judgement n the matter if some data were available on the turbine esign.

Other than this, I have no comments on the Draft tatement.

Thank you for the opportunity to comment.

Sincerely,

Edwin C. Schlender

EDWIN C. SCHLENDER
Snake River Power Association

CSrmn

Information on the turbines is included in Section A and the impact on fish from passage through the turbines is discussed in Section C, item 17.

UNION PACIFIC RAILROAD COMPANY
TRANSPORTATION DIVISION
DEPARTMENT OF OPERATION

O. M. BAKER
GENERAL MANAGER
NORTHWESTERN DISTRICT

726 PITTOCK BLOCK
PORTLAND, OREGON 97205

August 15, 1973

U. S. Department of the Interior
Bureau of Reclamation
Federal Building & U. S. Courthouse
Box 043 - 550 West Fort Street
Boise, Idaho 83724

Gentlemen:

Please refer to your file reference 160 -120.1, regarding environmental statement for the proposed American Falls Dam replacement and powerplant, Minidoka Project, Idaho.

I regret I was unable to contact local officers regarding this project prior to August 1st as requested; however, information now presented indicates your project apparently will not affect our facilities, and as present facilities are deteriorated and possibly dangerous, there are no objections on behalf of the Union Pacific to the proposed construction.

Very truly yours,

O. M. Baker

WATER QUALITY DATA

Water Pollution Study Data - American Falls Reservoir *
1968 Irrigation Delivery Season
(Samples taken immediately upstream from American Falls Dam)

Sample Date	Depth (ft.)	COD ppm	SiO_2 ppm	Phosphate		Nitrogen			
				Ortho ppm P	Total ppm P	Ammonia ppm N	Nitrite ppm N	Nitrate ppm N	Organic ppm N
ıy 7-9, 1968	5	19.6	14.4	0.06	0.31	0.00	0.02	0.03	0.50
	35	12.1	13.4	0.06	0.28	0.00	0.01	0.03	0.50
	58	10.6	14.3	0.07	0.33	0.00	0.01	0.03	0.61
ıy 21-23, 1968	5	3.3	9.0	0.03	0.18	0.09	0.00	0.02	0.24
	35	8.8	9.9	0.03	0.17	0.00	0.00	0.00	0.07
	55	8.8	11.5	0.05	0.19	0.03	0.00	0.02	0.14
ıe 3-14, 1968	5	10.0	6.8	0.09	0.26	0.00	0.01	0.00	0.40
	30	4.6	7.2	0.09	0.28	0.00	0.01	0.00	0.55
	60	0.8	10.4	0.16	0.34	0.20	0.01	0.03	0.10
.e 24-27, 1968	5	6.8	9.4	0.13	0.21	0.00	0.00	0.00	0.65
	30	6.0	11.4	0.11	0.25	0.00	0.00	0.06	0.51
	50	5.6	12.3	0.11	0.24	0.00	0.01	0.08	0.44
y 7-10, 1968	5	6.7	9.6	0.14	0.35	0.18	0.01	0.10	0.40
	30	4.0	9.4	0.13	0.28	0.12	0.01	0.12	0.43
	50	3.2	11.4	0.22	0.35	0.28	0.01	0.06	0.25
y 22-23, 1968	5	4.3	10.8	0.20	0.45	0.13	0.01	0.03	0.32
	30	7.4	11.0	0.19	0.39	0.25	0.01	0.03	0.27
	50	5.4	12.2	0.19	0.44	0.32	0.01	0.03	0.29
ıust 5-6, 1968	5	15.7	12.2	0.20	0.65	0.00	0.02	0.00	0.64
	25	7.1	12.2	0.14	0.50	0.14	0.04	0.01	0.31
	45	7.1	15.6	0.21	0.69	0.32	0.04	0.01	0.43
ıust 20-27, 1968	5	9.2	17.8	0.20	0.38	0.30	0.01	0.00	0.56
	25	6.9	18.2	0.22	0.36	0.36	0.01	0.04	0.65
	45	12.2	18.4	0.24	0.36	0.44	0.01	0.07	0.53
t. 3-4, 1968	5	15.5	17.4	0.06	0.38	0.05	0.02	0.06	0.54
	25	8.8	18.4	0.08	0.18	0.03	0.02	0.10	0.31
	45	5.4	18.8	0.06	0.24	0.20	0.02	0.10	0.26
t. 16-23, 1968	5	13.0	18.4	0.14	0.45	0.13	0.01	0.08	0.70
	25	13.0	20.6	0.14	0.50	0.09	0.01	0.07	0.46
	45	13.0	20.8	0.20	0.48	0.14	0.01	0.05	0.63
t. 30 - Oct. 1, 1968	5	14	18.2	0.12	0.25	0.10	0.014	0.06	0.31
	25	12	19.0	0.14	0.35	0.08	0.014	0.06	0.38
	45	11	18.8	0.14	0.68	0.27	0.014	0.13	0.45
. 17-18, 1968	5	18	20.2	0.14	0.29	0.38	0.015	0.25	0.80
	25	12	20.2	0.14	0.28	0.36	0.014	0.25	0.45
	40	14	20.6	0.17	0.37	0.30	0.015	0.23	0.60

Study prepared by Bureau of Reclamation - Dr. Vernon C. Bushnell, Eutrophication of American Falls Reservoir, Minidoka Project - April 1969.

Exhibit 24

Letter from P. Holm, Chapman and Cutler, to D. C. Alexander, IRS Comm'r (Nov. 27, 1974)

MOORE S. CHAPMAN (1877-1944)
HENRY E. CUTLER (1879-1958)

AMOS H. WATTS
RALPH F. HUCK
PAUL W. CUTLER
FREDERICK O. D. CUR
ROBERT S. BURROWS
LYMAN L. MITCHELL
PETER V. TAZIO
JOHN N. VANDER VRIES
JOHN A. CUTLER
ENOCH L. MOORE
NORMAN R. GENUNG
DEV W. WATTS
JOHN A. MORRIS
FRANK J. MOONITY
KEENN LANDIS
MANLY W. MUMFORD
WILFRED A. MOLDERMAKER
WILLIAM C. WELCH
ROBERT W. SHARP
GEORGE D. HAMSPECK
PETER P. COLADARCI
JAMES N. ZARTMAN
RICHARD G. FORWARD
JOHN B. HUCK
DAVID TALLANT, JR.
DAVID H. NELSON
AUBREY BLATTBERG
DONALD H. MURPHY
PHILIP H. HOLM
HERBERT H. HANSEN
THOMAS W. HEENAN
LEE A. BOYE
KENNETH J. VAUGHAN
SAMUEL J. HENRY
WILLIAM M. TAYLOR
HOWARD H. HUSH, JR.
LARRY ELKINS
ROBERT V. LEWIS
DAVID G. WILLIAMS
DANIEL J. KUCERA
RICHARD H. GOSS
C. ROBERT FOLTZ
JOHN M. DIXON
KENNETH R. M. THOMPSON
JOHN A. WARD
MICHAEL W. FORD
VOYLE C. W. LEON

LAW OFFICES OF
CHAPMAN AND CUTLER
111 WEST MONROE STREET
CHICAGO 60603
726-6130
AND
726-6122
AREA CODE 312
TWX 910-221-2103

WILBERT R. SCHULTZ
RICHARD A. MAKARSK
EDWIN S. BROWN
ROBERT J. BRAMAN
STEVEN L. CLARK
HARRY P. LAMBERSON
JAMES E. JUNZ
JOHN S. RICE
TERRENCE W. WALSH
PAUL C. ROBIN
RONALD E. ROBOSZ
ROBERT C. NASH
JAMES R. RICHARDSON
WALTER C. KNUTSON
EARL T. BYRON
RANDALL L. MITCHELL
STEPHEN E. KITCHEN
THOMAS A. WINGADER
GEORGE F. SULLIVAN, JR.
STEVEN N. WOHL
TERRY A. MOILROY
LOUIS M. RICHTER
J. RICHARD FISHER JR.
NANCY S. WHITTEN
RAYMOND A. FYLSTRA
JOHN W. NANOS
WENDY C. BINDER
MARK J. KNEEDY
STEPHEN F. STROH
EMIL T. BAYKO
TIMOTHY V. McGREL
JAMES F. LUESCHOW
TERENCE T. O'HARA
RICHARD J. SCOTT
ROBERT P. DAVIS

OFFICE OF CHIEF COUNSEL
RECEIVED
DEC 5 1974

November 27, 1974

Honorable Donald C Alexander
Commissioner of Internal Revenue
Washington, D C 20224

COPY

ATTENTION: Mr Albert L Woodman
IR T:I:E:A
Rm 5115

In re: AMERICAN FALLS RESERVOIR DISTRICT, IDAHO

Dear Sir:

This letter and attachments are supplemental to the June 3, 1974 and August 16, 1974 ruling request submitted on behalf of the American Falls Reservoir District, Idaho, with respect to its proposed American Falls Reservoir Revenue Bonds.

We understand from speaking with Mr Woodman and Mr McMunn that the Service is submitting to us several questions requesting additional information. The waterusers are of the opinion that time is of the essence in their efforts to obtain successful financing of the replacement dam. In order to be able to commence construction next year, thereby avoiding postponement of construction for an additional year, in addition to the year's delay which has already been occasioned in the project schedule, we are submitting this material to you in advance of receipt of the formal letter from the Service. This submittal is made with the understanding that upon receipt of such formal letter, any information requested therein which is not included herewith will be immediately forwarded to the Service. In addition, if the Service should like conferences with any of the engineering staff of either Bechtel or the Idaho Power Company with respect to the material supplied herewith, such conferences can be immediately arranged. Expeditious treatment of this ruling request, which has been on file with the Service since June of this year, would be appreciated.

The first question has to do with the method of allocation of power intake facilities, as discussed on page 14 of the August 16 letter and in Exhibit C attached to that letter. A

conference has been held with a representative of Bechtel Incorporated and as a result certain additional information is supplied herewith, together with additional explanatory material. Attached hereto as Exhibit 1 is the Bechtel basis for estimating the American Falls project. Exhibit 2 is the estimate summary prepared by Bechtel for the American Falls project. You will note that sheet 1 of 12 of July 7, 1974, as contained in Exhibit 2, contains the method of determination of costs of the power intake facilities. The balance of the sheets of Exhibit 2 show the method for the determination of costs of the balance of the project. Exhibit 3 is Drawing No D-013, which shows a cross section of the general arrangement of the dam. Exhibit 4 is Drawing No D-020 and has marked thereon in red the power intake structures assigned according to Federal Power Commission account numbers. The circled numbers appearing on this exhibit refer to the same power intake structure numbers contained on Sheet 1 of 12 in Exhibit 2.

At the time of preparing their letter of August 15, 1974, attached as Exhibit C to the letter of August 16, 1974, Bechtel did not assign to the power intake structures an appropriate share of the anticipated costs of engineering, escalation and contingencies which are included in the total project cost. This was ascertained this week in the conference with Bechtel in Boise. Subsequent to the August 16 letter to the Service, the District and the waterusers were forced to conclude that it would not be possible to commence construction of the project at the end of 1974 as had been originally hoped, inasmuch as it was apparent that a favorable ruling from the Internal Revenue Service would not be received in time and that the necessary Federal Power Commission license would not be issued in time to meet such schedule. A new construction schedule was then developed by Bechtel and on September 9, 1974, a revised estimate of total construction cost was prepared by Bechtel. Exhibit 5 shows the anticipated breakdown of the bond issue based on such estimate and should replace previous estimates submitted to the Service.

A current revised comparison of power intake structure costs has been prepared by Bechtel and is attached as Exhibit 6. The differences between Exhibit C to the August 16 letter and Exhibit 6 hereto in the costs for the power intake structures represent: (1) the determination that it would not be necessary to use three shifts under the new construction schedule, thereby eliminating paragraph 3 of the basis for estimates (Exhibit 1 attached hereto); (2) an adjustment for sales tax on certain of the power intake structures; (3) a determination that the $600,000 contingency for water quality facilities can be deleted, but that the oxygen injection facility cost must be increased from $80,000 to $180,000; (4) a further refinement of items

to be properly included as power intake structures (the deletion of some and the addition of others); and (5) recognition of allocation of engineering, escalation and contingency costs to the power intake structures. The estimated cost of the power intake structures shown on Exhibit 6 is $3,397,700.

Exhibit 7 is a letter from Bechtel dated November 27, 1974, further expanding on the rationale for deducting $216,000 from power intake structure costs in properly determining the net cost of power intake structures attributable to Idaho Power Company. Such deduction results in a net figure of $3,181,700 for the power intake structures, which on the basis of the figures submitted in Exhibit 5, would represent an insubstantial portion of the proceeds of the bonds.

As has been stated in the August 16, 1974 letter and at the conference with the Service in July, it is the opinion of the District and the waterusers that the Bureau of Reclamation would have required as a part of the construction of the dam the inclusion of the facilities necessary for future power production and that, therefore, even without the participation of Idaho Power Company or any other public utility, the project would have been built substantially as it is under the present plans and specifications, which provide such facilities for use in connection with the proposed power plant of Idaho Power Company.

Attached hereto as Exhibit 8 is a design drawing, dated October, 1972, furnished by the Bureau of Reclamation, showing the Bureau's design for the reconstruction of the American Falls dam, which exhibit you will note provides for construction with provision for a future federal power plant, even though at the time cost benefit studies demonstrated a federal power plant not to be feasible. Exhibit 9, being an additional copy of Drawing No D-020, shows in green those power intake structures which, in the opinion of Bechtel, would have had to have been included in the project in order to construct a project equivalent to that contained in Exhibit 8 and as contemplated by the Bureau of Reclamation. The numerical references in Exhibit 9 refer again to the power intake structures referred to in Exhibit 2. Exhibit 10 shows Bechtel's cost estimate of those facilities which would have had to have been included in the project in order to construct it on an equivalent basis as shown in Exhibit 9. It is shown that these costs are equal to $1,888,000. It is the opinion of Bechtel, therefore, that it would be sound engineering practice, in order to determine the cost directly attributable to Idaho Power Company, to subtract $1,888,000 from the $3,397,700 shown in Exhibit 6, resulting in a proper net power intake structure cost allocation of $1,509,700, which is again an insubstantial portion of the bond proceeds, as set forth in Exhibit 5.

We believe the above adequately answers the first question concerning the method of allocation of the power intake structures. If additional information or explanatory material is desired, please let us know and it will be supplied.

The second question which has been propounded concerns the rate of discharge of water from the old and the new dams during the irrigation and non-irrigation seasons. Attached hereto as Exhibit 11 is a copy of the November 26, 1974 letter from the Bureau of Reclamation which addresses this subject. Attached hereto as Exhibit 12 is a tabulation of the average daily discharge (on a cubic foot per second basis) by month from the American Falls dam for the years 1958 through 1973 and through September of 1974.

Note the statement from the Bureau that the rate of discharge will not be changed by the construction of the replacement dam.

In answer to the request for plans and specifications showing physical location of the proposed powerplant in relation to the dam, attached are Exhibit 13, being Bechtel's Document AF-101, Construction of American Falls Draft 08-30-74, and Exhibit 14 being one copy of the complete plans and specifications of the project.

Attached hereto as Exhibit 15 is a letter from the Idaho Power Company dated November 27, 1974, to which are attached memoranda setting forth costs of an alternate power source and marketing information. In line with our telephone conversation with McMunn earlier in the week, it was agreed that it was not practicable under local conditions to refer to either oil or gas fired power plants as an alternate source of power.

A copy of the application of the Idaho Power Company to the Federal Power Commission for a license for the power plant at the American Falls site, together with attachments, will be mailed to you directly by the Company on or about December 3, 1974, and is referred to as Exhibit 16.

One of the questions propounded concerns the abandonment of a federal power plant as part of the project, as discussed in the Executive Summary Report of the Bureau of Reclamation, attached as Exhibit 6 to the original ruling request of June 3, 1974. The November 26 letter from the Bureau (Exhibit 11) also refers to the material appearing in the internal report of the Bureau prepared in 1972 regarding this aspect of the project and which is attached to Exhibit 11.

One of the questions had to do with the provisions of Section 10.5 of the Falling Water Contract dealing with the payment of certain operation and maintenance expenses of the dam by Idaho Power Company. It is anticipated that with the construction of the replacement dam and the powerplant attached thereto, there will be some cost associated with the operation and maintenance of the replacement dam to enable the Idaho Power Company to utilize the falling water for power generation. Principally, these costs will be related to the operation and maintenance of the spillway and sluiceway and penstock gates. It was estimated by the Bureau and the Idaho Power Company that these costs could amount to about $5,000 annually.

During the contract negotiations, the accounting and reimbursement procedures associated with such operation and maintenance were explored in detail with Bureau personnel and it was concluded that, rather than attempt to maintain separate cost accounts (and to avoid the potentially large expense of maintaining such accounts) for any work related solely to power generation, 33 percent of the direct cost expended by the Bureau of Reclamation in the operation and maintenance of the dam would first be charged to the Idaho Power Company; the residual 67 percent of the direct cost would be added to the sum of the indirect (administrative and overhead) costs of the dam and all operation and maintenance costs of the reservoir, and would be assigned to each spaceholder, including the Idaho Power Company, in the same proportion as the present assignment of the operation and maintenance cost of the existing dam.

It is anticipated by the Bureau and the Idaho Power Company that the direct cost associated with the replacement dam will be about $15,000 annually and, thus, the Idaho Power Company would pay 33 percent, or $5,000 annually. This will, of course, fluctuate from year to year on the basis of the actual work required.

Please note that Exhibit 17 is a letter from Bechtel, which explains in some detail all the material attached as Exhibits 1, 2, 3, 4, 5, 6, 7, 9 and 10 and supplied to the District by Bechtel.

As has previously been stated on several occasions, if the Service has any further questions or has desire for further information on any aspect of the transaction, we hope that you will feel free to telephone the undersigned at your convenience.

Once again, the District and the waterusers wish to express their appreciation for your prompt consideration of this complicated problem and will attempt, in any way you desire,

to cooperate with the Service in order to expedite this consideration. Copies of this letter, but without the attachments, are being sent to the below listed participants at the meeting of July 24, 1974.

Respectfully submitted,

CHAPMAN AND CUTLER

By Phillip H Holm
Phillip H Holm

PHH:mlm:lrt

Encls

cc - Senator Church
Senator McClure
Congressman Symms
Congressman Hansen
Governor Andrus
Senator Barker
Burke W Willsey, Assistant to the Commissioner
Lawrence B Gibbs, Assistant Commissioner
John Walker, Section Chief, Individual Income Tax Branch
David McMunn, Engineering and Valuation Branch

LIST OF EXHIBITS

1 - Bechtel's "Basis For Estimate"
2 - Bechtel's Estimate "Summary"
3 - Bechtel Drawing # D-013 - "Cross Section"
4 - Bechtel Drawing # D-020 - "Power House Intake Structure"
5 - American Falls Reservoir District - "Cost Breakdown for Bond Issue"
6 - Bechtel's "Comparison" of Power Intake Costs
7 - Bechtel - Explanatory Letter on "Power Intake Facilities"
8 - Bureau of Reclamation Drawing - From Dec 1972 Special Report entitled "American Falls Dam Replacement"
9 - Bechtel Drawing # D-020 "Power House Intake Structure"
10 - Bechtel Estimate "Cost of Minimal Power Facilities for Inclusion in Dam to be Constructed Without a Powerplant"
11 - Bureau of Reclamation Letter, dated November 26, 1974, with enclosure
12 - Bureau of Reclamation "Summary of Water Discharges"
13 - Bechtel Document # AF-101, "Bid Document"
14 - Bechtel Documents - "Plans and Specifications"
15 - Idaho Power Company Letter, dated November 27, 1974
16 - Idaho Power Company's Application to Federal Power Commission for American Falls
17 - Bechtel's Explanatory Letter of November 27, 1974

Exhibit 25

Brief of AFRD to IRS (Jan. 31, 1975)

CHAPMAN AND CUTLER
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TWX 910-221-2103

January 31, 1975

FEB 1975

Honorable Donald C. Alexander
Commissioner of Internal Revenue
Washington, D.C. 20224

ATTENTION: Mr. Patrick Putzi T.I.I.

Re: American Falls Reservoir District, Idaho

Sir:

We enclose herewith an original and four copies of a brief submitted on behalf of the American Falls Reservoir District and the pending ruling request discussing the matters covered in our conference on January 23, 1975.

This brief is submitted by this law firm and Parry, Robertson, Daly & Larson of Twin Falls, Idaho, as counsel for the District in accordance with the time limits specified at our conference.

Very truly yours,

CHAPMAN AND CUTLER

By Phillip H. Holm
Phillip H. Holm

PHH/bb

Enclosures

Honorable Donald C. Alexander
Commissioner of Internal Revenue
Washington, D.C. 20224

ATTENTION: Mr. Patrick Putzi T.I.I.

Re: American Falls Reservoir District, Idaho

On the basis of our January 23, 1975, conference, we would state the position of the Commissioner on the June 3, 1974, ruling request as supplemented ("Request") to be as follows: Where a non-exempt person uses falling water in its trade or business for the furnishing of electric energy pursuant to a take or pay contract or other financing arrangement, more than an insubstantial portion of bond proceeds is used for other than the furnishing of water for purposes of I.R.C. Section 103(c)(4)(G), and that the requested ruling would not issue.

This brief is designed to demonstrate the following position on behalf of the American Falls Reservoir District ("District"):

(1) The Request as submitted and the facts demonstrated therein establish that District bonds ("Bonds") do comply with the requirements of I.R.C. Section 103(c)(4)(G) and the Bonds are proposed to be issued for the construction of a dam and related facilities ("Project") which in fact and in use constitute facilities for the furnishing of water available on reasonable demand to members of the general public.

(2) The use of the falling water by the Idaho Power Company ("Company") pursuant to the falling water contract, Exhibit 11, as revised ("Falling Water Contract") having been authorized by Congress for only an incidental phase of the Project is not a primary or independent end in itself.

(3) The denial of a ruling under the facts submitted would represent a failure by the Commission to comply with the requirements of Reg. § 1.103-8(a)(4) which reads as follows:

> "The question whether substantially all of the proceeds of an issue of obligations are to be used to provide one or more of the exempt facilities listed in subparagraphs (A) through (G) of section 103(c)(4) and in this section is to be resolved by reference to the ultimate use of such proceeds." (Emphasis supplied)

The decision represents in fact a failure by the Commission to comply with the requirements of Paragraph (4) of Section 103(c) which provides that paragraph (1), including the trade or business test of subparagraph (A) and the security interest test of subparagraph (B) of paragraph (2), is not applicable, and in fact results in the application of the trade or business test and the security interest test to the determination of the qualification of a bond issue as between the subparagraphs contained in paragraph (4).

(4) As demonstrated in the material contained as Exhibit 5 in our supplemental letter of December 23, 1974, in fact only an insubstantial portion of the Bonds will be used for facilities which are functionally related to the production of power and the inclusion of such functionally related facilities does not destroy the characterization of the Bonds as coming within the tests established in Reg. § 1.103-8(h).

It is submitted that an unfavorable ruling on the Request because of a failure to follow the regulations of the Commissioner will cause irreparable harm and injury to the District and the spaceholders ("Spaceholders") in view of the current restricted reservoir, potential crop losses to Spaceholders and the increased costs of construction of the Project resulting from inflation during the delay in obtaining a favorable ruling.

I.

THE PROPOSED BONDS COMPLY WITH AND MEET THE TESTS ESTABLISHED IN I.R.C. § 103(c)(4)(G) FOR THE ACQUISITION OF FACILITIES FOR THE FURNISHING OF WATER AVAILABLE ON REASONABLE DEMAND TO MEMBERS OF THE GENERAL PUBLIC.

The Minidoka Reclamation Project, of which the American Falls Reservoir is a part, is a reclamation project under the reclamation laws of the United States. The United States Court of Appeals for the District of Columbia has characterized the primary object of the reclamation laws and of the Minidoka Reclamation Project to be the reclamation of arid lands through irrigation. Burley Irrigation District vs. Ickes, 116 F.2d 529 (1940), Writ of Certiorari denied by the United States Supreme Court on February 3, 1941. Public Law 93-206 ("P.L. 93-206") enacted by the Congress in 1973, which authorizes the Project provides that the United States shall take title to the dam upon reconstruction, but the dam is to be a feature of the Minidoka Reclamation Project, and that the Secretary must operate and maintain the Project as a feature of the Minidoka Reclamation Project discussed in the Ickes case.

In the Ickes case, at pages 530-531, the Court in discussing the Minidoka Reclamation Project characterizes the relationship between irrigation and power in the following language:

> "The production of power for pumping in connection with irrigation is an important incident to this main object. Disposition of surplus power, not required for pumping or other uses of irrigation, for commercial uses is authorized by an amendatory act of April 16, 1906, set forth below. But the development and sale of such power is authorized only as an incidental phase of reclamation, not as a primary or independent end in itself. The statute and its amendments are reclamation acts, not commercial power development acts. The legislation is entirely inconsistent with the development and sale of commercial power whenever that may interfere with the development or irrigation or 'impair the efficiency of the irrigation project."

Section 4 of P.L. 93-206 in authorizing the execution of the Falling Water Contract requires that such contract shall not impair the efficiency of the Project to serve the other purposes of the Minidoka Reclamation Project. This specific requirement is consistent with and in accordance with the general provisions of the Reclamation Act, which provides that no such arrangement shall be made as will impair the efficiency of an irrigation project. See 43 U.S.C.A., Section 522. The Legislature of the State of Idaho in the enactment of Chapter 22 of Title 43, Idaho Code, has limited the authority granted to irrigation districts to replace dams to enter into falling water contracts only for the purpose of preserving, restoring, protecting, and maintaining the rights of storage, diversion and delivery of water necessary and appurtenant to the purposes for which such irrigation district and other like similarly situated districts were organized. Chapter 22 permits the inclusion in a bond issue of penstocks and other facilities related to hydroelectric production plant only when authorized by Act of Congress.

The Idaho Supreme Court, in Barker vs. Wagner, 96 Idaho 214, 526 P.2d 174 (1974), has upheld the power of the District to exercise the authority granted under Chapter 22 in the reconstruction of the Project authorized by Congress in P.L. 93-206.

The proposed contract between the United States and the District for the construction and operation and maintenance

of the replacement dam Exhibit 10 to the Request, as revised ("Government Contract") in accordance with the requirements of P.L. 93-206 sets forth the operating criteria for the operation of the Project by the United States in the following words:

"Operating Criteria

"16. The Replacement Dam will be operated by the United States in a manner so that (1) the storage rights of the Spaceholders shall not be altered or changed, (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 (recreation, fish and wildlife, and flood control) of the Minidoka Project shall not be impaired by the utilization for power generation of the water leaving 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."

See Section 4.6 of the Falling Water Contract wherein the Company consents to the operating criteria set forth in the Government Contract.

The Congress of the United States, the Idaho Legislature, the Idaho Supreme Court, the Bureau of Reclamation, the Spaceholders, and the Company recognize that the purpose of the Project is irrigation and that the purpose of the issuance of the Bonds by the District is for the reconstruction of a dam which is part of a reclamation project the primary purpose of which is the reclamation of arid lands through irrigation.

The Company will have no control over the release of water other than in its capacity as a Spaceholder which is exceedingly nominal. The use of the water by the Company is a non-consumptive use, and the water which is released from the Project is in its entirety available for irrigation purposes. In low water years, assuming that the reservoir would fill to the 1,700,000-acre-feet level, it would be entirely used for irrigation purposes and would be entirely diverted from the reservoir for irrigation purposes.

At the conference held with the Internal Revenue Service on January 23, 1975, Mr. Bone of the Engineering Branch, suggested that if all of the water was not utilized from the American Falls reservoir during the irrigation season, that under the proposed arrangement, the Idaho Power Company would have the right to demand the release of any water held in the reservoir in the non-irrigation season.

Generally, the first irrigation in the spring occurs prior to the time that the river reaches flood stage. Through the use of sophisticated flood forecasting equipment and through coordination with the Bureau of Reclamation, the Soil Conservation Service, and the U. S. Geological Survey, in some years releases are made from reservoirs (in addition to passing natural flow waters) to meet flood parameters, in addition to filling the reservoirs with the flood waters. Obviously in case of a flood, if the reservoirs are full, all the flood water in the river cannot be diverted by the irrigators. Such flood flows would also normally exceed the generating capacity of the Idaho Power Company at the existing American Falls plant or at the plant which would be constructed by the Idaho Power Company pursuant to this proposal.

When the flood is over, the irrigators with water rights utilize all of the natural flow of the Snake River above Milner Dam (located 22 miles east of Twin Falls, Idaho). Milner Dam is a diversion dam which blocks the Snake River entirely and allows the diversion for irrigation purposes of approximately 9,000 c/f/s of water. This natural flow will generally be available in the river at Milner Dam until the middle part of June in an average year. At that time, the flows are diminished and only those with the prior rights obtain any natural flow waters. All other irrigation water users must then call for storage water that they own in the reservoirs of the Minidoka Project. In an average year, they would call for, divert, and use approximately 2/3 or 3/4 of the total water in the American Falls Reservoir.

Because the water users have vivid memories of short water years, any water that can be carried over for use in the subsequent irrigation season is kept in the reservoir and not released. In the event that a short water year occurred in the watershed, there would then be a sufficient supply to fill the reservoir for the following irrigation season with the lesser amount of water. The water users would then be in a better position than if they had had to use all of the water in the reservoir the previous year.

Following the irrigation season, and as soon as forecasts are made that there is adequate water for the ensuing irrigation season, the Bureau of Reclamation then begins to bypass some water flows of the river through the reservoirs so that the flood parameters are not violated when the flood comes and the reservoirs can still be filled. If the flood forecast is such that it would be necessary to release some of the "hold over" storage so as to insure adequate capacity in the reservoirs to avert a flood, some of the "hold over" storage may be released.

In a year that the forecasts indicate that the water supply will be inadequate, all winter flows are stored. For the privilege of storing all such flows, the irrigation water users pay to the Bureau of Reclamation an amount which represents the "power loss" at the Bureau's Minidoka Power plant between American Falls and Milner Dam for the power that would have been generated if water had not been stored. This arrangement exists because after the Bureau completed the construction of the original American Falls dam in the late 1920's, they continued to release winter flows in the amount of 2,700 c/f/s to satisfy the Government's power entitlement in the Minidoka Power Plant. During the drought of the 1930's the American Falls reservoir was not filled. The release of winter flows substantially contributed to this problem. This power right was in direct conflict with irrigation storage and the need to have adequate storage water in the reservoir for the following irrigation season. The American Falls reservoir water users then made an agreement with the Bureau of Reclamation to pay the Government for the power lost which could have been generated in the winter and consequently the water could be stored for irrigation use. This arrangement was last dealt with in 1952 in the Government's contracts with all American Falls spaceholders executed at the time of the construction of the Palisades Reservoir on the Minidoka Project. Language concerning this arrangement is contained in Burley Irrigation District vs. Ickes, 116 F. 2d 529 (1940) at pp. 230-231.

In most irrigation seasons (generally considered to be April 1 to November 1) the flow of the river at Milner Dam (the last diversion structure of the Minidoka project) is all diverted.

Pursuant to Public Law 93-206, a falling water contract has been drafted which specifically states that the Company has no right to call upon the Bureau of Reclamation or the spaceholders for the release of water from the American Falls Reservoir (except for the 45,000 acre feet which the Company owns as a spaceholder of the 1,700,000 acre feet capacity).

The facts as set forth in the Request demonstrate that the Project does in fact meet the requirments of Reg. §1.103-8(h). The Bonds are to be used to provide facilities (the dam and the reservoir and related facilities) for the furnishing of water, which related facilities are in fact functionally related to and subordinate to the facility and they are of a character and size commensurate with the Project within the meaning of Reg. §1.103-8(a)(3). The water is available on reasonable demand to members of the general public as demonstrated on page 27 of the Request.

Water facilities are defined in Reg. §1.103-8(h)(2) as including among other things, reservoirs, dams and related equipment. The Project consists of such facilities. The Project is designed to furnish water for domestic, industrial, irrigation and other purposes thereby also complying with the balance of subparagraph (2) which specifically permits the use of the water for irrigation and industrial purposes. The Flood Control Act of 1944 (Act of December 22, 1944, 33 U.S.C., Section 701-1 (b)), which permits the use of water for navigation which does not conflict with domestic, municipal, stock water, irrigation, mining, or industrial purposes, has been interpreted by the Department of the Interior to permit the use of water for the generation of hydroelectric energy as an industrial use of water within the meaning of that statute. See Federal Reclamation and Related Laws Annotated, Volume II, United States Department of the Interior, 1972, page 798. It is, therefore, submitted that the sale of the falling water to the Company is in literal compliance with the requirements of Reg. §1.103-8(h), inasmuch as the Company is a member of the general public and the water is available on reasonable demand to the members of the general public within the service area of the water system and that it is irrelevant to what extent the contractual arrangement with the Company meets the trade or business test and the security interest test.

As has been demonstrated, under the reclamation laws for the Minidoka Project, the purpose of that project including the American Falls dam and reservoir is irrigation. This is a concept which has been part of the reclamation laws since their inception. See Federal Reclamation and Related Laws, Annotated, Volume 1, United States Department of the Interior, 1972, page 112, where the statement is made that the availability of power revenues to aid irrigation has in one form or another been a part of the general reclamation law almost from its beginning.

A conclusion by the Commissioner that the Project is for other than water is also contrary to principles of law well established in decisions of the United States Supreme Court. In Kaukauna Water Power Co. vs. Green Bay and Mississippi Canal Company, 142 U.S. 254 (1891), the question was presented as to the right of the State of Wisconsin to appropriate private interests on a waterway, to construct a public dam for a public purpose, and to dispose of the incidental water power. The United States Supreme Court clearly held that where the purpose for the project is a public one, and where the surplus is a mere incident to the public improvement, the state is authorized to dispose of the surplus. This is seen in the following quotation at page 276:

> "In Atty-Gen. v. Eau Claire, 37 Wis. 400, it was broadly held that where the State was authorized to erect and maintain a dam for a public municipal use, the Legislature might also empower it to lease any surplus water power created by such dam. The ruling was repeated in State v. Eau Claire, 40 Wis. 533.
>
> "The true distinction seems to be between cases where the dam is erected for the express or apparent purpose of obtaining a water power to lease to private individuals, or where in building a dam for a public improvement, a wholly unnecessary excess of water is created, and cases where the surplus is a mere incident to the public improvement and a reasonable provision for securing an adequate supply of water at all times for such improvement. No claim is made in this case that the water power was created for the purpose of selling or leasing it, or that the dam was erected to a greater height than was reasonably necessary to create a depth of water sufficient for the purposes of navigation at all seasons of the year. So long as the dam was erected for the bona fide purpose of furnishing an adequate supply of water for the canal and was not a colorable device for creating a water power, the agents of the State are entitled to great latitude of discretion in regard to the height of the dam and the head of water to be created; and while the surplus in this case may be unnecessarily large, there does not seem to have been any bad faith or abuse of discretion on the part of those charged with the construction of the improvement. Courts should not scan too jealously their conduct in this connection if there be no reason to doubt that they were animated solely by

a desire to promote the public interests, nor can they undertake to measure with nicety the exact amount of water required for the purposes of the public improvement. Under the circumstances of this case, we think it within the power of the State to retain within its immediate control such surplus as might incidentally be created by the erection of the dam."

Also in Green Bay and Mississippi Canal Company vs. Patten Paper Company, 172 U.S. 58 (1898), the Court again addresses itself in the contest of an eminent domain suit to the dedication of water powers incidentally created by a dam to aid in the erection, completion and maintenance of the dam. It quoted with approval the language from the previous Green Bay case that there is no need of a surplus running to waste and there is nothing objectionable thereby in connection with the water project in permitting a governmental letting the use of it to private parties and thus reimbursing itself for the expenses of the improvement. This concept was cited with approval by the Court in Ashwander vs. Tennessee Valley Authority, 297 U.S. 288 (1936) where in upholding the powers of the Tennessee Valley Authority to dispose of power incident to the construction of a dam for flood control and navigation purposes the Court held that the power of the falling water was an inevitable and natural incident of the construction of the dam. The Court characterizes the incidental energy created as "water power" and it is the disposition of "water power" which is consistent with a water project which is the subject of the Falling Water Contract.

It is submitted that the primary purpose of the Project is not converted into other than water by the incidental although profitable use of the water power created by damming the river. That the Company was willing to enter into the Falling Water Contract and to pay approximately $1,600,000.00 a year for the use of the falling water does not, within the established decisions of the United States Supreme Court, convert the Project in law into other than a water project. No basis has been shown for a conclusion by the Commissioner that there is any relationship in the financing of the cost of the Project between the amount to be paid by the Company and the characterization of the Project as other than as a water project. Neither can it be demonstrated that the real purpose of the Project is for the purpose of supplying such energy to the Company. Therefore the Project should be deemed to meet the exception provided by Congress in I.R.C. §103 (c)(4)(G).

II.

THE CHARACTERIZATION OF THE AMERICAN FALLS REPLACEMENT DAM PROJECT AS OTHER THAN A WATER PROJECT CONSTITUTES A FAILURE BY THE COMMISSIONER TO APPLY REGULATION § 1.103-8(h) IN A PROPER MANNER.

The Commissioner is as bound by its own regulations as is the District. See Petroleum Heat & Power Co., Inc. vs U.S., 405 F2d 1300 (US Court of Claims, 1969) wherein at page 1306 the Court made the following statement:

> "Plaintiff acted in complete accord with the regulations, and any dissatisfaction on the Government's part with plaintiff's treatment of income for the period in question is attributable to the lack of clarity in and omissions from the Government's own regulations. A taxpayer cannot be expected to intuit an unexpressed desire of the Internal Revenue Service that would seemingly contradict written revenue regulations which taxpayer is obliged to follow. The Commissioner is bound by its own regulations as much as is the taxpayer." (Emphasis supplied).

The regulation which governs the question of whether substantially all of the proceeds of the Bonds are to be used for exempt facilities listed in subparagraph (G) of Section 103(c) (4) is Reg. § 1.103-8(a) (4). This regulation requires the Commissioner to resolve this question "by reference to the ultimate use of such proceeds". The Request and the material submitted in connection therewith evidences that the ultimate use of the water is for irrigation irrespective of a nonconsumptive use of the water power by the Company. Inasmuch as the Project clearly fits the requirements of Reg. § 1.103-8(h) and the water impounded is used for irrigation purposes, the regulation requires the conclusion that the Bonds do fit into the exception contained in IRC § 103(c)(4)(G).

A contrary conclusion is an impermissible substitution of the trade or business test and the security interest test as the determining factor of whether or not the facilities constitute one of the exempt facilities under paragraph (4). Paragraph (4) clearly evidences an intention of Congress that the factors set out in paragraph (2) even though present in the financing of exempt facilities under paragraph (4), should not cause the Bonds to be treated as industrial development bonds under paragraph (1). If Congress had

intended, or if the Commissioner in drafting the regulation had intended, that the trade or business test or the security interest test would govern they would have so stated. It is submitted, therefore, that once it is determined that bonds are industrial development bonds under paragraph (2) the fact of the involvment of a nonexempt person in the financing is basically irrelevant in characterizing a project for purposes of the exemptions provided in subparagraphs (A) through (C) of paragraph 4.

The conclusion of the Commissioner apparently is based upon the fact that the Company benefit from the use of the falling water creates a dual relationship which automatically converts the Project from water into other than water, at least to the extent of the financial contribution of the nonexempt person. It is submitted that the offer of the Company to pay what to it is the value represented by the use of the falling water is irrelevant to the decision before the Commissioner. The regulations require this question to be resolved by reference to the ultimate use of the proceeds. The proceeds are to be used to construct the project to impound water to be ultimately used for irrigation by members of the general public. The expenditures of the Company make the transaction an industrial development bond in the first place and should have no relationship to such ultimate use as the use of the water power is nonconsumptive and permits the full amount of the irrigation water to be available to the Spaceholders for irrigation. Certainly regulations under the Internal Revenue Code are as binding on the government as on the taxpayer. It is submitted that the Commissioner would not be following its regulations if it permits the characterization of the Project as other than for water as the ultimate use of the proceeds is for water under the regulation. See McCord vs. Granger, 201 F.2d 103 (CCA 1952).

III.

LESS THAN AN INSUBSTANTIAL PORTION OF THE BOND PROCEEDS IS TO BE DEVOTED TO THE ACQUISITION OF FACILITIES DIRECTLY RELATED TO POWER PRODUCTION.

At our conference on January 23, 1975, we supplied the Service with a copy of the January 10, 1975, letter from the Commissioner of the Bureau of Reclamation in which the Commissioner discusses the considerations present in the inclusion in the Project of the power intake structure facilities. It seems clear the Project would be constructed in basically the same manner as now proposed irrespective of the execution of the Falling Water Contract. Whatever power

facilities are present in the Project are set forth in Exhibit 5 as revised and as furnished to the Service in the supplemental letter of December 23, 1974. This Exhibit 5 contains a breakdown of all specific construction costs of the Project according to the Federal Power Commission Account Numbers and, together with the material contained in the November 27 supplemental letter, shows the method of allocation and the component portions of the power intake structure.

It is submitted that under the regulations of the Service the proper method of determining the allocation of power should be on a functionally related basis and it is submitted that the Request contains a reasonable method for such allocation. It is submitted that the cost estimates in Exhibit 5, as revised, demonstrate that only an insubstantial portion of the Bond proceeds is assigned on this functional basis to power related facilities. If the Commissioner disagrees with this conclusion on the basis of the amount of dollars allocated on a functional basis, this can be cured by the deletion from the Project of such portion of the power intake facilities as will in fact result in only an insubstantial portion of Bond proceeds being used for other than water.

IV.

CONCLUSION

The Spaceholders have been granted authority by Congress to be the constructing agency to finance and provide for the construction of the replacement dam. Failure of the Commissioner in consideration of the request to apply the appropriate regulations in a lawful manner could cause irreparable harm and injury to the Spaceholders who are obligated to pay a portion of the cost of reconstructing the dam. These costs are escalating because the District cannot obtain a favorable ruling, sell its Bonds and commence construction in 1975. Further, irreparable injury and harm can be caused to the Spaceholders from the lack of reservoir capacity especially in a low natural flow water year in the near future. Current indications are that 1975 may be such a year.

The Request as supplemented demonstrates compliance with the regulations and it is respectfully requested that the Commissioner issue a ruling as requested that interest on the proposed Bonds is exempt from Federal income tax under the provisions of Internal Revenue Code, Section 103(C)(4)(G).

Attorneys for American Falls
Reservoir District

CHAPMAN AND CUTLER
PARRY, ROBERTSON, DALY & LARSON

Exhibit 26

Order Issuing Major License (Constructed), Project No. 2258 (FPC Mar. 31, 1975)

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. 2258

ORDER ISSUING MAJOR LICENSE
(CONSTRUCTED)

(Issued March 31, 1975)

The Idaho Power Company (Applicant) of Boise, Idaho, filed with the Commission on February 13, 1959, an application for major license under §4(e) of the Federal Power Act (Act), 16 U.S.C. §797(e), for operation and maintenance of the constructed Project No. 2258. Supplements and revisions to the basic application were filed on February 24, March 24, April 2, 6 and 29, and November 12, 1959; November 21, 1972; and April 10, 1973. Project No. 2258, as applied for, consists of three developments on the Snake River, Idaho, which was found to be a navigable water of the United States by Commission order dated August 4, 1955, in Idaho Power Company, Project Nos. 1971, 2132 and 2133, 14 F.P.C. 72 (1955). Upper Salmon A and B developments are located in the region of Buhl, Counties of Gooding and Twin Falls, Idaho. Shoshone Falls development is located in the region of Twin Falls, Counties of Jerome and Twin Falls, Idaho. American Falls development is located in the region of the City of American Falls, County of Power, Idaho.

We are by this order licensing only the American Falls development under the docket designated as Project No. 2258. While the Commission has included under one license developments owned and operated by the same company when they are closely coordinated hydraulically or electrically, 1/ no close relationship appears to exist here between American Falls and the two other developments involved. American Falls is 99 miles upstream of Shoshone Falls development and over 130 miles upstream of the

1/ See, e.g., Wisconsin Michigan Power Company, Project No. 1759, Order issued November 5, 1974, _F.P.C._; Virginia Electric & Power Company, Project Nos. 2093 and 2009, 23 F.P.C. 537 (1960).

FEDERAL POWER COMMISSION DOCKETED APR 28 1975 DOCKET SECTION

two plants at Upper Salmon development. The Bureau of Reclamation (Reclamation) Minidoka Dam, which impounds Lake Walcott reservoir as part of the Minidoka Reclamation Project, is some 39 miles downstream of American Falls, and separates American Falls from the other developments and interrupts flows from the American Falls reservoir. Accordingly, we will not presently treat Project No. 2258, as applied for, as one project, but will defer consideration of the Upper Salmon and Shoshone Falls portions. Hereinafter, any discussion or comments on Project No. 2258 will refer only to American Falls development, designated hereinafter as American Falls Project. Matters and issues raised in any portion of record in Project No. 2258 relating to Shoshone Falls or Upper Salmon developments will not be treated or resolved by this order.

American Falls Project was constructed in several stages between 1913 and 1927, with the first unit placed in operation in 1913; the second in December, 1923; the third in January, 1924; and the fourth and fifth in June, 1927. The project works consist of: a concrete gravity diversion dam, located immediately below the American Falls dam of Reclamation, with gated spillway; a powerhouse adjacent to the dam with one 3,500-kW generating unit and four 6,000-kW generating units installed therein; step-up transformers and switching equipment associated with the 2.3/6.9/46/138-kV substation; and appurtenant facilities. The diversion dam provides a forebay which receives water from the American Falls reservoir. The forebay supplies the plant and creates an effective head of 48 feet.

Public notice of the filing of the basic application was issued June 1, 1959, with July 20, 1959, as the last day for filing protests or petitions to intervene. Notice was published in the Federal Register on June 6, 1959, 24 Fed. Reg. 4643 (1959).

A petition for leave to intervene was tendered out-of-time by the Idaho Fish and Game Commission (IFG). The petition stated that as it appeared that the construction and operation of the hyroelectric dams at Project No. 2258 have had and will have detrimental effect upon certain fish resources of the State of Idaho, the petitioner requested leave to intervene in order to fulfill its statutory responsibilities. By order dated August 14, 1959, we permitted intervention. Our records reflect no further action taken by IFG respecting the instant proceeding.

Interior has requested the inclusion of special license articles in any license issued for Project No. 2258; Applicant has opposed several of these conditions. By letter dated December 16, 1969, Interior recommended that the Commission hold in abeyance the issuance of a license to Applicant for the American Falls power plant, until the problems arising out of the contemplated replacement of Reclamation's American Falls dam had been resolved.

We note that with the enactment of the Act of December 28, 1973, 87 Stat. 904, a method was adopted by which a Replacement Dam may be constructed by non-Federal entities. We note too, that on September 25, 1973, Applicant filed for major license for its unconstructed American Falls power plant, Project No. 2736, in anticipation of enactment of the Act of December 28, 1973. Therefore, we herein issue a license for Project No. 2258 and provide for Applicant's filing for surrender of its license for Project No. 2258 at such time as it is rendered inoperative by any new project approved by the Commission.

Pursuant to Staff request dated January 26, 1971, Applicant filed on November 21, 1972, and supplemented on April 10, 1973, its Exhibit W or environmental report. Pursuant to Section 2.81 of the Commission's General Rules, 18 C.F.R. §2.81 (1974), Staff has made its initial review of the Applicant's report and determined that the proposed action is not a major Federal action significantly affecting the quality of the human environment requiring the preparation of a detailed environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. §4321 et seq.

We agree. Issuance of this license for continuing operation in the present manner will not produce significant environmental impacts. All three applied-for developments involve plants with limited pondage and are semipermanent features in the environment, having operated from 28 to 68 years. Enough time has elasped since construction so that local human and wildlife populations have adapted to their appearance, spatial requirements and operational modes.

The United States Department of the Interior (Interior) made comments dated August 30, September 28, and November 2, 1962; March 25, 1964; March 24, 1965; and December 16, 1969. We herein provide for the disposition of all issues remaining between Interior and Applicant.

Interior asserts that the hydroelectric installation sought to be licensed under Project No. 2258 is located in part on Federal lands. Applicant has opposed Interior's allegations, saying that none of the developments proposed to be licensed involve public lands. We do not believe that the importance of designating public lands within the project at this time outweighs the public interest in placing this constructed project under license. By Article 29 herein, we have reserved settling this difference pending notice and opportunity for hearing.

Interior recommended license conditions to effect the maximum benefit from use of waters from the Reservoir for generation of power from any Federal plant at the site and from Applicant's plant. We believe that the maximum utilization of the power resource at American Falls can be achieved under the terms of Article 10 regarding the development of additional capacity or other changes and Article 11, which requires electrical and hydraulic coordination with respect to any Federal powerplant at American Falls. In addition, we are requiring by Article 36 that Applicant enter into an agreement with the Bureau of Reclamation within two years to effect the maximum justifiable power development of the American Falls site.

We note that no Federal power plant has been constructed, although one was authorized by the Congress, 64 Stat. 1083. Under Section 10(f) of the Act and Article 12 of this license, the United States will be reimbursed for headwater benefits, if any, provided to Applicant.

Issues have also been raised concerning protection for present and future irrigation development. The interested parties have agreed to Article 32 as recognition that the project should not be operated in a manner that would contribute to the depletion in flow of the Snake River.

As the forebay above Applicant's plant at American Falls backs up against the existing Reclamation Dam, Interior noted that evacuation of all the stored water from the reservoir requires lowering the elevation of the forebay. To insure the integrity of the Reclamation project, Interior requested a license condition which would insure that drawdown would be effected as necessary. Applicant would accede to such a condition only when such drawdown was required for irrigation purposes. We concur with Interior's position on this matter; the United States should be able to control flows at American Falls for all beneficial downstream uses. We have so provided in Article 31 of the license.

Interior also wishes to have included the condition found in Utah Power & Light Company, Project No. 2420, 40 F.P.C. 1495 (1968), wherein the order issuing license said that the Applicant would not make any claims under the authority of the license for depletion of future flows for irrigation of lands or other beneficial purposes. In the Order Modifying License Order on Rehearing in the above-captioned project, 41 F.P.C. 175 (1969), that article was clarified to indicate that the license was not to be construed as affording greater rights to Licensee than it might otherwise have. Here, we adopt the clarified article as Article 33.

At the time the original application for Project No. 2258 was filed on February 13, 1959, Exhibits R (recreational use) and S (fish and wildlife resources) were not required of the Applicant. These plans became required elements of certain applications in 1963 in the case of Exhibit R, 29 F.P.C. 777; and in 1966 for Exhibit S, 35 F.P.C. 1038.

We are requiring by Article 35 that within two years Applicant shall file for Commission approval Exhibits R and S pursuant to our Regulations, 18 C.F.R. §4.41. Such a condition will more fully develop and protect the resources available at the project. Consulation with appropriate agencies is a part of this requirement.

By letter dated January 26, 1971, the Commission's Secretary requested from Applicant a filing of an Exhibit W (environmental report) pursuant to our then applicable Order No. 415, 44 F.P.C. 1529 (1970). On November 21, 1972 and April 10, 1973, Applicant filed the requested data. These filings have given us certain insight on environmental factors involved in this application, and some limited data as to recreational and fish and wildlife matters. In addition, other data exist in the Commission's records relating to the instant application and that in Project No. 2736 which give us a satisfactory basis for evaluating the environmental resources of the area.

The major characteristics of this project are an outstanding forebay fishery for resident species, particularly rainbow and brown trout; boat ramp and public parking area adjacent to the power plant; extensively landscaped 1/4 acre park, 1/2 acre open, grassy park, and 1-1/2 acre plot of grassy

terrain, all used for picnicking; foot bridge for fishing accessibility; and certain common flora and fauna, none of which are endangered species under the Endangered Species Act of 1973, 16 U.S.C. §1531 et seq. No major archeological resources are located in the area.

We have consulted the National Register of Historical Places through February 4, 1975, and find no listed historical sites would be affected. The Old Island Powerhouse has been identified as an historical landmark eligible for inclusion in the National Register. By Article 30 herein we are assuring that project operation will not have a detrimental effect upon it.

Interior recommended that the transmission lines and facilities included under license be made available for wheeling of government power on such terms and conditions as may be mutually satisfactory to the Applicant and Interior. Applicant submits that there is no justification for subjecting the lines to such a requirement, contending that such arrangements should be left to mutual agreements of the parties.

Applicant included for license its Shoshone Falls-American Falls 138-kV transmission line; American Falls-Brady Substation 138-kV transmission line; and the step-up transformer banks and switching equipment which make up the 2.3/6.9/46/138-kV substation adjacent to the American Falls plant. Our analysis of the transmission system leads us to conclude that the interconnected primary transmission system ties in at the American Falls substation. The banks and facilities at the substation connect with the American Falls plant and serve as the primary outlet for plant output, while other sources feed into the substation, commingling the power generated by the project. We do not believe that the two 138-kV lines included in the application are "primary lines" and a part of the project within the meaning of the Section 3(11) of the Act, 16 U.S.C. §796(11).

We, therefore, perceive no need to include those facilities herein under license in an article requiring wheeling of government power. While Applicant has wheeling responsibilities at other projects, see, e.g., Idaho Power Company, Project No. 1971, 32 F.P.C. 342 (1964), we believe that the facts here are sufficiently at variance with those in Project No. 1971 so as to preclude the necessity for the same arrangements. In Project No. 1971 wheeling is accomplished over the applicant's lines from the powerhouse to the junction with the interconnected system, which were deemed jurisdictional. In the instant case there are no such transmission facilities subject to our jurisdiction.

By letter dated August 28, 1959, the U.S. Department of the Army, Corps of Engineers (Corps) commented on the basic application. Corps said that at the present time, the need for navigation facilities in this reach of the river and operational control of these projects in the interests of navigation, appears remote. However, to adequately safeguard the right of any possible future navigation, the Corps recommended that the Commission's standard navigation articles be inserted in any license issued. The Corps has approved the plans of the structures in accordance with the Act and we have included the requested provisions.

By letter dated April 19, 1967, the Snake River Power Association, Inc., stated that the Association is in full support of the position that the Secretary of the Interior has taken with regards to the conditions for granting of the license for the American Falls Plant.

By our previously noted order issued August 4, 1955, 14 F.P.C. 72, we determined that the Snake River from its junction with the Columbia River up to the mouth of Henry's Fork is a navigable water of the United States. In accordance with the criteria set forth in Public Service Company of New Hampshire, Project No. 2288, 27 F.P.C. 830, the termination date for this license will be December 31, 1993. Interior has recommended this termination date. We make the effective date of this license August 1, 1955, which was the first day of the month in which the Snake River was determined to be navigable.

By letter dated March 6, 1975, Idaho Department of Health and Welfare (IDHW) issued a state water quality certificate pursuant to Section 401 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. §1341. In so doing, IDHW stated that it found no adverse impacts on water quality by the operation and maintenance of the American Falls Power Plant facility.

Pertinent parts of Exhibits J, K, L and M filed with the application for major license have been examined and found to conform with the Commission's Rules and Regulations and are hereinafter approved and made part of the license for Project No. 2258. We believe that the structures to be placed under license are safe and adequate. In addition, Applicant has shown the necessary financial ability to continue operation.

The Applicant for Project No. 2258 is also the Applicant for American Falls Project No. 2736, which would be constructed pursuant to the Act of December 28, 1973, to utilize for power generation, falling water releases from the American Falls Replacement Dam. Article 37 of the license approved herein would require surrender of the license for Project No. 2258 when the project is rendered inoperable by the construction or operation of a more comprehensive development at American Falls. Accordingly, we do not consider the application for Project No. 2736 to be a conflicting application within the meaning of the Act. 16 U.S.C. §800(a).

We believe that licensing Project No. 2258 under terms and conditions hereinafter proposed meets the standard of Section 10(a) of the Act, 16 U.S.C. Section 803(a). That Section requires that the 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 water power development, and for other beneficial public uses, including recreational purposes..."

Our evaluation of the question of comprehensive development has included questions of conservation of resources, optimum utilization of water power, maintenance of water quality, fish and wildlife protection, navigation, the inclusion of the project in the interconnected transmission system, and recreational use. The license conditions also insure the development of the project for public use and access.

We believe that the subject matter of the instant application has been fully developed and considered by this Commission. Therefore, we do not believe that a trial-type hearing would contribute any new and relevant information, except as hereinafter provided, and conclude that it is not in the public interest to hold such a hearing at this time.

We conclude on the basis of the facts before us that a major license should be issued to the applicant effective on August 1, 1955 and terminating December 31, 1993. We believe that such a term is appropriate under our prior determinations as to constructed projects in similar cirmumstances.

The Commission finds:

(1) The American Falls development of Project No. 2258 may affect lands of the United States and would be located on a navigable waterway of the United States.

(2) The Shoshone Falls and Upper Salmon developments of proposed Project No. 2258 should be severed from the application and reserved for treatment in later proceedings.

(3) Applicant is a corporation organized under the laws of the State of Maine and is authorized to do business in the State of Idaho.

(4) Public notice of the filing of the application for major license was given on June 1, 1959. A timely petition to intervention was filed by the Idaho Fish and Game Commission and was granted.

(5) No conflicting application is before the Commission.

(6) Subject to the terms and conditions hereinafter imposed, the project does not adversely affect a Government Dam, nor will the issuance of a license upon the conditions hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(7) 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.

(8) Subject to the terms and conditions hereinafter imposed, the cost of continuing operation of this constructed project is reasonable compared to the cost of developing suitable alternative sources of power.

(9) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 36,700 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 1 of the Act is reasonable.

(10) The Commission should reserve the right to determine at a later date, after notice and opportunity for hearing, whether any lands of the United States are occupied by the American Falls Project, and to fix reasonable annual charges for the use, occupancy and enjoyment of such lands.

(11) The plans of the structures affecting navigation have been approved by the Corps of Engineers.

(12) The term of the license hereinafter authorized is reasonable.

(13) 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.

(14) Applicant has submitted satisfactory evidence of compliance with the requirements of all applicable state laws insofar as necessary to effectuate the purposes of a license for the project.

(15) For the reasons discussed above, we do not believe that our actions taken herein constitute a major Federal action significantly affecting the quality of the human environment requiring the preparation of a detailed environment impact statement.

The Commission orders:

(A) This license is hereby issued to Idaho Power Company of Boise, Idaho, under Section 4(e) of the Federal Power Act, for a period effective August 1, 1955, and terminating December 31, 1993, for the continued operation and maintenance of the American Falls Project No. 2258, located on the Snake River and affecting navigable waters of the United States, subject to the terms and conditions of the Act which is incorporated herein by reference as a 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. 2258 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the licensee's interests in such lands, the limits of which are otherwise defined, the use and occupancy of which are necessary for the purpose of the project; 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 J: (FPC No. 2258-3) General Map, American Falls Development

Exhibit K: (FPC No. 2258-6) Detail Map, American Falls Development

(ii) project works consisting of: a concrete gravity diversion dam, located immediately below the American Falls Dam of the United States Bureau of Reclamation, with gated spillway; a forebay impounded by such diversion dam; a powerhouse adjacent to the dam with one 3,500-kilowatt generating unit and four 6,000-kilowatt generating units installed therein; step-up transformers and switching equipment associated with the 2.3/6.9/46/138-kV substation; and 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 for American Falls
Sheet 1 of 4	2258-7	General Plan
Sheet 2 of 4	2258-8	Weir & Gate Sections
Sheet 3 of 4	2258-9	Powerhouse Plans
Sheet 4 of 4	2258-10	Powerhouse Sections

Exhibit M: Pages 1 and 2 of five typewritten pages, entitled "General Description and Specifications of Equipment," filed February 13, 1959, except for the two 46-kV transmission lines, the 138-kV tie to Brady Substation, and the four 138-kV transmission lines included on page 2.

(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, including such portable 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; also, 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 area and project works shall be 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 lands and waters or the project works or 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. The project, including its operation and maintenance and any work incident to additions or alterations authorized by the Commission whether or not conducted upon lands of the United States, 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 such information as he may require concerning the operation and maintenance of the project, and of any such alteration thereof, and shall notify him of the date upon which work with respect to any alteration will begin, and as far in advance thereof as said representative may reasonable specify, and shall notify him promptly in writing of any suspension of work for a period more than one week, and of its resumption and completion. Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative 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 applicability as the Commission may from time to time prescribe for the protection of life, health, or property.

Article 5. 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 to this article.

Article 6. 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 licensee 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 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 7. 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 8. 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 9. 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 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 10. 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 11. 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 12. 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 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 other headwater improvements of the United States the Licensee shall pay to the Commission the amounts for which it 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 13. 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 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.

Article 14. 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 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 15. 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 16. 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 17. 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 reasonable 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. 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 18. 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 structures and operations 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 19. 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 water 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. Licensee, in the interests of promoting optimum recreational use and protecting the scenic values of project lands and waters, may to a reasonable extent grant permits to individuals or groups of individuals for landscape plantings on project lands, or for the construction of access roads, wharves, landings, and other similar facilities, the occupancy of which may, under appropriate circumstance, be subject to the payment of rent in a reasonable amount; Provided, That Licensee, in granting such permits, shall require that permittees provide for multiple occupancy and use of such facilities, where

feasible, and shall ensure that such facilities are constructed and maintained in such a manner so as to be consistent with shoreline aesthetic values; Provided further, That the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the License.

Article 20. 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 21. 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 statutes and regulations.

Article 22. 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 that it will reasonably preserve the project environmental values and so it will not 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 23. 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 24. 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 25. 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 26. 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 27. 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 28. 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 29. The Commission reserves the right to determine at a later date what, if any, lands of the United States are occupied or affected by the project works and to fix the annual charge for the use thereof.

Article 30. The Licensee shall cooperate with the U.S. Department of the Interior's Bureau of Reclamation, the Office of the Idaho State Historic Preservation Officer, and other appropriate agencies (1) in the identification of historical resources within the project boundary, (2) in developing a plan for protection of such structures including the Old Island Powerhouse, and (3) in developing and executing plans for the improvement of such resources in the interest of recreation, education, and historic preservation, including the provision of public access to such structures.

Article 31. The Licensee shall operate its facilities at American Falls in such a manner as not to interfere with the release of water by the Government at American Falls Dam and, when required by the United States, acting through the Department of the Interior, the Licensee shall draw down the elevation of water in its forebay pool sufficiently to permit the waters to flow from the Government's American Falls Dam into the forebay of the Licensee's installation at rates of flow as determined by the Department of the Interior.

Article 32. The project shall be operated in such a 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.

Article 33. 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 34. The Licensee shall, to the satisfaction of the Commission's authorized representative, install and operate such signs, lights, sirens or other devices 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 35. The Licensee shall, within two years from the issuance of the license, file for Commission approval an Exhibit R and an Exhibit S for the project conforming to the requirements of Section 4.41 of the Commission's Rules and Regulations under the Federal Power Act. These exhibits shall be prepared in cooperation with the appropriate State and Federal agencies with Exhibit R specifically incorporating a solid waste management plan to include (a) the location of solid waste receptacles to be provided at public areas, picnic areas, and boat access areas, (b) schedules for collection from the 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 36. Within two years from the issuance of this order, the Licensee shall enter into an agreement with the Bureau of Reclamation, United States Department of the Interior, to effect the maximum justifiable development of the power resources of the American Falls site consistent with comprehensive development for other beneficial public purposes.

Article 37. The Licensee shall file for surrender of license for this project when its generating capacity is rendered inoperable by reason of the construction and/or operation of a more comprehensive hydroelectric development at American Falls.

Article 38. The Licensee shall continue to consult and cooperate with the Idaho Department of Parks and Recreation, Idaho Fish and Game Department, Fish and Wildlife Service and the Bureau of Reclamation of the U.S. Department

of the Interior, the City of American Falls, and other appropriate agencies for the protection and development of the natural resources and environmental values of the project area.

Article 39. The Licensee shall pay the United States the following annual charges, effective August 1, 1955:

(i) For purpose of reimbursing the United States for the cost of administration of Part 1 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 36,700 horsepower;

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, an amount to be hereafter determined by the Commission.

Article 40. 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.

(E) The Licensee shall within 90 days from the date of acceptance of this license, file in accordance with the provisions of Section 11.20(a)(4) of the Regulations a statement under oath showing the gross amount of power generation for the project in kilowatt-hours for each calendar year commencing August 1, 1955.

(F) The Upper Salmon and Shoshone Falls developments included as part of the application for license for American Falls Project No. 2258 filed February 13, 1959, are hereby severed from that application and will be considered separately at a later date.

(G) 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

Kenneth F. Plumb,
Secretary.

IN TESTIMONY of its acknowledgement of acceptance of all of the provisions, terms and conditions of this license the Idaho Power Company, this 25th day of April, 1975, has caused its corporate name to be signed hereto by JAMES E BRUCE its President, and its corporate seal to be affixed hereto and attested by PAUL L JAUREGUI, its Secretary, pursuant to a resolution by its Board of Directors duly adopted on the 10th day of April, 1975, a certified copy of the record of which is attached hereto.

Idaho Power Company

By _____
President

Attest:

_____
Secretary

(Executed in Quadruplicate)

RESOLUTIONS

RESOLVED, That the officers of the Company be, and they hereby are, authorized in their discretion to file for rehearing on Federal Power Commission Order Issuing Major License (Constructed) for the American Falls development under Project No 2258, or to acknowledge, accept and execute acceptance of all of the terms and conditions of the Federal Power Act, and all of the provisions, terms and conditions prescribed in conformity therewith by the Federal Power Commission in its Order Issuing Major License (Constructed) for American Falls development of Project No 2258, issued March 31, 1975, as contained and expressed therein, for and on behalf of, and as the act and acceptance of said license, and all of the provisions, terms and conditions thereof by this Company; and be it

FURTHER RESOLVED, That the officers of the Company be, and they hereby are, authorized in their discretion to file for rehearing on Federal Power Commission Order Issuing Major License (Unconstructed) and Permitting Withdrawal of Intervention for the American Falls Development under Project No 2736, or to acknowledge, accept and execute acceptance of all of the terms and conditions of the Federal Power Act, and all of the provisions, terms and conditions prescribed in conformity therewith by the Federal Power Commission in its Order Issuing Major License (Unconstructed) and Permitting Withdrawal of Intervention for American Falls development of Project No 2736, issued March 31, 1975, as contained and expressed therein, for and on behalf of, and as the act and acceptance of said license, and all of the provisions, terms and conditions thereof by this Company.

STATE OF IDAHO)
) ss
County of Ada)

I, PAUL L JAUREGUI, Secretary of Idaho Power Company, do hereby certify that the above and foregoing is a true, full and correct copy of the resolutions unanimously passed and adopted by the Board of Directors of said Company at a regular meeting of said Board held at Boise, Idaho, on Thursday, the 10th day of April, 1975, of which meeting due notice was given, and that a quorum was present and voting throughout the meeting and at the time of the passage and adoption of said resolutions; that the said resolutions have not been in any way altered, amended or rescinded, and the same is in full force and effect as of the date of this certificate.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed ths corporate seal of said Company this 25th day of April, 1975.

(CORPORATE SEAL)

Paul T. Laurenzi

Exhibit 27

Order Issuing Major License (Unconstructed), Project No. 2736 (FPC Mar. 31, 1975)

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Copy to: Lt. Koenher 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.

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

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.

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).

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.

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.

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.

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

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
Sheet 1 of 10	2736-18	Project Layout-Plan & Section
Sheet 2 of 10	2736-19	Powerhouse General Arrangement-Top Deck & Generator Floor
Sheet 3 of 10	2736-20	Powerhouse General Arrangement-Turbine Floor & Inspection Gallery
Sheet 4 of 10	2736-21	Powerhouse General Arrangement-Transverse Sections
Sheet 5 of 10	2736-22	Powerhouse General Arrangement-Longitudial Section

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

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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

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.

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

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

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

(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)

Exhibit 28

S. Rep. No. 94-263 (1975)

Calendar No. 255

94TH CONGRESS
1st Session

SENATE

REPORT
No. 94-263

AMENDING THE ACT OF DECEMBER 28, 1973, WHICH AUTHORIZED THE REPLACEMENT OF THE EXISTING AMERICAN FALLS DAM

JULY 3, 1975.—Ordered to be printed
Filed under authority of the order of the Senate of June 26, 1975

Mr. CHURCH, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany S. 1152]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 1152) to clarify the relationship of the provisions of the Act of December 28, 1973 (87 Stat. 904) to the provisions of section 103 of title 26, United States Code, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of this measure (S. 1152) is to clarify the relationship of the provisions of the Act of December 28, 1973 (87 Stat. 904) to 26 U.S.C. Section 103. The Act of December 28, 1973, authorized the Secretary of the Interior to negotiate and enter into agreements with the American Falls Reservoir District, or an appropriate agency representing water users which own space in the Reservoir, to arrange for the financing and construction of a replacement for the existing American Falls Dam. The measure provides that the dam and related facilities to be so financed and constructed by the American Falls Reservoir District constitute solely water facilities for all purposes of 26 U.S.C. Section 103(c)(4), and therefore, the obligations to be issued to finance construction of the dam shall not be considered industrial development bonds on which the interest is taxable.

S443-27

BACKGROUND

I. PROBLEMS ENCOUNTERED IN ATTEMPTS TO PRIVATELY FINANCE CONSTRUCTION OF THE REPLACEMENT DAM

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 for safety reasons because of excessive pressures on the dam which were caused by an alkali-aggregate reaction and deterioration in the concrete.

The Act of December 28, 1973, was adopted to permit replacement and rehabilitation of the American Falls Dam through the use of non-Federal financing by the American Falls Reservoir District, a political subdivision of the State of Idaho. The plan to finance replacement of the dam represented a deliberate choice over legislation concurrently proposed and considered which would have obligated the Federal government to replace the structure. Not only would such financing remove a financial burden from the taxpayer and assure more rapid implementation of the replacement dam project, but Federal involvement would be minimal and State and local involvement would be at a maximum. The Act 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 also contemplated among those involved with the project and with the Act that bonds issued by the District to finance construction would be tax exempt. That understanding was not challenged throughout Congressional action and subsequent passage of the Act.

To assure that the bonds would be successfully marketed the American Falls Reservoir District has sought a ruling from the Internal Revenue Service that interest on the bonds would be tax exempt. In June of 1974 the District requested a ruling from the Service but that ruling has yet to be issued.

The delays in obtaining the tax ruling and the completion of the review and approval of the contracts by the Secretary of the Interior have resulted in several postponements of the date for commencement of construction of the replacement dam. These delays have also resulted in increased project costs because of inflation, thereby adding to the spaceholders' costs for financing the construction project. Assuming commencement of construction in the late fall of 1975 the total

project cost could exceed $40,000,000, nearly doubling the original estimated project costs.

II. RELEVANT INTERNAL REVENUE CODE PROVISIONS

In 1968, Section 103(c) was added to the Internal Revenue Code to provide for the taxation of interest on industrial development bonds. 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. Regulations promulgated by the Internal Revenue Service under Section 103(c) provide that even though the facility financed is owned and operated by the state or local political subdivision the bonds will be treated as industrial development bonds if more than 25 percent of the output of the facility so financed is under the contract, to be taken, or taken or paid for, by a taxable trade or business. Therefore, the effect of the regulation is that if a state or local unit constructs or acquires a dam and reservoir or other facilities for the impoundment and storage of water through the issuance of its bonds and if more than 25 percent of the water is taken, or taken and paid for, pursuant to a contract with a non-exempt person, like Idaho Power Company, even though ownership of the facility remains in the state or local unit, the bonds are classified as industrial development bonds for purposes of Section 103(c).

Section 103(c)(4), however, continued unlimited interest exemption on obligations issued to finance certain exempt activities. As originally enacted, exempt activity (E) consisted of "Sewage or solid waste disposal facilities or facilities for the local furnishing of electric energy, gas or water". The service, by regulation, has determined that "local furnishing" is limited to not more than two contiguous counties or political equivalents, whether or not such counties are located in one state.

Section 103(c)(4) was amended in 1971 to establish a new category of exempt water activity as "(G)" and deleted "water" from (E); (G) as so added reads: "Facilities for the furnishing of water, if available on reasonable demand to members of the general public".

The Service has promulgated the following regulation under Section 103(c)(4)(G) which reads in pertinent part as follows:

> Reg. § 1.103-8(h) Water facilities—(1) General rule. Section 103(c)(4)(G) provides that section 103(c)(1) shall not apply to obligations issued by a State or local governmental unit which are part of an issue substantially all of the proceeds of which are to be used to provide facilities for the furnishing of water which are available, on reasonable demand, to members of the general public. A water facility will satisfy the public use test of paragraph (a)(2) of this section if it will provide water, on reasonable demand, to any member

of the general public within the service area of the water system of which such facility is a part.

(2) Definition. For purposes of section 103(c)(4)(G) and this paragraph, the "water facilities" include artesian wells, reservoirs, dams, related equipment and pipelines, and other facilities used to furnish water for domestic, industrial, irrigation, or other purposes.

The dam and related facilities to be financed and constructed by the American Falls Reservoir District under the Act meet the test of such regulation as an exempt activity in that:

(1) the dam and related facilities will provide water on reasonable demand to any member of the general public within the service area of the water system of which the facility is a part; and

(2) the dam and related facilities constitute a reservoir, dam, and related equipment and other facilities used to furnish water for domestic, industrial, irrigation and other purposes.

The Service, however, is understood to have expressed the position, in effect, that where a non-exempt person uses falling water in its trade or business for the furnishing of electric energy pursuant to a take or pay contract which secures the bonds an interrelationship of water and power is created which the Service is unable to separate and to allocate to the exempt activities contained in Section 103(c)(4), and would conclude that therefore more than an insubstantial portion of bond proceeds are to be used for other than the furnishing of water for the purposes of the exempt activity described in (G).

In approving the Act of December 28, 1973, the Interior Committee did not intend that the execution of the falling water contract by the American Falls Reservoir District with a non-exempt person, as authorized in Section 4 of the Act, would cause the dam and related facilities to be characterized as other than water facilities or that the dam and related facilities are any less a water project as a result of the payment for the use of falling water for hydroelectric power generation by the Idaho Power Company. The dam, when replaced, will continue to be operated and maintained by the Bureau of Reclamation as a government dam as a part of the Minidoka Project. The Act of December 28, 1973, is specific in requiring that the execution of the falling water contract must not impair the efficiency of the project to serve the irrigation purposes of the Minidoka Project. The Secretary has implemented this requirement by inclusion of the following language in the draft of the contract proposed to be entered into between the Secretary and the American Falls Reservoir District pursuant to Section 1 of the Act:

OPERATING CRITERIA

16. The Replacement Dam will be operated by the United States in a manner so that (1) the storage rights of the Spaceholders shall not be altered or changed, (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 (recreation, fish and wildlife, and flood control) of

the Minidoka Project shall not be impaired by the utilization for power generation of the water leaving 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.

The use of falling water for the hydroelectric generation of power as authorized in the Act is subordinate to irrigation, is a non-consumptive use of water and does not destroy the essential irrigation or water character of the facilities. It is, therefore, necessary to clarify the relationship between the Act of December 28, 1973, to the provisions of 26 U.S.C. 103 (C) (4) by establishing that for all purposes of that section the dam and related facilities to be financed by the American Falls Reservoir District pursuant to the Act of December 28, 1973, constitute solely facilities for the furnishing of water which is available on reasonable demand to the members of the general public, and therefore qualify solely as exempt facilities pursuant to 26 U.S.C. 103(c)(4)(G).

III. CONCLUSION

In authorizing the replacement of the American Falls dam under the provisions of the Act of December 28, 1973, the Congress expected and intended that the benefits of tax-free interest would be available to the bonds issued by the American Falls Reservoir District. The financial viability of the proposal rested upon this reasonable expectation.

In this Act, the Congress merely intends to clear away any interpretive impediments to the original expectation and intent regarding tax exemption. It does not intend to make or influence interpretations of the tax law in any other instance nor does it intend to reinterpret any existing legal rights or positions of the American Falls water-users or any aspect of the American Falls project.

Analysis of Bill

The provisions of S. 1152 as reported to the Senate are as follows: The measure provides that in order to clarify the relationship of the provisions of the Act of December 28, 1973, to the provisions of Section 103 of 26 U.S.C., the dam and related facilities authorized to be financed and constructed by the American Falls Reservoir District as provided in the Act shall for all purposes of 26 U.S.C. section 103(c)(4) constitute "facilities solely for the furnishing of water, available on reasonable demand to members of the general public". The dam and related facilities would thus quality as an exempt water activity under 26 U.S.C. Section 103(c)(4)(G).

Committee Recommendation

The Committee on Interior and Insular Affairs, by unanimous vote of a quorum present at an open executive session on May 14, 1975, recommends that S. 1152 be enacted.

EXECUTIVE COMMUNICATIONS

The reports of the Department of the Interior and the Department of the Treasury on S. 1152 are set forth in full below.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 23, 1975.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department concerning S. 1152, "To amend the Act of December 28, 1973 (87 Stat. 904) to clarify the realtionship of the provisions of said Act to the provisions of section 103 of Title 26, United States Code."

The purpose of S. 1152 is to assure tax-exempt status for the bonds that may be issued by a non-Federal agency to provide for the replacement of the American Falls Dam. S. 1152 is based upon uncertainties that have arisen in the proposed implementation of Public Law 93–206, the Act which this bill would amend.

That Act, (87 Stat. 904), forms the basic legal framework for the replacement of American Falls Dam. The Act authorizes the Secretary of the Interior to enter into agreements with the American Falls Reservoir District, a non-Federal agency, or some other appropriate agency representing the reservoir spaceholders, to finance and provide for the construction of a dam and related facilities to replace the existing dam, which is part of the Minidoka Project, located in the upper Snake River basin, Idaho.

The plan upon which the Act was based was a joint proposal, by the spaceholders in the American Falls Reservoir, and by the Idaho Power Company, to provide for non-Federal financing for the new dam through a bond issue by the spaceholders. The Idaho Power Company would pay the spaceholders an amount equal to the annual requirement for amortization and interest on the bonds over a 40 year period, up to $19 million. The spaceholders would pay the remaining cost of the dam and would receive the use of the total storage in the reservoir. The power company would have the benefit of the falling water. The spaceholders and the Federal Government were to pay certain additional costs, and the spaceholders would help Idaho Power obtain a Federal Power Commission license for construction of a power plant at the dam. [The license has now been issued.]

At the time of the passage of Public Law 93–206, it was the expectation among those involved with the project and with the Act that the proposed bonds would be tax exempt. That understanding went unchallenged throughout the proceedings leading to passage of the Act. Since that time, however, the Internal Revenue Service has challenged the exempt status. This challenge is evidently based on a determination that the proposed bond issue would not fall within the exemption provision of Internal Revenue Code found at section 103, 26. U.S.C. That section provides, in subsection (a) (1), that (with regard to the gross income computed by a taxpayer for income tax purposes) "gross

income does not include interest on the obligations of a State—or any political subdivision" thereof. Section 103 was subsequently amended by adding provision "(C)", which excluded industrial development bonds from the exemption status provided in subsection (a)(1). Subsection (C) further provided, however, that certain industrial development type bonds would qualify for exempt status if "issued as part of an issue substantially all of the proceeds of which are used to provide" [A number of facilities listed here.] "(G) facilities for the furnishing of water, if available on reasonable demand to members of the public." S. 1152 is specifically directed at taking advantage of this provision.

While we support the purpose of the Act of December 28, 1973, and have consistently supported it in prior legislative reports, the bill at hand, S. 1152, concerns a tax issue with which the Treasury Department has the primary expertise and authority. Accordingly, we must defer to the Treasury Department insofar as their tax views are concerned.

It should be pointed out the plan adopted represented a deliberate choice over alternative legislation, proposed and considered simultaneously with Public Law 93–206, which would have placed full responsibility for the replacement dam project with the Federal government. The plan adopted was favored because it avoided total Federal involvement, it favored the utilization of private enterprise and non-Federal governmental agencies, and it appeared to offer the advantage of more rapid implementation of the replacement program. The benefits to the United States and the taxpayer are considerable in that the burden of financing the reconstruction project have been removed. Upon satisfactory completion of the project, title to the dam will vest in the United States.

The ability of the spaceholders to carry out their plan to finance the replacement dam may depend upon obtaining a favorable interest rate on the bonds they issue. Obviously the rate will be substantially less if the bonds are afforded tax-exempt status. The spaceholders estimate that a saving of $23.5 million in interest costs could be achieved if their bonds are tax-exempt.

The dam was originally constructed by the Bureau of Reclamation in 1927. It has provided substantial benefits to the region since that time, particularly for irrigation, and the regional economy is highly dependent on the dam and reservoir, and on replacement of the dam. Other important benefits are provided by the dam in terms of flood control, fish and wildlife conservation, and recreational facilities open to the public.

The present dam must be replaced because substantial deterioration has occurred since its construction in 1927. The dam in its current condition presents a potential safety hazard and the use of the space behind the dam has been diminished by ⅓ due to the deteriorated condition of the dam. The need for replacement was documented in a Bureau of Reclamation report that was published in 1972 after thorough study.

The basic plan for replacement has been approved and enacted through legislation. Although it is unfortunate to further delay the

implementation of that plan, with respect to the legislation before us, S. 1152, we must defer to the views of the Treasury Department.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

RAYSTON C. HUGHES,
Assistant Secretary of the Interior.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., May 7, 1975.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 1152, "To amend the Act of December 28, 1973 (87 Stat. 904) to clarify the relationship of the provisions of said Act to the provisions of section 103 of title 26, United States Code."

The Act of December 28, 1973 (Public Law 93–206) authorizes the Secretary of the Interior to enter into agreements with the American Falls Reservoir District or other agency to provide for the construction of a dam to replace the existing American Falls Dam of the Minidoka Federal reclamation project. Public Law 93–206 provides that upon completion of construction the United States shall take title to the dam and the Secretary shall operate and maintain the replacement dam as a feature of Minidoka project. S. 1152 would amend Public Law 93–206 to provide that for purposes of section 103(c)(4) of the Internal Revenue Code obligations issued to finance construction of the dam shall not be considered industrial development bonds on which the interest is taxable. Thus, construction of the dam could be financed by the issuance of tax-exempt obligations.

From the standpoint of debt management policy, the Department sees no justification for financing this Federal project through tax-exempt obligations. The proposal would be contrary to longstanding Federal policy against financing Federal activities in the tax-exempt bond market. The obvious attraction of the tax-exempt borrowing rate has prompted a number of similar proposals in other areas, but such financing would involve excessive costs to the Federal Government, because of the revenue losses, and would also result in higher borrowing costs to States and local governments because of the added burden on the tax-exempt bond market. Attached for the convenience of the Committee is a list of twelve statutes enacted in recent years in which Congress has precluded Federal guarantees of tax-exempt obligations and provided other means of achieving the program and budget objectives without resort to this undesirable and unnecessary costly method of financing.

In view of the foregoing, the Department is strongly opposed to the proposal.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

RICHARD R. ALBRECHT,
General Counsel.

Enclosure.

STATUTES WHICH PRECLUDE FEDERAL GUARANTEES OF TAX-EXEMPT OBLIGATIONS

1. Loans for modernization and construction of hospitals and other medical facilities; Public Law 91-296, June 30, 1970, 42 U.S.C. 291j-7(e).
2. New Community debentures; Public Law 91-609, December 31, 1970, 42 U.S.C. 4514.
3. Water and waste facility loans sold out of the Agricultural Credit Insurance Fund; Public Law 91-617, December 31, 1970, 7 U.S.C. 1929(a)(1).
4. Farm Credit Administration member institution guarantees; Public Law 92-181, December 10, 1971, 12 U.S.C. 2204.
5. Academic facilities loan insurance; Public Law 92-318, June 23, 1972, 20 U.S.C. 1132c-5.
6. Washington Metropolitan Area Transit Authority obligations; Public Law 92-349, July 13, 1972, D.C. Code 1-1441 note.
7. Loans sold out of the Rural Development Insurance Fund; Public Law 92-419, August 30, 1972, 7 U.S.C. 1929a(h).
8. Vocational rehabilitation facilities mortgages; Public Law 93-112, September 26, 1973, 20 U.S.C. 773(c).
9. National Railroad Passenger Corporation guaranteed obligations; Public Law 93-146, November 3, 1973, 45 U.S.C. 602(g).
10. Loan guarantees for initial operating costs of health maintenance organizations; Public Law 93-222, December 29, 1973, 42 U.S.C. 300e-7(c)(3).
11. Loan guarantees to assist the economic development of Indians and Indian organizations; Public Law 93-262, April 12, 1974.
12. State housing finance and State development agency obligations; section 802 of Public Law 93-383, August 22, 1974.

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 S. 1152, 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 changes is proposed is shown in roman):

SEC. 4 OF THE ACT OF DECEMBER 28, 1973 (87 STAT. 904)

SEC. 4. The constructing agency may contract with an appropriate non-Federal entity for the use of the falling water leaving the dam for power generation, which contract shall provide for a monetary return

to the constructing agency to defray the costs of construction of the replacement dam. The constructing agency may enter into agreements with an appropriate non-Federal entity to coordinate the construction of hydroelectric power facilities with the construction of the replacement dam. The contract and agreements for use of the falling water shall not be subject to the limitations of section 9(c) of the Reclamation Project Act of 1939 (53 Stat. 1194), or any similar limitations in any other applicable Acts of Congress: *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.] *project: And provided further, That the dam and related facilities to be financed and constructed by the constructing agency as provided in this Act shall for all purposes of section 103(c)(4) of title 26, United States Code, constitute facilities solely for the furnishing of water, available on reasonable demand to members of the general public.*

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THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, June 27, 1975, be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees may be authorized to meet during the session of the Senate today until 11:30 a.m.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

QUORUM CALL

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Does the Senator from North Carolina seek recognition as acting minority leader?

Mr. HELMS. Only briefly, Mr. President.

ALEXANDER SOLZHENITSYN

Mr. HELMS. Mr. President, during the recess last week I noticed in the press of North Carolina a report on what purported to be comments by Ron Nessen, who is, of course, the news secretary of the President of the United States. It seemed to me that Mr. Nessen went out of his way to be snide, indeed approaching the point of sarcasm concerning a distinguished citizen of the world, Alexander Solzhenitsyn.

Mr. Solzhenitsyn, of course, is visiting in Washington at the present time.

As many Americans know, here is a man who has literally risked his life on behalf of freedom in the Soviet Union. He has been exiled because he dared to speak the truth about the tyranny of communism, which continues to spread around the world. It is widely speculated that he no doubt would have been executed had it not been for the fact that his great book "Gulag Archipelago," and his other books, were prepared in duplicate manuscript form with one copy smuggled out of the country to be released if he were imprisoned or executed. Mr. Solzhenitsyn was sent to a slave labor camp, a concentration camp, for committing the offense of telling the truth. It was then that his books attracted worldwide attention.

Mr. President, this Senator from North Carolina feels honored that Mr. Solzhenitsyn is in America. As the distinguished Presiding Officer will recall, the Senate of the United States last year, and again this year, voted unanimously to confer honorary citizenship upon Mr. Solzhenitsyn.

About 2 weeks ago, the distinguished Senator from South Carolina (Mr. THURMOND) and I sent a joint letter to the President of the United States, expressing the hope that the President would extend the courtesy of an invitation to Mr. Solzhenitsyn while this distinguished Nobel Prize winner is in this country. I am informed that the advisers—I am tempted to put quotation marks around the word "advisers"—to the President told him, in effect, "Oh, no, Mr. President; we may make the Russians mad if you extend the common courtesy of 5 minutes with Mr. Solzhenitsyn."

Mr. President, I suggest that this is a sad day for our country if the United States of America must tremble in cowering timidity for fear of offending Communists unless the President of the United States refuses to see a dedicated exponent of freedom—a dedicated Christian, I might add—a Nobel Prize winner, who comes to our country as a visitor.

I would be less than candid if I did not today express my regrets at this discouraging decision by the White House. I can only hope that the President, himself, has not given his personal attention to this matter and that the refusal to see Mr. Solzhenitsyn was purely a judgment made by the President's advisers. I think the President should reverse this judgment of his so-called advisers, because they have given him bad advice, and certainly it is a slap in the face to all the freedom-loving people throughout the world who understand the nature of communism.

Mr. Solzhenitsyn, in a visit with me a few days ago, commented that the United States is inordinately concerned with world war III. He said:

> Senator, what your leaders apparently do not understand is that World War III is over and that the Communists have won it, taking over 20 countries in the last 15 or 20 years.

So I repeat, Mr. President, the hope that the President of the United States will reconsider this bad advice that his advisers have given him and extend even yet the courtesy of at least a brief invitation to Mr. Solzhenitsyn. If the President has time to roll out the red carpet for soccer players and actors—and Communist functionaries—surely he should be able to find time for a distinguished Nobel Prize winner who has been willing to lay down his life in defense of freedom.

QUORUM CALL

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business, for not to exceed 30 minutes, with statements therein limited to 5 minutes each.

Mr. MOSS. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECESS UNTIL 1 P.M.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate stand in recess until 1 p.m. today.

There being no objection, the Senate, at 11:20 a.m., recessed until 1 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. HELMS).

REPLACEMENT OF THE EXISTING AMERICAN FALLS DAM—ASSURANCE OF TAX-EXEMPT STATUS OF BONDS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 255, S. 1152, which I understand has been cleared on both sides.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

> A bill (S. 1152) to amend the act of December 28, 1973 (87 Stat. 904) to clarify the relationship of the provisions of said act to the provisions of section 103 of title 26, United States Code.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. CHURCH. Mr. President, in 1973, Congress passed and the President signed into law a proposal to permit replacement and rehabilitation of the American Falls dam through the use of non-Federal financing by the American Falls Reservoir District, a political subdivision of the State of Idaho. The plan to finance replacement of the dam represented a deliberate choice over legislation concurrently proposed and considered which would have obligated the Federal Government to replace the structure. Not only would such financing remove a financial burden from the taxpayer and assure more rapid implementation of the replacement dam project, but Federal involvement would be minimal and State and local involvement would be at a maximum. The act 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.

It was the expectation of those of us involved with the project and with the act that bonds issued by the reservoir district to finance construction would be tax exempt. That understanding was not challenged throughout congressional ac-

tion and subsequent passage of the act. In fact, a spokesman for the administration noted in a letter to the chairman of the Interior Committee that the spaceholders would obtain financing for the new dam by the issuance of tax-exempt bonds. Thus, in supporting passage of the original act, the administration also contemplated tax-exempt status.

To assure that the bonds would be successfully marketed, the American Falls Reservoir District has sought a ruling from the Internal Revenue Service that interest on the bonds would be tax exempt. In June of 1974, the district requested a ruling from the Service, but that ruling has yet to be issued.

Passage in the Senate of S. 1152, a bill to clarify the relationship of the provisions of the American Falls Dam Replacement Act to provisions of section 103 of the Internal Revenue Code, will specifically define the intent of Congress and will help to assure adequate financing for replacement costs. I want to emphasize that this bill does not create a precedent for other water projects. It simply clarifies the situation for the American Falls dam reconstruction project.

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 for safety reasons, because of excessive pressures on the dam which were caused by an alkali-aggregate reaction and deterioration in the concrete.

The economy of southern Idaho depends upon affirmative action to reconstruct and rehabilitate the dam. Nearly 900,000 acres of prime agricultural land depend, to a large extent, upon the waters stored behind the present, deteriorating structure.

It is for these reasons that speedy passage of the act authorizing replacement was sought in the first instance. Further delay is a luxury the farmers in Idaho cannot afford. I am hopeful the House of Representatives will act quickly and positively on this matter.

The bill was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4 of the Act of December 28, 1973 (87 Stat. 905) is hereby amended by changing the final period to a colon and adding the following language: *"And provided further,* That the dam and related facilities to be financed and constructed by the constructing agency as provided in this Act shall for all purposes of section 103(c)(4) of title 26, United States Code, constitute facilities solely for the furnishing of water, available on reasonable demand to members of the general public.".

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Heiting, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore (Mr. BUMPERS) laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

APPROVAL OF JOINT RESOLUTIONS

A message from the President of the United States stated that on June 28, 1975, he had approved and signed the enrolled joint resolution (S.J. Res. 94) to extend by 90 days the expiration date of the Defense Production Act of 1950 and to extend the funding of the National Commission on Productivity and Work Quality for 90 days; and on July 4, 1975, he had approved and signed the joint resolution (S.J. Res. 93) to provide that the flag of the United States of America may be flown for 24 hours of each day in Valley Forge State Park, Valley Forge, Pa.

PROPOSED LEGISLATION BY THE PRESIDENT—MESSAGE FROM THE PRESIDENT

The ACTING PRESIDENT pro tempore (Mr. BUMPERS) laid before the Senate a message from the President of the United States transmitting a draft of proposed legislation entitled "Federal-Aid Highway Act of 1975"; which, with the accompanying papers, was referred to the Committee on Finance and the Committee on Public Works, jointly, by unanimous consent. The message is as follows:

To the Congress of the United States:

Twenty years ago, President Eisenhower sent to the Congress a landmark report on our Nation's highways. That report, and the legislation it inspired, launched the Nation on one of the most ambitious public works programs in history—construction of the 42,500-mile Interstate Highway System.

Today, eighty-five percent of the Interstate system is open to traffic, and the system has proven vital to the Nation's commercial prosperity and to the individual mobility of millions of Americans.

The Highway Trust Fund which has financed this remarkable program is scheduled to expire on October 1, 1977. I am today recommending legislation to extend the Trust Fund but limit its use to completion and improvement of the Interstate system itself. Other highway projects receiving Federal assistance would be funded through the general treasury.

In addition, I am recommending that income to the Fund be reduced by transferring two cents of the current Federal gasoline tax from the Trust Fund to the general treasury. At the same time, I am recommending that the Federal gasoline tax be reduced by one cent per gallon in those States which increase their State gasoline tax by an equal amount.

In this way, the ability of State and local governments to deal with their own transportation problems will be improved, but costs to the highway user will not be increased.

Top priority in this legislation will go to completion of those segments of the Interstate system which will make the system truly national in scope.

I am also proposing consolidation of Federal highway programs under three broadly-based categories, combining some thirty narrow grant-in-aid programs now in existence. The three programs will deal, respectively, with urban and suburban transportation, rural transportation and highway safety improvements.

The highway program is a classic example of a Federal program that has expanded over the years into areas of State and local responsibility, distorting the priorities of those governments.

The legislation I propose will refocus the Federal attention on the Interstate System, which is clearly of national significance, and provide flexible aid for other highway construction in a manner which fully respects State and local decision-making roles.

This is consistent with my general philosophy that we should not, at the Federal level, extend our influence into areas which other levels of government can handle better.

As we near our 200th birthday as a Nation, we must select with care the great national efforts we undertake, reflecting the responsibility we all have to preserve the integrity of our Republic. We must limit the Federal role to national concerns, strengthen the authority and resources of State and local governments, and protect the prerogatives of individuals.

I believe this legislation is the most responsible and effective means of meeting the Nation's transportation needs. I urge the Congress to give it prompt and favorable consideration.

GERALD R. FORD.

THE WHITE HOUSE, *July 7, 1975.*

Mr. ROBERT C. BYRD subsequently said: Mr. President, I ask unanimous consent that a message from the President relative to the Highway Trust Fund and the Interstate Highway System be referred jointly to the Committee on Finance and the Committee on Public Works.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

MESSAGES FROM THE HOUSE RECEIVED DURING ADJOURNMENT

ENROLLED BILLS SIGNED

Under authority of the order of June 26, 1975, a message from the House of Representatives was received on June 27, 1975, during the adjournment of the Senate, stating that the Speaker had

Exhibit 30

121 Cong. Rec. 31515 (1975)

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. SEIBERLING, and to include extraneous material following the first part of his colloquy with the gentleman from Pennsylvania (Mr. MORGAN) on the bill just voted on, S. 2230.

(The following Members (at the request of Mr. KASTEN) and to include extraneous matter.)

Mr. CRANE in two instances.
Mr. COLLINS of Texas in four instances.
Mr. BROOMFIELD.
Mr. SHUSTER.
Mr. ARCHER.
Mr. SNYDER in two instances.
Mr. COHEN.
Mr. YOUNG of Florida.
Mr. HEINZ.
Mr. MCKINNEY in two instances.
Mr. COCHRAN in two instances.
Mr. ESCH.
Mr. CARTER.
Mr. FISH.
Mr. MADIGAN.
Mr. SYMMS in two instances.
Mr. RINALDO.
Mr. DERWINSKI in two instances.
Mr. O'BRIEN.
Mr. MCCLORY.
Mr. ANDERSON of Illinois.
Mrs. HECKLER of Massachusetts.
Mr. FRENZEL in two instances.
Mr. PRITCHARD.
Mr. KEMP in four instances.

(The following Members (at the request of Mr. SHARP), and to include extraneous matter):

Mr. ANDERSON of California in three instances.
Mr. GONZALEZ in three instances.
Ms. ABZUG.
Mr. COTTER.
Mr. BYRON in 10 instances.
Mr. BOLAND.
Mr. STEPHENS.
Mr. EILBERG in 10 instances.
Mr. CHARLES H. WILSON of California.
Mrs. SCHROEDER in two instances.
Mr. BARRETT in two instances.
Mr. DRINAN.
Mr. FLORIO.
Mr. ROSENTHAL.
Mr. MATHIS.
Mr. MCDONALD of Georgia in three instances.
Mr. ROBERTS.
Mr. HOWE.
Mr. DIGGS in four instances.
Mr. DOMINICK V. DANIELS.
Mr. O'HARA.
Mr. VANIK in two instances.
Mr. MOAKLEY.
Mr. RICHMOND.
Mr. MEZVINSKY.
Mr. ALEXANDER.
Mr. CARNEY.
Mr. AMBRO.
Mr. WON PAT.
Mr. WAXMAN.
Mr. EARLY.

ADJOURNMENT

Mr. SHARP. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 31 minutes p.m.) under its previous order, the House adjourned until tomorrow, Friday, October 3, 1975, at 10 o'clock a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1820. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report on political contributions made by Ambassador-designate Walter L. Cutler and his family, pursuant to section 6 of Public Law 93–126; to the Committee on International Relations.

1821. A letter from the Deputy Assistant Secretary of the Interior, transmitting the report of the Fish and Wildlife Service on the Department of the Interior's administration of its functions under the Marine Mammal Protection Act of 1972, covering the period June 22, 1974, through June 21, 1975, pursuant to section 103(f) of the act; to the Committee on Merchant Marine and Fisheries.

1822. A letter from the Secretary of Transportation, transmitting a draft of proposed legislation to amend the Intervention on the High Seas Act to implement the Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other Than Oil, 1973; to the Committee on Merchant Marine and Fisheries.

1823. A letter from the Administrator, Federal Energy Administration, transmitting a report on changes in market shares for petroleum products during the months of May and June 1975, pursuant to section 4(c)(2)(A) of the Emergency Petroleum Allocation Act of 1973; to the Committee on Interstate and Foreign Commerce.

1824. A letter from the Acting Secretary of Health, Education, and Welfare, transmitting a draft of proposed legislation to amend title XX of the Social Security Act to require that State social services plans compiy with the Federal Interagency Day Care Requirements, subject to the existing penalties (termination of Federal payments or 3-percent reduction therein) in cases of noncompliance; to the Committee on Ways and Means.

1825. A letter from the Secretary of Health, Education, and Welfare, transmitting a draft of proposed legislation to encourage and assist States and localities to develop, demonstrate, and evaluate means of improving the utilization and effectivness of human services through integrated planning, management, and delivery of these services in order to achieve the objectives of personal independence and individual and family economic self-sufficiency; jointly, to the Committees on Education and Labor, Interstate and Foreign Commerce, Ways and Means, and Government Operations.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. HAYS of Ohio: Committee of conference. Conference report on S. 824 (Rept. No. 94–526). Ordered to be printed.

Mr. SLACK: Committee of conference. Conference report on H.R. 8121 (Rept. No. 94–527). Ordered to be printed.

Mr. WHITTEN: Committee of conference. Conference report on H.R. 8561 (Rept. No. 94–528). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ANNUNZIO:

H.R. 9967. A bill to establish coinsurance for urban conventional home mortgages; to the Committee on Banking, Currency and Housing.

By Mr. ULLMAN:

H.R. 9968. A bill to amend section 103 of the Internal Revenue Code of 1954 with respect to certain obligations used to provide irrigation facilities; to the Committee on Ways and Means.

By Mr. BROWN of Ohio (for himself, Mr. BROYHILL, Mr. FREY, Mr. KINDNESS, Mr. MARTIN, and Mr. SARASIN):

H.R. 9969. A bill to provide temporary authority for the President, the Federal Power Commission, and the Federal Energy Administration to institute emergency measures to minimize the adverse effects of natural gas shortages, and to regulate commerce to assure increased supplies of natural gas at reasonable prices for the consumer, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. CARTER:

H.R. 9970. A bill to amend chapter 97 of title 18, United States Code, to make it a criminal offense for any person to fire any firearm or throw any object at any railroad train operated in interstate commerce, and for other purposes; to the Committee on the Judiciary.

By Mr. COUGHLIN (for himself and Mr. RAILSBACK):

H.R. 9971. A bill to amend the Internal Revenue Code of 1954 to allow a credit against income tax to individuals for certain expenses incurred in higher education, to the Committee on Ways and Means.

By Mr. DEVINE:

H.R. 9972. A bill to provide temporary authority for the President, the Federal Power Commission, and the Federal Energy Administration to institute emergency measures to minimize the adverse effects of natural gas shortages, and to regulate commerce to assure increased supplies of natural gas at reasonable prices for the consumer, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. ESCH:

H.R. 9973. A bill to amend the Regional Rail Reorganization Act of 1973 with regard to effective date of the final system plan; to the Committee on Interstate and Foreign Commerce.

By Mr. HEINZ:

H.R. 9974. A bill to amend the Regional Rail Reorganization Act of 1973 with respect to the local service lines which the United States Railways Association does not designate as part of the Conrail System in the final system plan, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. KASTENMEIER (for himself and Mr. RAILSBACK):

H.R. 9975. A bill to amend the Consolidated Farm and Rural Development Act, to provide an alternate method of making loans for acquisition and improvements of the farm, needed by farm families, including young farmers, and to provide the borrower family with adequate standards of living and the consumer with reasonable prices for dairy and other agricultural products, as well as to maintain and improve national health, and for other purposes; to the Committee on Agriculture.

By Mr. LENT:

H.R. 9976. A bill to amend XVIII of the Social Security Act to provide for the cover-

to revise and extend their remarks, and to include extraneous matter:)

Mr. GONZALEZ, for 5 minutes, today.
Mr. ADAMS, for 15 minutes, today.
Mr. FORD of Michigan, for 10 minutes, today.
Mr. FLOOD, for 5 minutes, today.
Mr. DUNN, for 5 minutes, today.
Ms. ABZUG, for 5 minutes, today.
Mr. BRADEMAS, for 5 minutes, today.
Mr. PEPPER, for 5 minutes, today.
Mr. BINGHAM, for 10 minutes, today.
Mr. BEVILL, for 5 minutes, today.
Mr. NEDZI, for 5 minutes, today.
Mr. DANIELSON, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. CARNEY, and to include extraneous matter notwithstanding the fact that it exceeds two pages of the Record and is estimated by the Public Printer to cost $1,575.

Mr. BROWN of California, and to include extraneous matter notwithstanding the fact that it exceeds two pages of the Record and is estimated by the Public Printer to cost $858.

Mr. PEPPER, immediately following the vote on the conference report on H.R. 9070.

Mr. BROWN of California, and to include extraneous matter, on H.R. 8841 in the Committee of the Whole today.

Mr. SIMON, and to include extraneous matter, in the Committee of the Whole on H.R. 8841 today.

(The following Members (at the request of Mr. KASTEN) and to include extraneous material:)

Mr. STEIGER of Arizona.
Mr. LATTA in two instances.
Mr. SHUSTER.
Mr. CRANE.
Mr. SARASIN.
Mr. DERWINSKI in three instances.
Mr. GOODLING.
Mr. BROTHILL.
Mr. MCCLORY.
Mr. ARMSTRONG.
Mr. WAMPLER.

(The following Members (at the request of Mr. PATTERSON of California) and to include extraneous matter:)

Mr. GONZALEZ in three instances.
Mr. ANDERSON of California in three instances.
Mr. RICHMOND.
Mr. HICKS.
Mr. DOWNEY of New York.
Mr. LEGGETT.
Mr. MURTHA.
Mr. JAMES V. STANTON.
Mrs. BURKE of California.
Mr. ANDREWS in 10 instances.
Mr. LAFALCE in 10 instances.
Mr. MCDONALD of Georgia in two instances.
Mr. KASTENMEIER.
Mr. OTTINGER in 12 instances.
Mr. WOLFF in three instances.
Mr. SEIBERLING in 10 instances.
Mr. HAWKINS in three instances.
Mr. MAZZOLI.
Mr. AMBRO.
Mr. NOWAK.
Mr. HAYES of Indiana.
Mr. DERRICK.
Mr. OTTINGER.
Mr. GIAIMO.
Mr. EVANS.
Mr. HANNA in two instances.
Mr. DE LUGO.
Mr. CASE in two instances.
Mr. KOCH in four instances.
Ms. SCHROEDER.
Mr. BONKER.
Mr. PATTERSON of California in 10 instances.
Mr. BRADEMAS in five instances.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 266. An act to authorize additional judgeships for the U.S. courts of appeals; to the Committee on the Judiciary.

ENROLLED BILL SIGNED

Mr. HAYS of Ohio, from the Committee on House Administration, reported that that committee had examined and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 9060. An act to rescind certain budget authority recommended in the message of the President of July 28, 1975 (H. Doc. 94-220), transmitted pursuant to the Impoundment Control Act of 1974.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 2230. An act to authorize appropriations for the Board for International Broadcasting for fiscal year 1976; and to promote improved relations between the United States, Greece, and Turkey, to assist in the solution of the refugee problem on Cyprus, and to otherwise strengthen the North Atlantic Alliance, and

S. 2375. An act to extend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, for 45 days.

BILL PRESENTED TO THE PRESIDENT

Mr. HAYS of Ohio, from the Committee on House Administration, reported that that committee did on this day present to the President, for his approval a bill of the House of the following title:

H.R. 9060. An act to rescind certain budget authority recommended in the message of the President of July 28, 1975 (H. Doc. 94-220), transmitted pursuant to the Impoundment Control Act of 1974.

ADJOURNMENT

Mr. PATTERSON of California. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 4 o'clock and 20 minutes p.m.), under its previous order, the House adjourned until Monday, October 6, 1975, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1826. A letter from the Acting Assistant Secretary of Defense (Manpower and Reserve Affairs), transmitting a report for fiscal year 1975 of the administration of the Aviation Career Incentive Act of 1974, pursuant to 37 U.S.C. 301a(c); to the Committee on Armed Services.

1827. A letter from the Secretaries of the Treasury and Housing and Urban Development, transmitting a report on the financing of programs authorized under section 236 of the National Housing Act and section 802 of the Housing and Community Development Act of 1974, pursuant to section 932 of Public Law 93-383; to the Committee on Banking, Currency and Housing.

1828. A letter from the Acting Secretary of Interior, transmitting a report covering fiscal year 1975 on donations received and allocations made from the fund "14X8565 Funds Contributed for Advancement of Indian Race, Bureau of Indian Affairs," pursuant to Public Law 90-833 (25 U.S.C. 451); to the Committee on Interior and Insular Affairs.

1829. A letter from the Deputy Assistant Secretary of the Interior, transmitting an application by Gila River Farms of Sacaton, Pinal County, Ariz., for a loan under the Small Reclamation Projects Act, pursuant to section 4(c) of the act; to the Committee on Interior and Insular Affairs.

1830. A letter from the Secretary of Transportation, transmitting a draft of proposed legislation to amend the Regional Rail Reorganization Act of 1973 to facilitate implementation of the final system plan by broadening the purposes for which assistance is available under title IV, and for other purposes; to the Committee on Interstate and Foreign Commerce.

1831. A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting reports concerning visa petitions approved according certain beneficiaries third and sixth preference classification, pursuant to section 204 (d) of the Immigration and Nationality Act, as amended; to the Committee on the Judiciary.

1832. A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting copies of orders suspending deportation under the authority of section 244(a)(1) of the Immigration and Nationality Act, as amended, together with a list of the persons involved, pursuant to section 244(c) of the Act (8 U.S.C. 1254(c)); to the Committee on the Judiciary.

RECEIVED FROM THE COMPTROLLER GENERAL

1833. A letter from the Comptroller General of the United States, transmitting a report on further actions needed to centralize procurement of automatic data processing equipment to comply with the objectives of Public Law 89-306; to the Committee on Government Operations.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mrs. SULLIVAN: Committee of conference. Conference report on S. 1849 (Rept. No. 94-520). Ordered to be printed.

Mr. SIKES: Committee on Appropriations. H.R. 10022. A bill making appropriations for military construction for the Department of

Defense for the fiscal year ending June 30, 1976, and the period ending September 30, 1976, and for other purposes (Rept. No. 94-530). Referred to the Committee of the Whole House on the State of the Union.

Mr. ULLMAN: Committee on Ways and Means. H.R. 9968. A bill to amend section 103 of the Internal Revenue Code of 1954 with respect to certain obligations used to provide irrigation facilities (Rept. No. 94-531). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ANDERSON of California (for himself, Mr. MOORHEAD of California, Mr. OBERSTAR, Mr. HYDE, Mr. SEIBERLING, Mr. SOLARZ, Mr. BEVILL, Mr. THONE, Mr. MAZZOLI, Mr. KETCHUM, Mr. WALSH, Mr. YOUNG of Florida, Mr. OTTINGER, Mr. PEPPER, Mr. RODINO, Mr. JOHNSON of California, Mr. WRIGHT, Mr. HENDERSON, Mr. HEINZ, Mr. DE LUGO, Mr. HUBBARD, and Mr. MOORE):

H.R. 10002. A bill to amend section 552a of title 5, United States Code, to permit Members of Congress to receive information from Federal agencies regarding individuals; to the Committee on Government Operations.

Mr. ASHBROOK:

H.R. 10003. A bill to prohibit the person holding the position of Secretary of State from holding simultaneously the position of Assistant to the President for National Security Affairs; to the Committee on Armed Services.

By Mr. ASPIN (for himself, Ms. ABZUG, Mr. ANDREWS of North Dakota, Mr. BADILLO, Mr. BAUCUS, Mr. D'AMOURS, Mr. DERRICK, Mr. ESCH, Mr. EVINS of Tennessee, Mr. HARRINGTON, Mr. HASTINGS, Mr. HOWARD, Mr. HUBBARD, Mr. JENRETTE, Ms. KEYS, Mr. MCCOLLISTER, Ms. MEYNER, Mrs. MINK, Mr. MITCHELL of Maryland, Mr. OTTINGER, Mr. PATMAN, Mrs. PETTIS, Mr. SOLARZ, Mr. STUDDS, and Mr. YATRON):

H.R. 10004. A bill to require the U.S. Postal Service to provide postal lock boxes for certain persons who reside in rural areas; to the Committee on Post Office and Civil Service.

By Mr. ASPIN (for himself, Ms. ABZUG, Mr. AUCOIN, Mr. BAUCUS, Mr. CORNELL, Mr. EDWARDS of California, Mr. EILBERG, Mr. HANNAFORD, Mr. KREBS, Mr. MOAKLEY, Mr. MURPHY of Illinois, Mr. PATTEN, Mr. PATTISON of New York, Mr. REES, Mrs. SPELLMAN, Mr. STARK, Mr. STUDDS, Mr. THOMPSON, and Mr. VAN DEERLIN):

H.R. 10005. A bill to assure that the discharge of chlorinated fluorcarbon compounds into the atmosphere will not impair the stratospheric zone layer increasing the risk of disease (including skin cancer) and for other purposes; jointly to the Committees on Interstate and Foreign Commerce, and Science and Technology.

By Mr. BINGHAM:

H.R. 10006. A bill to amend the Emergency Loan Guarantee Act to permit the Emergency Loan Guarantee Board to guarantee the bonds of States and municipalities; to the Committee on Banking, Currency and Housing.

By Mr. DANIELSON (for himself and Mr. STARK):

H.R. 10007. A bill to amend section 304 of the Federal Water Pollution Control Act to authorize the use of ad valorem taxes to satisfy the user charge system requirement; to the Committee on Public Works and Transportation.

By Mr. EVANS of Colorado (for himself, Mr. RODINO, Mr. MCCORMACK, Mr. CHARLES WILSON of Texas, Mr. PERKINS, Mr. MILLER of California, Mr. ARDNOR, Mr. OBERSTAR, Mr. FUQUA, and Mr. CLEVELAND):

H.R. 10008. A bill to provide for certain payments to be made to State or local governments by the Secretary of the Interior based upon the amount of certain public lands within the boundaries of such State or locality; to the Committee on Interior and Insular Affairs.

By Mr. FISHER:

H.R. 10009. A bill to require candidates for Federal office, Members of the Congress, and officers and employees of the United States to file statements with the Comptroller General with respect to their income and financial transactions; jointly to the Committees on the Judiciary, and Standards of Official Conduct.

By Mr. FUQUA:

H.R. 10010. A bill to amend the Food Stamp Act of 1964 by revising the eligibility requirements for participation in the program and increasing the overall efficiency of the program administration through the imposition of a national income formula, and for other purposes; to the Committee on Agriculture.

H.R. 10011. A bill to authorize an appropriation to the Secretary of the Interior for the repair and restoration of a certain road in Saint Marks National Wildlife Refuge; to the Committee on Merchant Marine and Fisheries.

By Mr. HARRIS (for himself and Mr. ECKHARDT):

H.R. 10012. A bill to amend the act of April 17, 1954, which preserved within Manassas National Battlefield Park, Va., important historic properties relating to the battles of Manassas and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. HAYES of Indiana (for himself, Mr. WINN, and Mr. BROWN of California):

H.R. 10013. A bill to authorize and direct the establishment of a coordinated national program relating to climate, to require an annual report of the program to Congress, and for other purposes; to the Committee on Science and Technology.

By Mr. HICKS:

H.R. 10014. A bill to amend the Internal Revenue Code of 1954 to exempt the use of certain punchboards, pulltabs, and similar devices from the taxes on wagering; to the Committee on Ways and Means.

By Mr. KEMP (for himself, Mr. RAILSBACK, Mr. DON H. CLAUSEN, Mr. CLEVELAND, Mr. TALCOTT, Mr. ROUSSELOT, Mr. COLLINS of Texas, Mr. MILLER of Ohio, and Mr. LAGOMARSINO):

H.R. 10015. A bill to accelerate the formation of investment capital required to expand both job opportunities and productivity in the private sector of the economy; to the Committee on Ways and Means.

By Mr. McDADE:

H.R. 10016. A bill to increase from 10 to 15 years the period during which veterans and certain wives and widows of veterans are eligible for educational assistance; to the Committee on Veterans' Affairs.

By Mr. MATHIS:

H.R. 10017. A bill to amend title 18 to provide a mandatory penalty of life imprisonment for any person attempting to assassinate certain Federal officials and other individuals, and for other purposes; to the Committee on the Judiciary.

By Mr. MICHEL:

H.R. 10018. A bill to eliminate certain abuses in Federal student aid programs, to prescribe criminal penalties for misconduct by persons connected with such programs, and for other purposes; to the Committee on Education and Labor.

By Mr. MITCHELL of New York:

H.R. 10019. A bill to award one preference point to National Guard and Armed Forces Reserve veterans applying for employment in the competitive service; to the Committee on Post Office and Civil Service.

By Mr. MILLER of Ohio (for himself, Mr. LAGOMARSINO, Mr. MOTTL, Mr. BEVILL, Mr. TEEEN, Mr. WHITEHURST, Mr. YOUNG of Florida, Mr. DERWINSKI, Mr. LUJAN, Mr. SATTERFIELD, Mr. SYMMS, Mr. MCDONALD of Georgia, and Mr. ARCHER):

H.R. 10020. A bill to amend title 18 of the United States Code to increase the penalties for certain criminal acts against the person of the President; to the Committee on the Judiciary.

By Mr. PATTISON of New York (for himself and Mr. MINETA):

H.R. 10021. A bill to regulate lobbying and related activities; to the Committee on Standards of Official Conduct.

By Mr. ROBERTS:

H.R. 10022. A bill to provide for the use of presently authorized double-sideband radio equipment until January 1, 1982; to the Committee on Interstate and Foreign Commerce.

By Mr. ROUSH (for himself, Mr. BROYHILL, Mr. DAN DANIEL, Mr. ESHLEMAN, Mr. FISH, Mr. GINN, Mr. GOODLING, Mr. BYRON, Mr. JOHNSON of California, Mr. HECHLER of West Virginia, Mr. LEHMAN, Mr. PEPPER, Mr. PIKE, Mr. QUIE, Mr. SCHEUER, Mr. SHARP, Mr. WAMPLER, Mr WHITEHURST, Mr. CONTE, and Mr. SIMON):

H.R. 10023. A bill to amend the Privacy Act of 1974 to allow Members of Congress to receive information from Federal agencies regarding individuals; to the Committee on Government Operations.

Mr. ST GERMAIN:

H.R. 10024. A bill to extend the authority for the flexible regulation of interest rates on deposits and share accounts in depository institutions, to extend the National Commission on Electronic Fund Transfers, and to provide for home mortgage disclosure; to the Committee on Banking, Currency and Housing.

By Mr. SLACK:

H.R. 10025. A bill to amend title XII of the Public Health Service Act to revise and extend the program of assistance for emergency medical services systems; to the Committee on Interstate and Foreign Commerce.

By Mr. THONE:

H.R. 10026. A bill to require the Bureau of Labor Statistics to publish a monthly cost of Government index; to the Committee on Education and Labor.

By Mr. ULLMAN:

H.R. 10027. A bill to authorize the Secretary of Agriculture to enter into cooperative agreements which benefit certain Forest Service programs and to advance or reimburse funds to cooperators for work performed and for other purposes; to the Committee on Agriculture.

By Mr. WAGGONNER:

H.R. 10028. A bill to amend the Social Security Act by adding thereto a new title XXI which will provide insurance against the costs of catastrophic illness, by replacing the medicaid program with a Federal medical assistance plan for low-income people, and by adding a new title XV thereto which will encourage and facilitate the availability, through private insurance carriers, of basic health insurance at reasonable premium

Exhibit 31

H.R. Rep. No. 94-531 (1975)

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94-531

TAX EXEMPT STATUS OF OBLIGATIONS USED TO PROVIDE CERTAIN IRRIGATION FACILITIES

OCTOBER 3, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ULLMAN, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 9968]

The Committee on Ways and Means, to whom was referred the bill (H.R. 9968) to amend section 103 of the Internal Revenue Code of 1954 with respect to certain obligations used to provide irrigation facilities, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

I. SUMMARY

The bill, H.R. 9968, deals with the tax-exempt status of obligations the proceeds of which are to be used to reconstruct the American Falls Dam in Idaho. The dam is used for irrigation purposes but the water also has a subordinate use in generating electric energy. Under present law, an industrial development bond whose proceeds are used to build a dam that stores water for irrigation purposes may be eligible for tax-exempt status. However, in this case where the water has a subordinate use in generating electric energy, the eligibility of the bond issue for tax-exempt status is uncertain.

The American Falls Dam is under the supervision of the Bureau of Reclamation of the Department of Interior and has been restricted to two-thirds of its capacity because of certain structural defects. The Federal Government might well eventually appropriate the funds to reconstruct the dam. However, the American Falls Reservoir District is undertaking the reconstruction project now in order to make the dam fully operational. In addition, the Idaho Power Company is assisting the financing of the project and is to use the water for electric energy generation. It is the interrelationships of the use of the dam for furnishing water for irrigation purposes and the use of the water for electric energy that raises questions with the interpretation of the present exceptions to industrial development bond treatment. In view of

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the special circumstances in this case, your committee believes it is appropriate to except the obligations for the reconstruction of the American Falls Dam from industrial development bond treatment which would allow these obligations to receive tax-exempt status.

Present Law

Present law provides that interest on obligations of State and local governments generally is exempt from Federal income tax. In 1968 tax-exempt status was withdrawn from industrial development bonds which State and local governments were using to finance and attract private industrial development within their jurisdictions.

Industrial development bonds are generally considered to be State or local obligations, a major portion of the proceeds of which are to be used in, and repaid by, a taxable trade or business. Such bonds are normally issued to acquire a facility for private business in which the beneficial ownership of the facility remains in the private trade or business, although (in order to secure repayment of the bonds) legal title normally remains with the State or local unit issuing the obligations.

When the industrial development bond limitation was enacted, exceptions were provided for certain small issues (sec. 103(c)(6)) and for certain specified public activities (sec. 103(c)(4)) in which cases tax-exempt status was continued. As initially enacted, one of the public activities for which an exemption was provided (sec. 103(c)(4)(E)) was "sewage or solid waste disposal facilities or facilities for the local furnishing of electric energy, gas or water."

In 1971, Congress amended the exception in subparagraph (E) to delete "water" and added the present law subparagraph (G) which extends the exception to "facilities for the furnishing of water, if available on reasonable demand to members of the general public."

As a result, in those cases where obligations are issued for facilities for the furnishing of water which meet the exception (under sec. 103(c)(4)(G)) but where the water is also used to generate electricity, it is uncertain as to whether the obligations would qualify for exempt status unless the use of the electric energy meets the "local" furnishing test (under sec. 103(c)(4)(E)), which has been interpreted to cover an area of two contiguous counties.

Reasons for the Bill

The American Falls Reservoir District applied to the Internal Revenue Service in June 1974 for a ruling that bonds to be issued to finance the replacement and rehabilitation of the American Falls Dam would qualify as a tax-exempt issue under section 103(c)(4)(G). The Internal Revenue Service, however, had questions of interpretation with respect to the interrelationship of the exceptions for facilities for furnishing of water and the local furnishing of electric energy and their application to the specific facts of this case. The committee reviewed the facts involved, as described below, and believed it is appropriate to specifically except the bond issue in this case as a result of the special circumstances.

The original American Falls dam was constructed in 1927 by the Bureau of Reclamation. The dam was restricted to two-thirds of its

1.7 million acre foot capacity in 1972 by the Bureau of Reclamation of the Department of the Interior for safety reasons because of excessive pressures on the dam which were caused by an alkali-aggregate reaction and deterioration in the concrete.

Legislation was enacted on December 28, 1973, to permit replacement and rehabilitation of the American Falls dam by the American Falls Reservoir District, which is a political subdivision of the State of Idaho. Replacement of the existing dam by the American Falls Reservoir District is an action to be taken in lieu of waiting for a Federal appropriation that would enable the Bureau of Reclamation to build the replacement dam.

The Act of December 28, 1973, also provides that upon completion of construction the United States shall take title to the dam as a feature of the Minidoka Project, located in the upper Snake River basin, Idaho.

As the constructing agent, the American Falls Reservoir District was authorized to contract with an electric utility for the use of the falling water at the dam for hydroelectric power generation. Revenues from such a contract will help defer the costs of constructing the dam. Prior to the adoption of the Act of December 28, 1973, the Idaho Power Company, which is a spaceholder in the reservoir and which owns and operates a powerplant below the existing dam, expressed interest in the execution of a falling water contract. Subsequent to the adoption of the Act, the District, as the constructing agency, entered into negotiations with the Secretary of the Interior, the Idaho Power Company and the other water users for the preparation of various contracts including a contract for the use of falling water.

It was intended that in normal circumstances, substantially all of the falling water would be made available to the Power Company only when water was released from the dam for irrigation purposes. There has been no intention to release water specifically for use by the Idaho Power Company to generate electricity, except for 45,000 acre-feet (2.65 percent of the storage capacity) whose release the power company can schedule for the purpose of generating electric energy. Thus, the use of water for electric energy would be subordinated to the use of the water for irrigation.

Although the Federal Government might well eventually completely finance the reconstruction of the American Falls Dam, the American Falls Reservoir District is undertaking the reconstruction now in order to make the dam fully operational for the spaceholders (rather than the present restricted two-thirds capacity). If it were not for the use of the water by the Idaho Power Company for hydroelectric power generation, any bonds issued by the Reservoir District would presently qualify for tax-exempt status. In this case the Idaho Power Company has a limited spaceholder right (under 3 percent) and is financing a large portion of the debt to assist the reconstruction of the dam and has use of the falling water for its hydroelectric power generation purposes. In addition, since the dam is to be turned over the the Federal Government after its reconstruction for ownership and operation, in effect, this financing can ve viewed as saving the Federal Government the expenditure it would have had to make to reconstruct the dam several years in the future. In view of these special circumstances, your committee believes it is appropriate to extend tax-exempt status to the bonds to be issued to finance the reconstruction of the dam.

Explanation of the Bill

Your committee's bill adds a new exception to industrial development bond treatment to specifically allow tax-exempt status for the bonds issued to reconstruct the American Falls Dam. This exception is to apply to obligations for a dam which furnishes water for irrigation purposes which has a subordinate use in connection with the generation of electric energy by water if substantially all of the stored water is contractually available for release from the dam for irrigation purposes and if the water released is available on reasonable demand for members of the general public.

The committee intends that subordinate use of water for generating electric energy means that less than 10 percent of the normal supply of stored water may contractually be scheduled for release by the power company and used for generating electric energy. "Normal" refers to conditions that generally prevail in the service area of 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.

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

* * * * * * *

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.

(E) CERTAIN CAPITAL EXPENDITURES NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (D)(ii), any capital expenditure—

(i) to replace property destroyed or damaged by fire, storm, or other casualty, to the extent of the fair market value of the property replaced,

(ii) required by a change made after the date of issue of the issue in question in a Federal or State law or local ordinance of general application or required by a change made after such date in rules and regulations of general application issued under such a law or ordinance, or

(iii) required by circumstances which could not be reasonably foreseen on such date of issue or arising out of a mistake of law or fact (but the aggregate amount of expenditures not taken into account under this clause with respect to any issue shall not exceed $1,000,000),

shall not be taken into account.

(G) LIMITATION ON LOSS OF TAX EXEMPTION.—In applying subparagraph (D)(ii) with respect to capital expenditures made after the date of any issue, no obligation issued as a part of such issue shall be treated as an obligation not described in subsection (a)(1) by reason of any such expenditure for any period before the date on which such expenditure is paid or incurred.

(H) CERTAIN REFINANCING ISSUES.—In the case of any issue described in subparagraph (A)(ii), an election may be made under subparagraph (D) only if all of the prior issues being redeemed are issues to which subparagraph (A) applies. In applying subparagraph (D)(ii) with respect to such a refinancing issue, capital expenditures shall be taken into account only for purposes of determining whether the prior issues being redeemed qualified (and would have continued to qualify) under subparagraph (A).

(7) EXCEPTION.—Paragraphs (4), (5), and (6) shall not apply with respect to any obligation for any period during which it is held by a person who is a substantial user of the facilities or a related person.

(d) ARBITRAGE BONDS.—

(1) SUBSECTION (a)(1) NOT TO APPLY.—Except as provided in this subsection, any arbitrage bond shall be treated as an obligation not described in subsection (a)(1).

(2) ARBITRAGE BOND.—For purposes of this subsection, the term "arbitrage bond" means any obligation which is issued as part of an issue all or a major portion of the proceeds of which are reasonably expected to be used directly or indirectly—

(A) to acquire securities (within the meaning of section 165(g)(2)(A) or (B)) or obligations (other than obligations described in subsection (a)(1)) which may be reasonably expected at the time of issuance of such issue, to produce a yield over the term of the issue which is materially higher (taking into account any discount or premium) than the yield on obligations of such issue, or

(B) to replace funds which were used directly or indirectly to acquire securities or obligations described in subparagraph (A).

(3) EXCEPTION.—Paragraph (1) shall not apply to any obligation—

(A) which is issued as part of an issue substantially all of the proceeds of which are reasonably expected to be used to provide permanent financing for real property used or to be used for residential purposes for the personnel of an educational institution (within the meaning of section 151(e)(4)) which grants baccalaureate or higher degrees, or to replace funds which were so used, and

(B) the yield on which over the term of the issue is not reasonably expected, at the time of issuance of such issue, to be substantially lower than the yield on obligations acquired or to be acquired in providing such financing.

This paragraph shall not apply with respect to any obligation for any period during which it is held by a person who is a substantial user of property financed by the proceeds of the issue of which such obligation is a part, or by a member of the family (within the meaning of section 318(a)(1)) of any such person.

(4) SPECIAL RULES.—For purposes of paragraph (1), an obligation shall not be treated as an arbitrage bond solely by reason of the fact that—

(A) the proceeds of the issue of which such obligation is a part may be invested for a temporary period in securities or other obligations until such proceeds are needed for the purpose for which such issue was issued, or

(B) an amount of the proceeds of the issue of which such obligation is a part may be invested in securities or other obligations which are part of a reasonably required reserve or replacement fund,

The amount referred to in subparagraph (B) shall not exceed 15 percent of the proceeds of the issue of which such obligation is a part unless the issuer establishes that a higher amount is necessary.

(5) REGULATIONS.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

(e) CERTAIN IRRIGATION DAMS.—A dam for the furnishing of water for irrigation purposes which has a subordinate use in connection with the generation of electric energy by water shall be treated as meeting the requirements of subsection (c)(4)(G) if—

(1) substantially all of the stored water is contractually available for release from such dam for irrigation purposes, and

(2) the water so released is available on reasonable demand to members of the general public.

[(e)] *(f)* CROSS REFERENCES.—

For provisions relating to the taxable status of—

(1) Bonds and certificates of indebtedness authorized by the First Liberty Bond Act, see sections 1 and 6 of that Act (40 Stat. 35, 36; 31 U.S.C. 746, 755);

(2) Bonds issued to restore or maintain the gold reserve, see section 2 of the Act of March 14, 1900 (31 Stat. 46; 31 U.S.C. 408);

(3) Bonds, notes, certificates of indebtedness, and Treasury bills authorized by the Second Liberty Bond Act, see sections 4, 5 (b) and (d), 7, 18 (b) and 22(d) of that Act as amended (40 Stat. 290; 46 Stat. 20, 775; 40 Stat. 291, 1310; 55 Stat. 8; 31 U.S.C. 752a, 754, 747, 753, 757c);

(4) Bonds, notes, and certificates of indebtedness of the United States and bonds of the War Finance Corporation owned by certain nonresidents, see section 3 of the Fourth Liberty Bond Act, as amended (40 Stat. 1311, § 4; 31 U.S.C. 750);

(5) Certificates of indebtedness issued after February 4, 1910, see section 2 of the Act of that date (36 Stat. 192; 31 U.S.C. 769);

(6) Consols of 1930, see section 11 of the Act of March 14, 1900 (31 Stat. 48; 31 U.S.C. 751);

(7) Obligations and evidences of ownership issued by the United States or any of its agencies or instrumentalities on or after March 28, 1942, see section 4 of the Public Debt Act of 1941, as amended (c. 147, 61 Stat. 180; 31 U.S.C. 742a);

(8) Commodity Credit Corporation obligations, see section 5 of the Act of March 8, 1938 (52 Stat. 108; 15 U.S.C. 713a–5);

(9) Debentures issued by Federal Housing Administrator, see sections 204(d) and 207(i) of the National Housing Act, as amended (52 Stat. 14, 20; 12 U.S.C. 1710, 1713);

(10) Debentures issued to mortgagees 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(c) of the National Housing Act (48 Stat. 1257; 12 U.S.C. 1725);

(15) Home Owners' Loan Corporation bonds, see section 4(c) of the Home Owners' Loan Act of 1933, as amended (48 Stat. 644, c. 168; 12 U.S.C. 1463);

(16) Obligations of Central Bank for Cooperatives, production credit corporations, production credit associations, and banks for cooperatives, see section 63 of the Farm Credit Act of 1933 (48 Stat. 267; 12 U.S.C. 1138c);

(17) Panama Canal bonds, see section 1 of the Act of December 21, 1904 (34 Stat. 5; 31 U.S.C. 743), section 8 of the Act of June 28, 1902 (32 Stat. 484; 31 U.S.C. 744), and section 39 of the Tariff Act of 1909 (36 Stat. 117; 31 U.S.C. 745);

(18) Philippine bonds, etc., issued before the independence of the Philippines, see section 9 of the Philippine Independence Act (48 Stat. 463; 48 U.S.C. 1239);

(19) Postal savings bonds, see section 10 of the Act of June 25, 1910 (36 Stat. 817; 39 U.S.C. 760);

(20) Puerto Rican bonds, see section 3 of the Act of March 2, 1917, as amended (50 Stat. 855; 48 U.S.C. 745);

(21) Treasury notes issued to retire national bank notes, see section 18 of the Federal Reserve Act (38 Stat. 268; 12 U.S.C. 447);

(22) United States Housing Authority obligations, see sections 5(e) and 20(b) of the United States Housing Act of 1937 (50 Stat. 890, 898; 42 U.S.C. 1405, 1420);

(23) Virgin Islands insular and municipal bonds, see section 1 of the Act of October 27, 1949 (63 Stat. 940; 48 U.S.C. 1403).

VI. Other Matters Required To Be Discussed Under House Rules

In compliance with clauses 2(l)(3) and 2(l)(4) of Rule XI of the Rules of the House of Representatives, the following statements are made.

With regard to subdivision (A) of Clause 3, the Committee advises that its oversight findings led it to the conclusion that an amendment to the Internal Revenue Code is necessary to establish the eligibility of bons issued by the American Falls Reservoir District for a dam and related facilities for tax-exempt status as industrial development bonds.

In compliance with subdivision (B) of Clause 3, the committee states that the change made in section 103 of the Internal Revenue Code will produce an annual revenue loss of about $1 million at current tax rates for the period of maturity during which the bonds to be issued will be outstanding. Alternatively, the cost to the Federal Government of construction of this project as a direct expenditure presently is estimated at about $50 million.

With respect to subdivisions (C) and (D) of Clause 3, the Committee advises that no estimate or comparison has been prepared by the Director of the Congressional Budget Office relative to any of the provisions of H.R. 9968, nor have any oversight findings or recommendations been made by the Committee on Government Operations with respect to the subject matter contained in H.R. 9968.

In compliance with clause 2(l)(4) of Rule XI, the Committee states that the bonds to be issued followed enactment of H.R. 9968 are not expected to have an inflationary impact on prices and in costs in the operation of the national economy.

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(18) Philippine bonds, etc., issued before the independence of the Philippines, see section 9 of the Philippine Independence Act (48 Stat. 462; 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 7 of the Act of March 2, 1917, as amended (39 Stat. 953; 48 U.S.C. 745);

(21) Treasury notes issued to retire national bank notes, see section 18 of the Federal Reserve Act (38 Stat. 265; 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. 891, 899; 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. 910; 48 U.S.C. 1403).

25. Ortstat Advice Required To Be Given by House Rules

In compliance with clauses 2(l)(3)(A) 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 $30 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.

Exhibit 32

121 Cong. Rec. 31868 (1975)

fense and ask him, "Is this the man? Is this the defendant?"

"Oh, I don't know. I don't know. I don't recognize him."

What is suggested here is that in the field of organized crime—and in some of the even more unorganized crime—there are people of a more vicious nature who suggest to these witnesses that if they would ever like to see their children or their wives again, they had better not recognize this fellow. Or there may be financial reward.

The feeling of those who press for the law the way it came to the House and the way it would be now written is that this is protection for the public against the changing testimony of witnesses.

The second part of the argument is this. If one is going to identify the man or woman, his identification is probably more accurate, say, within a week after the offense. The trial comes up one or two years later, and the fellow has had a chance to grow a beard or dye his hair, and probably the victim's first identification is best. That is the general nub of the argument.

This is a typical situation with which this rule would deal. A crime takes place, as indicated. The witness sees it and identifies the person. By the time of the trial, the witness has what some would suggest is a convenient lapse of memory.

Current Federal case law—please hear this—permits the use of the identification. The passage of S. 1549 will, in effect, codify existing Federal law. We are not coming in here and taking away any rights people have had before. We just leave that part the way it is.

Rule 801(d)(1), as S. 1549 proposes, will not permit the use of just any out-of-court identification. There are preconditions to the use of this evidence. The person who made the identification must testify and must be subject to cross-examination about the out-of-court identification. If this precondition is satisfied, then the court must determine whether the out-of-court identification procedures meet constitutional standards. If they do, then rule 801(d)(1) says the evidence is admissible—if they meet constitutional standards.

Courtroom identification is generally very suggestive. It takes place a long time after the offense. The witness knows the defendant is in the room. He knows where he nearly always sits—next to the defense attorney.

Out-of-court identifications that meet the preconditions are not so suggestive.

S. 1549, I submit is a good bill, and the two amendments are purely technical. One changes the effective date from July 1, 1975, to 15 days after it becomes law, so it would not be a retroactive statute.

The other amendment makes a stylistic change.

S. 1549 will codify present Federal case law. It will make available to judges and juries what we believe to be a more reliable type of identification evidence. I urge the Members to support it.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. The Chair recognizes the gentleman from California (Mr. WIGGINS).

Mr. WIGGINS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to express my support of S. 1549 amending one provision of the Federal rules of evidence to conform with existing case law in many of the U.S. circuits.

S. 1549 merely returns to the rules of evidence a paragraph which it originally contained when written by the Judicial Conference, transmitted by the U.S. Supreme Court and when first passed by the House of Representatives as H.R. 5463 on February 6, 1974. The bill excludes from hearsay restriction evidence of a prior eyewitness identification—but only if the witness testifies at trial and is subject to cross-examination. This provision was not originally accepted by the Senate and the House-Senate Conference Committee deleted it from the House bill. The Senate now has seen the wisdom of the House version and S. 1549 returns rule 801(d)(1) to its original condition.

The bill returns to existing case law and applies to situations where an eyewitness has previously identified a person out of court. It would admit into evidence testimony of that identification. For example, testimony by a police officer that at a lineup John Doe identified the defendant as the man who robbed his store.

Why is this necessary? Because in some instances the eyewitness may forget, in others he may have been threatened by the defendant to withdraw the identification, and in still others the eyewitness may be able to give only the most inconclusive identification in court.

In such cases, the prior out-of-court identification was more reliable than that given in court because it was made closer to the time of the actual event and moreover, in a setting much less suggestive than the courtroom.

This bill still requires the eyewitness to testify at the trial and be subject to cross-examination. It does not remove any other of the pre-trial identification requirements promulgated by the U.S. Supreme Court. The out-of-court identification must have been made under circumstances insuring its reliability and the right to counsel exists as it did under the strictures of the Kirby against Illinois and Wade against California cases.

The argument that this bill would "open the door to all kinds of out-of-court eyewitness identification" ignores both the letter and purpose of the bill.

Only identifications that would have been admissible under the Supreme Court rulings would become admissible now.

In conclusion, this bill serves to return this section of the hearsay rule to the status it had reached by process of natural judicial evolution. This status was one calculated to strike the best balance between the rights of the defendant and those of the State, and to insure admissibility of the most trustworthy evidence.

Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois (Mr. HYDE), a member of the subcommittee.

Mr. HYDE. Mr. Speaker, I wish to voice my support for the adoption of S. 1549.

This bill merely returns to the rules of evidence a provision originally passed by the House but deleted by the Senate and the House-Senate Conference Committee when the rules were originally passed.

One of the Nation's most noted experts on evidence, Judge Jack B. Weinstein, has called this deletion "the most incomprehensible action of Congress in modifying the Rules of Evidence."

Writing in a five-volume, exhaustive analysis of the rules, Judge Weinstein goes right to the heart of the entire issue of admitting prior eyewitness identifications when he states:

> Most trial judges recognize that the identification in the courtroom is a formality that has little reliability and much in the way of suggestibility. The experienced judge gives much greater credence to the out-of-court identification—4 *Weinstein's Evidence* 109.

Writing earlier in a judicial opinion, Judge Weinstein cited the example of the blind man who detects someone picking his pocket and grabs him until the police arrive. At trial, the blind man cannot look across the courtroom and point to the defendant as the man who robbed him. But the identification that he made at the time of the crime was seen by the policeman. How is justice served by not admitting that out-of-court identification? *U.S.* v. *Barbati*, 284 F.Supp. 409, E.D.N.Y. 1968.

As my distinguished colleague Mr. WIGGINS has stated, an out-of-court identification made while the memory is fresh is certainly more reliable than a mere ritual performed in court after time has dulled the memory.

I urge support of S. 1549.

GENERAL LEAVE

Mr. HUNGATE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill S. 1549 now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. WIGGINS. Mr. Speaker, I reserve the balance of my time.

Mr. HUNGATE. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Missouri (Mr. HUNGATE) that the House suspend the rules and pass the Senate bill S. 1549, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

TAX-EXEMPT STATUS OF OBLIGATIONS USED TO PROVIDE CERTAIN IRRIGATION FACILITIES

Mr. ULLMAN. Mr. Speaker, I move to suspend the rules and pass 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.

The Clerk read as follows:

H.R. 9968

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 103 of the Internal Revenue Code of 1954 (relating to interest on certain governmental obligations) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new 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".

SEC. 2. The amendments made by the first section of this Act shall apply to obligations issued after the date of the enactment of this Act.

The SPEAKER. Is a second demanded?

Mr. KETCHUM. Mr. Speaker, I demand a second.

The SPEAKER. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER. The gentleman from Oregon (Mr. ULLMAN) and the gentleman from California (Mr. KETCHUM) will be recognized for 20 minutes respectively.

The Chair recognizes the gentleman from Oregon (Mr. ULLMAN).

Mr. ULLMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, before explaining the purpose of this legislation, I want to take this opportunity to advise the Members that there is an inadvertent error in the committee report on the bill—House Report No. 94–531. The report, on page 4, at the bottom of the page, states that the bill was ordered reported by a unanimous voice vote. This is an error since the gentleman from Wisconsin (Mr. STEIGER) objected to the reporting of the bill, and, therefore, Mr. Speaker, I want the record to be clear that that sentence in the committee report was in error. However, I can say that the bill was overwhelmingly reported by the committee although it was not unanimous.

Mr. Speaker, 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 will have 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 original American Falls Dam was constructed in 1927 by the Bureau of Reclamation of the Department of Interior. In 1972, the Bureau of Reclamation restricted the dam to two-thirds of its capacity for safety reasons because of certain structural defects.

In lieu of waiting for a Federal appropriation that would enable the Bureau of Reclamation to build a replacement dam, Congress enacted legislation on December 28, 1973, to permit the American Falls Reservoir District, which is a political subdivision of the State of Idaho, to build a replacement dam. In addition, the act also authorized the reservoir district to contract with an electric utility, the Idaho Power Co., for the use of falling water at the dam for hydroelectric power generation. The revenues from the contract are to help defer the costs of constructing the dam. It is intended that in normal circumstances substantially all of the falling water would be made available to the power company only when water is released from the dam for irrigation purposes.

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 tax-exempt status of the industrial development bonds. In view of the special circumstances in this case, the Committee on Ways and Means believes it is appropriate to except the obligations for the reconstruction of the American Falls Dam from industrial development bond treatment which will allow these obligations to receive tax-exempt status.

Since the American Falls Dam is to be turned over to the Bureau of Reclamation for supervision after its reconstruction, this bill can be viewed as saving the Federal Government the direct expenditure of about $50 million if appropriations were to be made.

Mr. Speaker, I urge that the bill be adopted.

Mr. KETCHUM. Mr. Speaker, I yield myself such time as I may consume, and I rise in support of the bill.

Mr. Speaker, I would like to associate myself with the remarks of the chairman of the committee, the gentleman from Oregon (Mr. ULLMAN). I think the gentleman has described this bill very, very well.

This bill deals with the tax-exempt status of certain obligations, the proceeds of which are to be used to reconstruct the American Falls Dam in Idaho. The dam will be used for irrigation purposes, with a subordinate use in generating electrical energy. Under the Internal Revenue Code, an industrial development bond, the proceeds of which are used in building a dam for storage of water to be used for irrigation purposes, may be eligible for tax-exempt status. However, where such water will have a subordinate use in generating electrical energy, the tax-exempt status of such bonds is uncertain.

The American Falls Dam, which was constructed in 1927 by the Bureau of Reclamation of the Department of the Interior, was restricted by two-thirds of safety reasons. Although the Federal Government might eventually appropriate funds to rebuild the dam, the American Falls Reservoir District is undertaking reconstruction now in order to render the dam fully operational as soon as possible. Additionally, the Idaho Power Co. is assisting in the financing of the project and will receive use of certain amounts of water for electrical energy generation.

In June 1974 the American Falls Reservoir District applied to the Internal Revenue Service for a ruling that the bonds to be issued to finance the reconstruction of the American Falls Dam would qualify as tax exempt under the provisions of section 103(c) of the Internal Revenue Code. However, the IRS raised the questions regarding the interrelationship between the furnishing of water for irrigation purposes and for electrical generation purposes, as described above.

It is anticipated that normally, substantially all the falling water from the dam would be made available to the Idaho Power Co. only when the water was released from the dam for irrigation purposes. There has been no intention to release water specifically for the power company except to the extent of approximately 2.65 percent of the dam storage capacity. Released water in that amount could be used by the power company for the purpose of scheduling the generation of electrical energy. Therefore, the use of water for electrical generation purposes would clearly be subordinate to the use for irrigation.

Were it not for the use of water by the power company for electrical power generation, any bonds issued by the reservoir district would presently qualify as tax-exempt under the Code. As stated above, the power company is financing a large portion of the debt to assist in reconstruction of the dam. Additionally, since the dam will be turned over to the Federal Government after reconstruction for ownership and operation, this financing may be viewed as saving the Federal Government the expenditure it would have had to make for dam reconstruction at some point in the future.

In view of these special circumstances, the committee believes it appropriate to extend tax-exempt status under section 103 of the Internal Revenue Code to the industrial development bonds to be issued in connection with rebuilding the American Falls Dam. The exception to be added to the code will apply to obligations for a dam which furnishes water for irrigation purposes and which has a subordinate use in connection with the generation of electrical energy, on the condition that substantially all the stored water be contractually available for release from the dam for irrigation purposes and that the water so released be available on reasonable demand to members of the general public.

The committee estimates, and the Department of Treasury concurs with this estimate, that changes made by H.R. 9968 would result in an annual revenue loss of about $1 million per year in each of the next 5 fiscal years.

Mr. SYMMS. Mr. Speaker, I would like to thank the gentleman from California (Mr. KETCHUM) for his work on this legislation clear back in the year 1973 when it first passed the Committee on Interior and Insular Affairs. It is, as the gentleman from California pointed out, a piece of legislation where private capital is going to pay to rebuild a Government bureau reclamation structure and deed it back over to the Federal Government after it is reconstructed.

I think this is a fine example of how our private system, if allowed to work

and if Government will allow it to do so, can take care of many of these problems. We appreciate passage of this bill and would like to thank the gentleman from Oregon (Mr. ULLMAN) for the speedy work that the Committee on Ways and Means did to bring this up so that we could start digging by December of this year, because they do need to start. It is a 3-year construction program, and they need to start to work on the reconstruction immediately, so it is coming none too soon.

We certainly appreciate it, and I know that as a downstream water user of the Snake River, many of my constituents also will appreciate this.

Mr. Speaker, I would also like to thank my colleague from Idaho (Mr. HANSEN) for the work he has done to bring this to speedy passage. Also I wish to pay tribute to Chairman BIZ JOHNSON for all the work he did on this legislation.

Mr. KETCHUM. Mr. Speaker, I yield such time as he may consume to the gentleman from Idaho (Mr. HANSEN).

Mr. HANSEN. Mr. Speaker, we all know that one man doesn't move even the weakest legislation; that a lot of hands are involved.

Two suspensions today are of vital importance to Idaho, particularly to the Second Congressional District. They are H.R. 6669 and H.R. 9968. Both of these bills will have a tremendous economic impact on an area where people only survive and thrive with good land use practices and water management. We in the West cannot underestimate the value of our reclamation projects.

On behalf of the people of Idaho, I want to sincerely thank two of my colleagues for their invaluable assistance and foresight in committee, especially in working out the details of H.R. 9963, and for bringing these two bills to the floor—Chairman JOHNSON of the Water and Power Resources Subcommittees of Interior, and Chairman ULLMAN of Ways and Means.

I am also most grateful to my colleague Mr. KETCHUM and Mr. STEVE SYMMS, a member of the Interior Committee, and to members of his staff, who watched these bills so carefully during their progress.

Mr. ULLMAN. Mr. Speaker, I have no further requests for time.

The SPEAKER. The question is on the motion offered by the gentleman from Oregon (Mr. ULLMAN) that the House suspend the rules and pass the bill H.R. 9968.

Mr. FRENZEL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Pursuant to the provisions of clause 3(b) of rule XXVII and the Chair's prior announcement, further proceedings on this motion will be postponed.

Does the gentleman from Minnesota withdraw his point of order of no quorum?

Mr. FRENZEL. I do, Mr. Speaker.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. Debate has been concluded on all motions to suspend the rules.

Pursuant to clause 3, rule XXVII, the Chair will now put the question on each motion, on which further proceedings were postponed, in the order in which that motion was entertained.

Votes will be taken in the following order:

H.R. 9576, de novo.

H.R. 9968, de novo.

The Chair will reduce to 5 minutes the time for any electronic votes after the first vote in this series.

VETERANS' READJUSTMENT ASSISTANCE AMENDMENTS OF 1975

The Speaker. The unfinished business is the quesion of suspending the rules and passing the bill H.R. 9576.

The Clerk read the title of the bill.

The SPEAKER. The question is on the motion offered by the gentleman from Texas (Mr. ROBERTS) that the House suspend the rules and pass the bill H.R. 9576.

The question was taken.

Mr. EDGAR. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify the absent Members.

The vote was taken by electronic device, and there were—yeas 293, nays 106, answered "present" 1, not voting 28, as follows:

[Roll No. 592]

YEAS—293

Abdnor	Cotter	Guyer
Adams	Coughlin	Hagedorn
Addabbo	Crane	Haley
Anderson, Calif.	D'Amours	Hamilton
Andrews, N.C.	Daniel, Dan	Hammer-schmidt
Andrews, N. Dak.	Daniel, R. W.	Hanley
Annunzio	Daniels, N.J.	Hannaford
Archer	Danielson	Hansen
Armstrong	Davis	Harkin
Ashbrook	de la Garza	Harsha
Ashley	Delaney	Hastings
AuCoin	Dent	Hechler, W. Va.
Bafalis	Derrick	Heckler, Mass.
Bauman	Derwinski	Hefner
Beard, R.I.	Devine	Heinz
Beard, Tenn.	Dickinson	Helstoski
Bennett	Diggs	Henderson
Bevill	Dodd	Hicks
Biaggi	Downey, N.Y.	Hightower
Biester	Downing, Va.	Hillis
Blouin	Duncan, Oreg.	Holt
Boggs	Duncan, Tenn.	Horton
Boland	du Pont	Howe
Bonker	Early	Hubbard
Bowen	Edwards, Ala.	Hungate
Breaux	Edwards, Calif.	Hutchinson
Breckinridge	Eilberg	Hyde
Brinkley	Emery	Ichord
Brodhead	English	Jacobs
Brooks	Erlenborn	Jarman
Broomfield	Evans, Colo.	Jeffords
Brown, Calif.	Evans, Ind.	Johnson, Colo.
Brown, Mich.	Fascell	Johnson, Pa.
Brown, Ohio	Fenwick	Jones, Ala.
Broyhill	Findley	Jones, N.C.
Buchanan	Fish	Jones, Tenn.
Burgener	Fisher	Karth
Burke, Mass.	Fithian	Kastenmeier
Burleson, Tex.	Flowers	Kazen
Burlison, Mo.	Flynt	Kelly
Byron	Foley	Kemp
Carney	Forsythe	Ketchum
Carr	Fountain	Kindness
Carter	Frenzel	Koch
Casey	Frey	Krebs
Cederberg	Fuqua	Krueger
Chappell	Gaydos	LaFalce
Clancy	Giaimo	Lagomarsino
Clawson, Del	Gibbons	Landrum
Cleveland	Gilman	Latta
Cochran	Ginn	Lent
Cohen	Goldwater	Levitas
Collins, Tex.	Goodling	Litton
Conlan	Gradison	Lloyd, Calif.
Conte	Grassley	Lloyd, Tenn.
Corman	Gude	Long, La.
Cornell	Guyer	Long, Md.
Dellums	Hagedorn	Lott
Delaney	Haley	Lujan
Dent	Hamilton	McCloskey
Derrick	Hammer-schmidt	McCollister
Derwinski	Hanley	McCormack
Devine	Hannaford	McDade
Dickinson	Hansen	McDonald
Diggs	Harkin	McFall
Dodd	Harsha	McHugh
Downey, N.Y.	Hastings	McKay
Downing, Va.	Hechler, W. Va.	McKinney
Duncan, Oreg.	Heckler, Mass.	Macdonald
Duncan, Tenn.	Hefner	Madigan
du Pont	Heinz	Maguire
Early	Helstoski	Mahon
Edwards, Ala.	Henderson	Mann
Edwards, Calif.	Hicks	Martin
Eilberg	Hightower	Mathis
Emery	Hillis	Matsunaga
English	Holt	Mazzoli
Erlenborn	Horton	Michel
Evans, Colo.	Howe	Milford
Evans, Ind.	Hubbard	Miller, Ohio
Fascell	Hungate	Mills
Fenwick	Hutchinson	Minish
Findley	Hyde	Moakley
Fish	Ichord	Moffett
Fisher	Jacobs	Moliohan
Fithian	Jarman	Montgomery
Flowers	Jeffords	Moore
Flynt	Johnson, Colo.	Moorhead, Calif.
Foley	Johnson, Pa.	Moorhead, Pa.
Forsythe	Jones, Ala.	Mosher
Fountain	Jones, N.C.	Mottl
Frenzel	Jones, Tenn.	Murphy, Ill.
Frey	Karth	Murphy, N.Y.
Fuqua	Kastenmeier	Murtha
Gaydos	Kazen	Myers, Ind.
Giaimo	Kelly	Neal
Gibbons	Kemp	Nichols
Gilman	Ketchum	Oberstar
Ginn	Kindness	O'Brien
Goldwater	Koch	O'Neill
Goodling	Krebs	Passman
Gradison	Krueger	Patten, N.J.
Grassley	LaFalce	Pettis
Gude	Lagomarsino	Peyser
	Landrum	Pickle
	Latta	Pike
	Lent	Poage
	Levitas	Preyer
	Litton	Price
	Lloyd, Calif.	Pritchard
	Lloyd, Tenn.	Quie
	Long, La.	Railsback
	Long, Md.	Randall
	Lott	Rees
	Lujan	Regula
	McCloskey	Rhodes
	McCollister	Rinaldo
	McCormack	Risenhoover
	McDade	Roberts
	McDonald	Robinson
	McFall	Rodino
	McHugh	Roe
	McKay	Rogers
	McKinney	Rooney
	Macdonald	Rose
	Madigan	Rosenthal
	Maguire	Rostenkowski
	Mahon	Roush
	Mann	Rousselot
	Martin	Russo
	Mathis	St Germain
	Matsunaga	Sarasin
	Mazzoli	Satterfield
	Michel	Schneebeli
	Milford	Schulze
	Miller, Ohio	Sebelius
	Mills	Seiberling
	Minish	Sharp
	Moakley	Shriver
	Moffett	Sikes
	Moliohan	Skubitz
	Montgomery	Slack
	Moore	Smith, Iowa
	Moorhead, Calif.	Smith, Nebr.
	Moorhead, Pa.	Snyder
	Mosher	Spellman
	Mottl	Spence
	Murphy, Ill.	Stanton, J. William
	Murphy, N.Y.	Steed
	Murtha	Steelman
	Myers, Ind.	Steiger, Ariz.
	Neal	Stephens
	Nichols	Stratton
	Oberstar	Stuckey
	O'Brien	Studds
	O'Neill	Sullivan
	Passman	Symington
	Patten, N.J.	Symms
	Pettis	Talcott
	Peyser	Taylor, Mo.
	Pickle	Taylor, N.C.
	Pike	Teague
	Poage	Thone
	Preyer	Thornton
	Price	Treen
	Pritchard	Tsongas
	Quie	Udall
	Railsback	Ullman
	Randall	Vander Jagt
	Rees	Vigorito
	Regula	Waggonner
	Rhodes	Walsh
	Rinaldo	Wampler
	Risenhoover	Whalen
	Roberts	Whitehurst
	Robinson	Whitten
	Rodino	Wiggins
	Roe	Wilson, C. H.
	Rogers	Wilson, Tex.
	Rooney	Winn
	Rose	Wright
	Rosenthal	Wydler
	Rostenkowski	Wylie
	Roush	Yatron
	Rousselot	Young, Fla.
	Russo	Young, Tex.
	St Germain	Zablocki
	Sarasin	Zeferetti
	Satterfield	
	Schneebeli	
	Schulze	
	Sebelius	
	Seiberling	
	Sharp	
	Shriver	
	Sikes	
	Skubitz	
	Slack	
	Smith, Iowa	
	Smith, Nebr.	

NAYS—106

Abzug	Hall	Pattison, N.Y.
Alexander	Harrington	Pepper
Ambro	Harris	Perkins
Aspin	Hawkins	Pressler
Badillo	Hayes, Ind.	Quillen
Baldus	Hays, Ohio	Rangel
Barrett	Hughes	Reuss
Baucus	Johnson, Calif.	Richmond
Bedell	Jordan	Roncalio
Bergland	Kasten	Roybal
Bingham	Keys	Ruppe
Blanchard	Lehman	Santini
Bolling	McClory	Sarbanes
Brademas	Madden	Scheuer
Burke, Calif.	Meeds	Schroeder
Burton, John	Melcher	Shipley
Burton, Phillip	Metcalfe	Simon
Chisholm	Meyner	Solarz
Clausen, Don H.	Mezvinsky	Staggers
Clay	Mikva	Stanton, James V.
Collins, Ill.	Miller, Calif.	Stark
Conte	Mineta	Steiger, Wis.
Conyers	Mink	Stokes
Corman	Mitchell, Md.	Thompson
Cornell	Mitchell, N.Y.	Traxler
Dellums	Moss	Van Deerlin
Drinan	Natcher	Vander Veen
Eckhardt	Nedzi	Vanik
Edgar	Nix	Weaver
Flood	Nolan	White
Florio	Nowak	Wirth
Ford, Mich.	Obey	Yates
Ford, Tenn.	O'Hara	Young, Alaska
Fraser	Ottinger	Young, Ga.
Gonzalez	Patman, Tex.	
Green	Patterson, Calif.	

ANSWERED "PRESENT"—1

Leggett

NOT VOTING—28

Anderson, Ill.	Hébert	Riegle
Bell	Hinshaw	Runnels
Burke, Fla.	Holland	Ryan
Butler	Holtzman	Shuster
Conable	Howard	Sisk
Dingell	Jenrette	Waxman
Esch	Jones, Okla.	Wilson, Bob
Eshleman	McEwen	Wolff
Evins, Tenn.	Morgan	
Fary	Myers, Pa.	

The Clerk announced the following pairs:

Mr. Hébert with Ms. Holtzman.

Mr. Howard with Mr. Anderson of Illinois.

Mr. Ryan with Mr. Bob Wilson.

Mr. Morgan with Mr. McEwen.

EXECUTIVE REPORTS OF COMMITTEES

As in executive session, the following executive reports of committees were submitted:

By Mr. JACKSON, from the Committee on Interior and Insular Affairs:

William G. Rosenberg, of Michigan, to be an Assistant Administrator of the Federal Energy Administration.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. EASTLAND, from the Committee on the Judiciary:

Ralph G. Thompson, of Oklahoma, to be U.S. district judge for the western district of Oklahoma.

By Mr. JACKSON, from the Committee on Interior and Insular Affairs:

Thomas S. Kleppe, of North Dakota, to be Secretary of the Interior (Exec. Rept. No. 94-7).

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

HOUSE BILLS REFERRED

The following bills were read twice by their titles and referred as indicated:

H.R. 1427. An act for the relief of Marta Adela Corletto Padro;

H.R. 1507. An act for the relief of Marisa Arzano;

H.R. 1558. An act for the relief of Dr. Gerald M. R. Winkler;

H.R. 2118. An act for the relief of Cheryl Ann V. Camacho;

H.R. 2502. An act for the relief of Peter Kay Mesikepp;

H.R. 2776. An act for the relief of Candido Aldua;

H.R. 3372. An act for the relief of Tze Tsun Chu;

H.R. 3815. An act for the relief of Joseph Andrews;

H.R. 3817. An act for the relief of the Arizona Daily Sun and Williams News;

H.R. 4835. An act for the relief of M/Sgt. George C. Lee, U.S. Air Force;

H.R. 4829. An act for the relief of Leah Maureen Anderson;

H.R. 4939. An act for the relief of Manuel Amotan;

H.R. 6156. An act for the relief of Walma Thompson;

H.R. 6512. An act for the relief of certain postmasters charged with postal deficiencies; and

H.R. 7494. An act for the relief of Luigi Antaniello; to the Committee on the Judiciary.

H.R. 2110. An act for the relief of Joyce Ann Farrior and Sarah E. Farrior; to the Committee on Finance.

H.R. 9500. An act to stabilize labor-management relations in the construction industry, and for other purposes; to the Committee on Labor and Public Welfare.

H.R. 7642. An act to amend chapter 5, title 37, United States Code, to extend the special pay provisions for veterinarians and optometrists, and for nuclear-qualified officers who extend their period of active duty; to the Committee on Armed Services.

H.R. 8550. An act to amend chapter 83 of title 5, United States Code, to grant an annuitant the right to elect within 1 year after remarriage whether such annuitant's new spouse shall be entitled, if otherwise qualified, to a survivor's annuity, and for other purposes; to the Committee on Post Office and Civil Service.

H.R. 9968. An act to amend section 103 of the Internal Revenue Code of 1954 with respect to certain obligations used to provide irrigation facilities; to the Committee on Finance.

REFERRAL OF H.R. 9005 TO THE COMMITTEE ON AGRICULTURE AND FORESTRY

Mr. HUMPHREY. Mr. President, I wish to modify a previous unanimous-consent order approved October 2, 1975.

I ask unanimous consent that H.R. 9005, which has been favorably reported by the Committee on Foreign Relations, be referred to the Committee on Agriculture and Forestry for that committee's consideration of title II and section 311 of H.R. 9005.

It was not possible to deal with the bill within the previously established October 11 deadline. Therefore, we are removing this date with the understanding that the Committee on Agriculture and Forestry will move as expeditiously as possible in its consideration of H.R. 9005.

Mr. President, H.R. 9005 is an act to authorize assistance for disaster relief and rehabilitation, to provide for overseas distribution and production of agricultural commodities, to amend the Foreign Assistance Act of 1961, and for other purposes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that today, October 8, 1975, he presented to the President of the United States for his approval the following bills:

S. 824. An act to provide for the use of certain funds to promote scholarly, cultural, and artistic activities between Japan and the United States, and for other purposes.

S. 1327. An act to declare that certain submarginal land of the United States shall be held in trust for certain Indian tribes and be made a part of the reservations of said Indians, and for other purposes.

S. 1549. An act to amend the Federal Rules of Evidence, and for other purposes.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolution were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. STEVENSON:

S. 2492. A bill to amend the Export Administration Act of 1969 in order to subject agricultural export agreements to congressional review. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. ABOUREZK (for himself and Mr. McGOVERN):

S. 2493. A bill to authorize the Secretary of the Interior to construct, operate, and maintain the Pollock-Herreid unit, South Dakota pumping division, Pick-Sloan Missouri Basin program, South Dakota, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. MOSS:

S. 2494. A bill to amend the Consumer Product Safety Act to prohibit the Consumer Product Safety Commission from issuing any rule or order that restricts the manufacture or sale of firearms, firearms ammunition, or components of firearms ammunition, to authorize new appropriations, and for other purposes. Referred to the Committee on Commerce.

By Mr. HARTKE:

S. 2495. A bill to amend the Internal Revenue Code of 1954 to repeal the excise tax on trucks, buses, and tractors and parts and accessories for such vehicles. Referred to the Committee on Finance.

By Mr. FONG:

S. 2496. A bill to amend the Internal Revenue Code of 1954 to provide that certain limited miscellaneous contributions may be taken into account for purposes of determining whether a private foundation has met the minimum distribution requirements of section 4942 of such Code. Referred to the Committee on Finance.

By Mr. MONDALE:

S. 2497. A bill to amend the Higher Education Act of 1965 to encourage the establishment of lifetime learning programs, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. MORGAN, from the Committee on Banking, Housing and Urban Affairs:

S. 2498. A bil to amend the Small Business Act to provide assistance for small business export activities, to transfer certain disaster relief functions of the Small Business Administration to other Federal agencies, to establish a National Commission on Small Business in America, and for other purposes. Placed on the calendar.

By Mr. INOUYE:

S. 2499. A bill to amend the Federal Water Pollution Control Act relating to the discharge of pollutants into open ocean waters. Referred to the Committee on Public Works.

By Mr. EAGLETON:

S. 2500. A bill to amend title XIX of the Social Security Act to require that, effective July 1, 1976, payment, under State plans approved under such title, for home health services shall be made on a reasonable cost-related basis. Referred to the Committee on Finance.

By Mr. BENTSEN:

S. 2501. A bill to amend the Act establishing the Big Thicket National Preserve to provide for the acquisition of property. Referred to the Committee on Interior and Insular Affairs.

By Mr. MOSS:

S. 2502. A bill to reform electric utility rate regulation, to provide for more effective planning of bulk power facilities, to assure reliability of bulk power supplies, to strengthen State electric utility regulatory agencies, and to establish the Federal Energy Commission. Referred jointly, by unanimous consent, to the Committee on Commerce and the Committee on Government Operations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MOSS:

S. 2494. A bill to amend the Consumer Product Safety Act to prohibit the Consumer Product Safety Commission from issuing any rule or order that restricts the manufacture or sale of firearms, firearms ammunition, or components of firearms ammunition, to authorize new appropriations, and for other purposes. Referred to the Committee on Commerce.

Mr. MOSS. Mr. President, I introduce today legislation to amend the Consumer Product Safety Act to prohibit the Consumer Product Safety Commission from issuing any rule or order that restricts the manufacture or sale of firearms,

Exhibit 33

S. Rep. No. 94-570 (1975)

Calendar No. 546

94TH CONGRESS } SENATE { REPORT
1st Session } { 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

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S 363-22

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 hydroelectirc power generation. Revenues from such a contract with help defer the costs of constructing the dam. Prior to the adoption of the Act of December 28, 1973, the Idaho Power Company, which is a spaceholder in the reservoir and which owns and operates a powerplant below the existing dam, expressed interest in the execution of a falling water contract. Subsequent to the adoption of the Act, the District, as the constructing agency, entered into negotiations with the Secretary of the Interior, the Idaho Power Company and the other water users for the preparation of various contracts including a contract for the use of falling water.

It was intended that in normal circumstances substantially all of the falling water would be made available to the Power Company only when water was released from the dam for irrigation purposes. There has been no intention to release water specifically for use by the Idaho Power Company to generate electricity, except for 45,000 acre-feet (2.65 percent of the storage capacity) whose release the power company, in its capacity as a space holder in the irrigation district, can schedule for the purpose of generating electric energy. Thus, the use of water for electric energy would be subordinated to the use of the water for irrigation.

Although the Federal Government might well eventually completely finance the reconstruction of the American Falls Dam, the American Falls Reservoir District is undertaking the reconstruction now in order to make the dam fully operational for the spaceholders (rather than the present restricted two-thirds capacity). If it were not for the use of the water by the Idaho Power Company for hydroelectric power generation, any bonds issued by the Reservoir District would presently qualify for tax-exempt status. In this case the Idaho Power Company has a limited spaceholder right (under 3 percent) and is financing a large portion of the debt to assist the reconstruction of the dam and has use of the falling water for its hydroelectric power generation purposes. In addition, since the dam is to be turned over to the Federal Government after its reconstruction for ownership and operation, in effect, this financing can be viewed as saving the Federal Government the expenditure it would have had to make to reconstruct the dam several years in the future. In view of these special circumstances, the committee believes it is appropriate to extend tax-exempt status to the bonds to be issued to finance the reconstruction of the dam.

The bill adds a new exception to industrial development bond treatment to specifically allow tax-exempt status for the bonds issued to reconstruct the American Falls Dam. This exception is to apply to obligations for a dam which furnishes water for irrigation purposes which has a subordinate use in connection with the generation of electric energy by water if substantially all of the stored water is contractually available for release from the dam for irrigation pur-

poses and if the water released is available on reasonable demand for members of the general public.

The committee intends that subordinate use of water for generating electric energy means that less than 10 percent of the normal supply of stored water may contractually be scheduled for release by the power company and used for generating electric energy. Normal refers to conditions that generally prevail in the service area of this reservoir, and it is recognized that unusually wet or dry weather can cause a significant distortion in the 2.65 percent of water contractually scheduled for release to be used for generating electric energy. The committee intends that such unusual circumstances not be guiding in determining the subordinate use of water. In addition, normal use does not include a temporary increase in water released for the power company following contractual default by a spaceholder and his water share being made available to other spaceholders under the terms of the contract for the construction and operation of the dam and its facilities.

Thus, the provision applies the requirements of subsection (e)(4)(G) where substantially all of the stored water (under normal weather and climatic conditions) is available for release to be used for irrigation in the American Falls Reservoir District. The requirement that the released water be available on reasonable demand to members of the general public is retained in the new subsection (e). The committee understands that the American Falls project conforms with this requirement.

The bill is to apply to obligations issued after the date of the enactment of this Act.

III. Costs of Carrying Out the Bill and Effect on the Revenues of the Bill

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made relative to the costs to be incurred in carrying out this bill and the effect on the revenues of the bill.

The committee estimates that the bill, relating to the tax-exempt status of obligations used to provide certain irrigation facilities, will result in an annual revenue loss of about $1 million in each of the five fiscal years following the current fiscal year. No revenue loss is expected in the current fiscal year.

IV. Vote of Committee in Reporting the Bill

In compliance with section 133 of the Legislative Reorganization Act, as amended, the following statement is made relative to the vote of the committee on reporting the bill. This bill was ordered favorably reported by the committee without a rollcall vote and without objection.

V. Changes in Existing Law

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as

reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

* * * * * * *

Chapter 1—Normal Taxes and Surtaxes

* * * * * * *

Subchapter B—Computation of Taxable Income

* * * * * * *

Part III—Items Specifically Excluded From Gross Income

Sec. 103. Interest on Certain Governmental Obligations.

(a) GENERAL RULE.—Gross income does not include interest on—

(1) the obligations of a State, a Territory, or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia;

(2) the obligations of the United States; or

(3) the obligations of a corporation organized under Act of Congress, if such corporation is an instrumentality of the United States and if under the respective Acts authorizing the issue of the obligations the interest is wholly exempt from the taxes imposed by this subtitle.

(b) EXCEPTION.—Subsection (a)(2) shall not apply to interest on obligations of the United States issued after September 1, 1917 (other than postal savings certificates of deposit, to the extent they represent deposits made before March 1, 1941), unless under the respective Acts authorizing the issuance thereof such interest is wholly exempt from the taxes imposed by this subtitle.

(c) INDUSTRIAL DEVELOPMENT BONDS.—

(1) SUBSECTION (a)(1) NOT TO APPLY.—Except as otherwise provided in this subsection, any industrial development bond shall be treated as an obligation not described in subsection (a)(1).

(2) INDUSTRIAL DEVELOPMENT BOND.—For purposes of this subsection, the term "industrial development bond" means any obligation—

(A) which is issued as part of an issue all or a major portion of the proceeds of which are to be used directly or indirectly in any trade or business carried on by any person who is not an exempt person (within the meaning of paragraph (3)), and

(B) the payment of the principal or interest on which (under the terms of such obligation or any underlying arrangement) is, in whole or in major part—

(i) secured by any interest in property used or to be used in a trade or business or in payments in respect of such property, or

(ii) to be derived from payments in respect of property, or borrowed money, used or to be used in a trade or business.

(3) EXEMPT PERSON.—For purposes of paragraph (2)(A), the term "exempt person" means—

(A) a governmental unit, or

(B) an organization described in section 501(c)(3) and exempt from tax under section 501(a) (but only with respect to a trade or business carried on by such organization which is not an unrelated trade or business, determined by applying section 513(a) to such organization).

(4) CERTAIN EXEMPT ACTIVITIES.—Paragraph (1) shall not apply to any obligation which is issued as part of an issue substantially all of the proceeds of which are to be used to provide—

(A) residential real property for family units,

(B) sports facilities,

(C) convention or trade show facilities,

(D) airports, docks, wharves, mass commuting facilities, parking facilities, or storage or training facilities directly related to any of the foregoing,

(E) sewage or solid waste disposal facilities or facilities for the local furnishing of electric energy or gas,

(F) air or water pollution control facilities, or

(G) facilities for the furnishing of water, if available on reasonable demand to members of the general public.

(5) INDUSTRIAL PARKS.—Paragraph (1) shall not apply to any obligation issued as part of an issue substantially all of the proceeds of which are to be used for the acquisition or development of land as the site for an industrial park. For purposes of the preceding sentence, the term "development of land" includes the provision of water, sewage, drainage, or similar facilities, or of transportation, power, or communication facilities, which are incidental to use of the site as an industrial park, but, except with respect to such facilities, does not include the provision of structures or buildings.

(6) EXEMPTION FOR CERTAIN SMALL ISSUES.—

(A) IN GENERAL.—Paragraph (1) shall not apply to any obligation issued as part of an issue the aggregate authorized face amount of which is $1,000,000 or less and substantially all of the proceeds of which are to be used (i) for the acquisition, construction, reconstruction, or improvement of land or property of a character subject to the allowance for depreciation, or (ii) to redeem part or all of a prior issue which was issued for purposes described in clause (i) or this clause.

(B) CERTAIN PRIOR ISSUES TAKEN INTO ACCOUNT.—If—

(i) the proceeds of two or more issues of obligations (whether or not the issuer of each such issue is the same) are or will be used primarily with respect to facilities located in the same incorporated municipality or located in the same county (but not in any incorporated municipality),

(ii) the principal user of such facilities is or will be the same person or two or more related persons, and

(iii) but for this subparagraph, subparagraph (A) would apply to each such issue,

then, for purposes of subparagraph (A), in determining the aggregate face amount of any later issue there shall be taken into account the face amount of obligations issued under all prior such issues and outstanding at the time of such later issue (not including as outstanding any obligation which is to be redeemed from the proceeds of the later issue).

(C) RELATED PERSONS.—For purposes of this paragraph and paragraph (7), a person is a related person to another person if—

(i) the relationship between such persons would result in a disallowance of losses under section 267 or 707(b), or

(ii) such persons are members of the same controlled group of corporations (as defined in section 1563(a), except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein).

(D) $5,000,000 LIMIT IN CERTAIN CASES.—At the election of the issuer, made at such time and in such manner as the Secretary or his delegate shall by regulations prescribe, with respect to any issue this paragraph shall be applied—

(i) by substituting "$5,000,000" for "$1,000,000" in subparagraph (A), and

(ii) in determining the aggregate fact amount of such issue, by taking into account not only the amount described in subparagraph (B), but also the aggregate amount of capital expenditures with respect to facilities described in subparagraph (E) paid or incurred during the 6-year period beginning 3 years before the date of such issue and ending 3 years after such date (and financed otherwise than out of the proceeds of outstanding issues to which subparagraph (A) applied), as if the aggregate amount of such capital expenditures constituted the face amount of a prior outstanding issue described in subparagraph (B).

(E) FACILITIES TAKEN INTO ACCOUNT.—For purposes of subparagraph (D)(ii), the facilities described in this subparagraph are facilities—

(i) located in the same incorporated municipality or located in the same county (but not in any incorporated municipality), and

(ii) the principal user of which is or will be the same person or two or more related persons.

For purposes of clause (i), the determination of whether or not facilities are located in the same governmental unit shall be made as of the date of issue of the issue in question.

(F) CERTAIN CAPITAL EXPENDITURES NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (D)(ii), any capital expenditure—

(i) to replace property destroyed or damaged by fire, storm, or other casualty, to the extent of the fair market value of the property replaced,

(ii) required by a change made after the date of issue of the issue in question in a Federal or State law or local

ordinance of general application or required by a change made after such date in rules and regulations of general application issued under such a law or ordinance, or

(iii) required by circumstances which could not be reasonably foreseen on such date of issue or arising out of a mistake of law or fact (but the aggregate amount of expenditures not taken into account under this clause with respect to any issue shall not exceed $1,000,000), shall not be taken into account.

(G) LIMITATION ON LOSS OF TAX EXEMPTION.—In applying subparagraph (D)(ii) with respect to capital expenditures made after the date of any issue, no obligation issued as a part of such issue shall be treated as an obligation not described in subsection (a)(1) by reason of any such expenditure for any period before the date on which such expenditure is paid or incurred.

(H) CERTAIN REFINANCING ISSUES.—In the case of any issue described in subparagraph (A)(ii), an election may be made under subparagraph (D) only if all of the prior issues being redeemed are issues to which subparagraph (A) applies. In applying subparagraph (D)(ii) with respect to such a refinancing issue, capital expenditures shall be taken into account only for purposes of determining whether the prior issues being redeemed qualified (and would have continued to qualify) under subparagraph (A).

(7) EXCEPTION.—Paragraphs (4), (5), and (6) shall not apply with respect to any obligation for any period during which it is held by a person who is a substantial user of the facilities or a related person.

(d) ARBITRAGE BONDS.—

(1) SUBSECTION (a)(1) NOT TO APPLY.—Except as provided in this subsection, any arbitrage bond shall be treated as an obligation not described in subsection (a)(1).

(2) ARBITRAGE BOND.—For purposes of this subsection, the term "arbitrage bond" means any obligation which is issued as part of an issue all or a major portion of the proceeds of which are reasonably expected to be used directly or indirectly—

(A) to acquire securities (within the meaning of section 165(g)(2)(A) or (B) or obligations (other than obligations described in subsection (a)(1)) which may be reasonably expected at the time of issuance of such issue, to produce a yield over the term of the issue which is materially higher (taking into account any discount or premium) than the yield on obligations of such issue, or

(B) to replace funds which were used directly or indirectly to acquire securities or obligations described in subparagraph (A).

(3) EXCEPTION.—Paragraph (1) shall not apply to any obligation—

(A) which is issued as part of an issue substantially all of the proceeds of which are reasonably expected to be used to provide permanent financing for real property used or to be

used for residential purposes for the personnel of an educational institution (within the meaning of section 151(e)(4)) which grants baccalaureate or higher degrees, or to replace funds which were so used, and

(B) the yield on which over the term of the issue is not reasonably expected, at the time of issuance of such issue, to be substantially lower than the yield on obligations acquired or to be acquired in providing such financing.

This paragraph shall not apply with respect to any obligation for any period during which it is held by a person who is a substantial user of property financed by the proceeds of the issue of which such obligation is a part, or by a member of the family (within the meaning of section 318(a)(1)) of any such person.

(4) SPECIAL RULES.—For purposes of paragraph (1), an obligation shall not be treated as an arbitrage bond solely by reason of the fact that—

(A) the proceeds of the issue of which such obligation is a part may be invested for a temporary period in securities or other obligations until such proceeds are needed for the purpose for which such issue was issued, or

(B) an amount of the proceeds of the issue of which such obligation is a part may be invested in securities or other obligations which are part of a reasonably required reserve or replacement fund.

The amount referred to in subparagraph (B) shall not exceed 15 percent of the proceeds of the issue of which such obligation is a part unless the issuer establishes that a higher amount is necessary.

(5) REGULATIONS.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

(e) CERTAIN IRRIGATION DAMS.—*A dam for the furnishing of water for irrigation purposes which has a subordinate use in connection with the generation of electric energy by water shall be treated as meeting the requirements of subsection (e)(4)(G) if—*

(1) substantially all of the stored water is contractually available for release from such dam for irrigation purposes, and

(2) the water so released is available on reasonable demand to members of the general public.

[(e)] (f) CROSS REFERENCES.—

For provisions relating to the taxable status of—

(1) Bonds and certificates of indebtedness authorized by the First Liberty Bond Act, see sections 1 and 6 of that Act (40 Stat. 35, 36; 31 U.S.C. 746, 755);

(2) Bonds issued to restore or maintain the gold reserve, see section 2 of the Act of March 14, 1900 (31 Stat. 46; 31 U.S.C. 408);

(3) Bonds, notes, certificates of indebtedness, and Treasury bills authorized by the Second Liberty Bond Act, see sections 4, 5 (b) and (d), 7, 18 (b) and 22(d) of the Act as amended (40 Stat. 290; 46 Stat. 20, 775; 40 Stat. 291, 1310; 55 Stat. 8; 31 U.S.C. 752a, 754, 747, 753, 757c);

(4) Bonds, notes, and certificates of indebtedness of the United States and bonds of the War Finance Corporation owned by certain nonresidents, see section 3 of the Fourth Liberty Bond Act, as amended (40 Stat. 1311, § 4; 31 U.S.C. 750);

(5) Certificates of indebtedness issued after February 4, 1910, see section 2 of the Act of that date (36 Stat. 192; 31 U.S.C. 769);

(6) Consols of 1930, see section 11 of the Act of March 14, 1900 (31 Stat. 48; 31 U.S.C. 751);

(7) Obligations and evidences of ownership issued by the United States or any of its agencies or instrumentalities on or after March 28, 1942, see section 4 of the Public Debt Act of 1941, as amended (c. 147, 61 Stat. 180; 31 U.S.C. 742a);

(8) Commodity Credit Corporation obligations, see section 5 of the Act of March 8, 1938 (52 Stat. 108; 15 U.S.C. 713a–5);

(9) Debentures issued by Federal Housing Administrator, see sections 204(d) and 207(i), of the National Housing Act, as amended (52 Stat. 14, 20; 12 U.S.C. 1710, 1713);

(10) Debentures issued to 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(c) of the National Housing Act (48 Stat. 1257; 12 U.S.C. 1725);

(15) Home Owners' Loan Corporation bonds, see section 4(c) of the Home Owners' Loan Act of 1933, as amended (48 Stat. 644, c. 168; 12 U.S.C. 1463);

(16) Obligations of Central Bank for Cooperatives, production credit corporations, production credit associations, and banks for cooperatives, see section 63 of the Farm Credit Act of 1933 (48 Stat. 267; 12 U.S.C. 1138c);

(17) Panama Canal bonds, see section 1 of the Act of December 21, 1904 (34 Stat. 5; 31 U.S.C. 743), section 8 of the Act of June 28, 1902 (32 Stat. 484; 31 U.S.C. 744), and section 39 of the Tariff Act of 1909 (36 Stat. 117; 31 U.S.C. 745);

(18) Philippine bonds, etc., issued before the independence of the Philippines, see section 9 of the Philippine Independence Act (48 Stat. 463; 48 U.S.C. 1239);

(19) Postal savings bonds, see section 10 of the Act of June 25, 1910 (36 Stat. 817; 39 U.S.C. 760);

(20) Puerto Rican bonds, see section 3 of the Act of March 2, 1917, as amended (50 Stat. 855; 48 U.S.C. 745);

(21) Treasury notes issued to retire national bank notes, see section 18 of the Federal Reserve Act (38 Stat. 268; 12 U.S.C. 447);

(22) United States Housing Authority obligations, see sections 5(c) and 20(b) of the United States Housing Act of 1937 (50 Stat. 890, 898; 42 U.S.C. 1405, 1420);

(23) Virgin Islands insular and municipal bonds, see section 1 of the Act of October 27, 1949 (63 Stat. 940; 48 U.S.C. 1403).

○

(18) Philippine bonds, etc., issued before the independence of the Philippines, see section 14 of the Philippine Independence Act (48 Stat. 459; 48 U.S.C. 1238);

(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 7 of the Act of March 2, 1917, as amended (39 Stat. 953; 48 U.S.C. 745);

(21) Treasury notes issued in retire national bank notes, see section 18 of the Federal Reserve Act (38 Stat. 268; 12 U.S.C. 441);

(22) United States Housing Authority obligations, see sections 6(c) and 20(b) of the United States Housing Act of 1937 (50 Stat. 891, 898; 42 U.S.C. 1406, 1420);

(23) Virgin Islands bonds and municipal bonds, see section 1 of the Act of October 27, 1949 (63 Stat. 891; 48 U.S.C. 1403).

VI. Certain Statements Required To Be Made by House Rules

In compliance with clauses 2(l)(1) and 2(l)(3) 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 the 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 interstate water 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 $8.2 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. 9068, 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. 9068.

In compliance with clause 2(l)(4) of Rule XI, the Committee states that the bonds to be issued by reason of enactment of H.R. 9068 are not expected to have an inflationary impact on prices and in costs in the operation of the national economy.

Exhibit 34

Pub. L. 94-164, 89 Stat. 970 (1975)

Public Law 94-164
94th Congress, H. R. 9968
December 23, 1975

An Act

To change certain income tax provisions of the Internal Revenue Code of 1954, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Revenue Adjustment Act of 1975.
26 USC 1 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Revenue Adjustment Act of 1975".

SEC. 1A. DECLARATION OF POLICY.

26 USC 1 note.

(a) Congress is determined to continue the tax reduction for the first 6 months of 1976 in order to assure continued economic recovery.

(b) Congress is also determined to continue to control spending levels in order to reduce the national deficit.

(c) Congress reaffirms its commitments to the procedures established by the Congressional Budget and Impoundment Control Act of 1974 under which it has already established a binding spending ceiling for the fiscal year 1976.

31 USC 1301 note.

(d) If the Congress adopts a continuation of the tax reduction provided by this Act beyond June 30, 1976, and if economic conditions warrant doing so, Congress shall provide, through the procedures in the Budget Act, for reductions in the level of spending in the fiscal year 1977 below what would otherwise occur, equal to any additional reduction in taxes (from the 1974 tax rate levels) provided for the fiscal year 1977: *Provided, however,* That nothing shall preclude the right of the Congress to pass a budget resolution containing a higher or lower expenditure figure if the Congress concludes that this is warranted by economic conditions or unforeseen circumstances.

SEC. 2. INDIVIDUAL INCOME TAX REDUCTIONS.

(a) LOW INCOME ALLOWANCE.—

(1) INCREASE.—Subsection (c) of section 141 of the Internal Revenue Code of 1954 (relating to low income allowance) is amended to read as follows:

26 USC 141.

"(c) LOW INCOME ALLOWANCE.—

"(1) IN GENERAL.—The low income allowance is—

"(A) $2,100 in the case of—

"(i) a joint return under section 6013, or

26 USC 6013.

"(ii) a surviving spouse (as defined in section 2(a)),

"(B) $1,700 in the case of an individual who is not married and who is not a surviving spouse (as so defined), or

"(C) $1,050 in the case of a married individual filing a separate return.

"(2) APPLICATION OF 6-MONTH RULE.—Notwithstanding the provisions of paragraph (1), the following amounts shall be substituted for the amount set forth in paragraph (1)—

"(A) '$1,700' for '$2,100' in subparagraph (A),

"(B) '$1,500' for '$1,700' in subparagraph (B), and

"(C) '$850' for '$1,050' in subparagraph (C).".

(2) CHANGE IN FILING REQUIREMENTS TO REFLECT INCREASE IN LOW INCOME ALLOWANCE.—Paragraph (1)(A) of section 6012(a) of such Code (relating to persons required to make returns of income) is amended—

26 USC 6012.

(A) by striking out "$2,350" in clause (i) of such paragraph and inserting in lieu thereof "$2,450";

(B) by striking out "$2,650" in clause (ii) of such paragraph and inserting in lieu thereof "$2,850"; and

(C) by striking out "$3,400" in clause (iii) of such paragraph and inserting in lieu thereof "$3,600".

(b) PERCENTAGE STANDARD DEDUCTION.—

26 USC 141. (1) INCREASE.—Subsection (b) of section 141 of such Code (relating to percentage standard deduction) is amended to read as follows:

"(b) PERCENTAGE STANDARD DEDUCTION.—

"(1) GENERAL RULE.—The percentage standard deduction is an amount equal to 16 percent of adjusted gross income but not to exceed—

"(A) $2,800 in the case of—

26 USC 6013. "(i) a joint return under section 6013, or

"(ii) a surviving spouse (as defined in section 2(a)),

"(B) $2,400 in the case of an individual who is not married and who is not a surviving spouse (as so defined), or

"(C) $1,400 in the case of a married individual filing a separate return.

"(2) APPLICATION OF 6-MONTH RULE.—Notwithstanding the provisions of paragraph (1) of this subsection, the following amounts shall be substituted for the amounts set forth in paragraph (1)—

"(A) '$2,400' for '$2,800' in subparagraph (A),

"(B) '$2,200' for '$2,400' in subparagraph (B), and

"(C) '$1,200' for '$1,400' in subparagraph (C).".

26 USC 3402. (2) CONFORMING AMENDMENTS.—Section 3402(m) of such Code (relating to withholding allowances based on itemized deductions) is amended—

(A) by striking out "$2,600" in paragraph (1)(B) and inserting in lieu thereof "$2,800", and

(B) by striking out "$2,300" in such paragraph and inserting in lieu thereof "$2,400".

(c) EARNED INCOME CREDIT.—Subsections (a) and (b) of section

26 USC 43. 43 of such Code (relating to earned income credit) are amended to read as follows:

"(a) ALLOWANCE OF CREDIT.—

"(1) GENERAL RULE.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 10 percent of so much of the earned income for the taxable year as does not exceed $4,000.

"(2) APPLICATION OF 6-MONTH RULE.—Notwithstanding the provisions of paragraph (1), the term '5 percent' shall be substituted for the term '10 percent' where it appears in that paragraph.".

"(b) LIMITATION.—

"(1) GENERAL RULE.—The amount of the credit allowable to a taxpayer under subsection (a) for any taxable year shall be reduced (but not below zero) by an amount equal to 10 percent of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds $4,000.

"(2) APPLICATION OF 6-MONTH RULE.—Notwithstanding the provisions of paragraph (1), the term '5 percent' shall be substituted for the term '10 percent' where it appears in that paragraph.".

(d) DISREGARD OF REFUND.—Any refund of Federal income taxes made to any individual by reason of section 43 of the Internal Revenue Code of 1954 (relating to earned income credit) shall not be taken into account as income or receipts for purposes of determining the eligibility, for the month in which such refund is made or any month thereafter which begins prior to July 1, 1976, of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds, but only if such individual (or the family unit of which he is a member) is a recipient of benefits or assistance under such a program for the month before the month in which such refund is made. 26 USC 43 note. 26 USC 43.

(e) EXTENSION OF CERTAIN LOW-INCOME ALLOWANCE, PERCENTAGE STANDARD DEDUCTION, AND TAX CREDIT PROVISIONS.—The last sentence of section 209(a) of the Tax Reduction Act of 1975 is amended to read as follows: "The amendments made by section 201(a) and 202(a) shall cease to apply to taxable years ending after December 31, 1975; those made by sections 201(b), 201(c), and 203 shall cease to apply to taxable years ending after December 31, 1976.". 26 USC 42 note. Ante, p. 35. 26 USC 42 note.

(f) EXTENSION OF EARNED INCOME CREDIT.—Section 209(b) of the Tax Reduction Act of 1975 (relating to effective date for section 204) is amended by striking out "January 1, 1976," and inserting in lieu thereof "January 1, 1977.". 26 USC 43 note.

(g) EFFECTIVE DATE.—The amendments made by this section apply to taxable years ending after December 31, 1975, and before January 1, 1977. 26 USC 42 note.

SEC. 3. TAXABLE INCOME CREDIT.

(a) TAXABLE INCOME CREDIT.—

(1) IN GENERAL.—Section 42 of the Internal Revenue Code of 1954 (relating to credit for personal exemptions) is amended to read as follows:

"SEC. 42. TAXABLE INCOME CREDIT. 26 USC 42.

"(a) ALLOWANCE OF CREDIT.—

"(1) IN GENERAL.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the greater of—

"(A) 2 percent of so much of the taxpayer's taxable income for the taxable year as does not exceed $9,000; or

"(B) $35 multiplied by each exemption for which the taxpayer is entitled to a deduction for the taxable year under subsection (b) or (e) of section 151. 26 USC 151.

"(2) APPLICATION OF SIX-MONTH RULE.—Notwithstanding the provisions of paragraph (1) of this subsection, the percentage "1 percent" shall be substituted for "2 percent" in subparagraph (A) of such paragraph, and the amount "$17.50" shall be substituted for the amount "$35" in subparagraph (B) of such paragraph.

"(b) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) shall not exceed the amount of the tax imposed by this chapter for the taxable year. In determining the credits allowed under—

"(1) section 33 (relating to foreign tax credit), 26 USC 33.

"(2) section 37 (relating to retirement income credit), 26 USC 37.

"(3) section 38 (relating to investment in certain depreciable property), 26 USC 38.

"(4) section 40 (relating to expenses of work incentive programs), and

26 USC 40.

"(5) section 41 (relating to contributions to candidates for public office),

26 USC 41.

the tax imposed by this chapter shall (before any other reductions) be reduced by the credit allowed by this section.

"(c) SPECIAL RULE FOR MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—

"(1) IN GENERAL.—Notwithstanding subsection (a), in the case of a married individual who files a separate return for the taxable year, the amount of the credit allowable under subsection (a) for the taxable year shall be equal to either—

"(A) the amount determined under paragraph (1)(A) of subsection (a); or

"(B) if this subparagraph applies to the individual for the taxable year, the amount determined under paragraph (1)(B) of subsection (a).

For purposes of the preceding sentence, paragraph (1) of subsection (a) shall be applied by substituting '$4,500' for '$9,000'.

"(2) APPLICATION OF PARAGRAPH (1)(B).—Subparagraph (B) of paragraph (1) shall apply to any taxpayer for any taxable year if—

"(A) such taxpayer elects to have such subparagraph apply for such taxable year, and

"(B) the spouse of such taxpayer elects to have such subparagraph apply for any taxable year corresponding, for purposes of section 142(a), to the taxable year of the taxpayer.

26 USC 142.

Any such election shall be made at such time, and in such manner, as the Secretary or his delegate shall by regulations prescribe.

"(3) MARITAL STATUS.—For purposes of this subsection, the determination of marital status shall be made under section 143.

26 USC 143.

"(d) CERTAIN PERSONS NOT ELIGIBLE.—This section shall not apply to any estate or trust, nor shall it apply to any nonresident alien individual."

(2) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by striking out the item relating to section 42 and inserting in lieu thereof the following:

"Sec. 42. Taxable income credit.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years ending after December 31, 1975. Such amendments shall cease to apply to taxable years ending after December 31, 1976.

26 USC 42 note.

SEC. 4. CORPORATE TAX RATES AND SURTAX EXEMPTION.

(a) CORPORATE NORMAL TAX.—Section 11(a) of the Internal Revenue Code of 1954 (relating to corporate normal tax) is amended to read as follows:

26 USC 11.

"(b) NORMAL TAX.—

"(1) GENERAL RULE.—The normal tax is equal to—

"(A) in the case of a taxable year ending after December 31, 1976, 22 percent of the taxable income, and

"(B) in the case of a taxable year ending after December 31, 1974, and before January 1, 1977, the sum of—

"(i) 20 percent of so much of the taxable income as does not exceed $25,000, plus

"(ii) 22 percent of so much of the taxable income as exceeds $25,000.

"(2) SIX-MONTH APPLICATION OF GENERAL RULE.—

"(A) CALENDAR YEAR TAXPAYERS.—Notwithstanding the provisions of paragraph (1), in the case of a taxpayer who has as his taxable year the calendar year 1976, the normal tax for such taxable year is equal to the sum of—

"(i) 21 percent of so much of the taxable income as does not exceed $25,000, plus

"(ii) 22 percent of so much of the taxable income as exceeds $25,000.

"(B) FISCAL YEAR TAXPAYERS.—Notwithstanding the provisions of paragraph (1), in the case of a taxpayer whose taxable year is not the calendar year, effective on July 1, 1976, paragraph (1) shall cease to apply and the normal tax shall be 22 percent.".

(b) CORPORATE SURTAX.—Section 11(c) of such Code (relating to surtax) is amended to read as follows: 26 USC 11.

"(c) SURTAX.—

"(1) GENERAL RULE.—The surtax is 26 percent of the amount by which the taxable income exceeds the surtax exemption for the taxable year.

"(2) SPECIAL RULE FOR 1976 FOR CALENDAR YEAR TAXPAYERS.—Notwithstanding the provisions of paragraph (1), in the case of a taxpayer who has as his taxable year the calendar year 1976, the surtax for such taxable year is—

"(A) 13 percent of the amount by which the taxable income exceeds the $25,000 surtax exemption (as in effect under subsection (d)(2)) but does not exceed $50,000, plus

"(B) 26 percent of the amount by which the taxable income exceeds $50,000.".

(c) SURTAX EXEMPTION.—Section 11(d) of such Code (relating to surtax exemption) is amended to read as follows:

"(d) SURTAX EXEMPTION.—

"(1) GENERAL RULE.—For purposes of this subtitle, the surtax exemption for any taxable year is $50,000, except that, with respect to a corporation to which section 1561 or 1564 (relating to surtax exemptions in case of certain controlled corporations) applies for the taxable year, the surtax exemption for the taxable year is the amount determined under such section. 26 USC 1561, 1564.

"(2) SIX-MONTH APPLICATION OF GENERAL RULE.—Notwithstanding the provisions of paragraph (1)—

"(A) CALENDAR YEAR TAXPAYERS.—In the case of a taxpayer who has as his taxable year the calendar year 1976, the provisions of paragraph (1) shall be applied for such taxable year by substituting the amount '$25,000' for the amount '$50,000' appearing therein.

"(B) FISCAL YEAR TAXPAYERS.—In the case of a taxpayer whose taxable year is not the calendar year, effective on July 1, 1976, paragraph (1) shall be applied by substituting the amount '$25,000' for the amount '$50,000' appearing therein, and such substitution shall be treated, for purposes of section 21, as a change in a rate of tax.".

(d) TECHNICAL AND CONFORMING CHANGES.—

(1) Section 1561(a)(1) of such Code (relating to limitations on certain multiple tax benefits in the case of certain controlled corporations) as such section is in effect for taxable years ending after December 31, 1975, is amended by striking out "$25,000",

26 USC 962.

Section 962(c) of such Code (relating to surtax exemption for individuals electing to be subject to tax at corporate rates) as such section is in effect for taxable years ending after December 31, 1975, is amended by striking out "$25,000" and inserting in lieu thereof "the surtax exemption".

26 USC 21.

(2) Section 21(f) of such Code (relating to increase in surtax exemptions) is amended—

(A) by striking out "INCREASE" in the caption and inserting "CHANGE" in lieu thereof, and

(B) by inserting after "Tax Reduction Act of 1975" the following: "and the change made by section 3(c) of the Revenue Adjustment Act of 1975".

26 USC 11 note.

(c) EFFECTIVE DATES.—The amendments made by subsections (b), (c), and (d) apply to taxable years beginning after December 31, 1975. The amendment made by subsection (c) ceases to apply for taxable years beginning after December 31, 1976.

SEC. 5. WITHHOLDING; ESTIMATED TAX PAYMENTS.

(a) WITHHOLDING.—

(1) IN GENERAL.—Section 3402(a) of the Internal Revenue Code of 1954 (relating to income tax collected at source), as amended by section 205 of the Tax Reduction Act of 1975, is amended by inserting after the second sentence thereof the following: "The tables so prescribed with respect to wages paid after December 31, 1975, and before July 1, 1976, shall be the same as the tables prescribed under this subsection which were in effect on December 10, 1975.".

26 USC 3402. Ante, p. 32.

(2) TECHNICAL AMENDMENT.—Section 209(c) of the Tax Reduction Act of 1975 is amended by striking out "January 1, 1976" and inserting in lieu thereof "July 1, 1976".

Ante, p. 35. 26 USC 3402 note.

(b) ESTIMATED TAX PAYMENTS BY INDIVIDUALS.—Section 6153 of such Code (relating to installment payments of estimated income tax by individuals) is amended by adding at the end thereof the following new subsection:

26 USC 6153.

"(g) SIX-MONTH APPLICATION OF REVENUE ADJUSTMENT ACT OF 1975 CHANGES.—In the case of a taxpayer who has as his taxable year the calendar year 1976, the amount of any installment the payment of which is required to be made after December 31, 1975, and before July 1, 1976, may be computed without regard to section 42(a)(2), 43(a)(2), 43(b)(2), 141(b)(2), or 141(c)(2).".

26 USC 42, 43, 141.

(c) ESTIMATED TAX PAYMENTS BY CORPORATIONS.—Section 6154 of such Code (relating to installment payments of estimated income tax by corporations) is amended by adding at the end thereof the following new subsection:

26 USC 6154.

"(h) SIX-MONTH APPLICATION OF REVENUE ADJUSTMENT ACT OF 1975 CHANGES.—In the case of a corporation which has as its taxable year the calendar year 1976, the amount of any installment the payment of which is required to be made after December 31, 1975, and before July 1, 1976, may be computed without regard to sections 11(b)(2), 11(c)(2), and 11(d)(2).".

26 USC 11.

SEC. 6. ROLLING STOCK.

(a) EXCLUSION FROM INCOME.—Section 883(a) of the Internal Revenue Code of 1954 is hereby amended by adding at the end thereof the following new paragraph:

26 USC 883.

"(3) RAILROAD ROLLING STOCK OF FOREIGN CORPORATIONS.—Earnings derived from payments by a common carrier for the use on a temporary basis (not expected to exceed a total of 90 days in any taxable year) of railroad rolling stock owned by a corporation of

a foreign country which grants an equivalent exemption to corporations organized in the United States."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after November 18, 1974. 26 USC 883 note.

SEC. 7. CERTAIN IRRIGATION FACILITIES.

(a) IN GENERAL.—Section 103 of the Internal Revenue Code of 1954 (relating to interest on certain governmental obligations) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection: 26 USC 103.

"(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.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act. 26 USC 103 note.

Approved December 23, 1975.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-531 (Comm. on Ways and Means).
SENATE REPORT No. 94-570 (Comm. on Finance).
CONGRESSIONAL RECORD, Vol. 121, (1975):
Oct. 6, considered and passed House.
Dec. 19, considered and passed Senate, amended; House concurred in Senate amendment with an amendment; Senate concurred in House amendment.

GPO 57-139

Exhibit 35

1976 Government Contract - Contract between the United States and the AFRD for Construction and Operation and Maintenance of the American Falls Replacement Dam Program, Contract No. 14-06-100-9041 (Mar. 31, 1976)

[CONFORMED COPY]

FALLING WATER CONTRACT

Dated as of March 31, 1976

by and between

AMERICAN FALLS RESERVOIR DISTRICT

and

IDAHO POWER COMPANY

CONTRACT

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(This Table of Contents is not a part of this Contract and is only for convenience of reference.)

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FALLING WATER CONTRACT

BY AND BETWEEN

AMERICAN FALLS RESERVOIR DISTRICT

AND

IDAHO POWER COMPANY

THIS CONTRACT, entered into this 31st day of March, 1976, between the AMERICAN FALLS RESERVOIR DISTRICT, an instrumentality of the State of Idaho, with its offices located in Twin Falls, Idaho, hereinafter referred to as the "Constructing Agency", and the IDAHO POWER COMPANY, a corporation organized under the laws of the State of Maine, authorized to do business in the State of Idaho, with its principal office therein located in Boise, Idaho, hereinafter referred to as "Idaho Power Company";

WITNESSETH:

WHEREAS, the existing American Falls Dam and Reservoir ("Existing Dam") was constructed on the Snake River in southern Idaho adjacent to the City of American Falls, Idaho, by the United States ("United States"), and was placed in operation in 1927 as a part of the Minidoka Project, Idaho-Wyoming, and the United States contracted with certain organizations and individuals ("Waterusers") for various amounts of the storage space of the Existing Dam and which Waterusers agreed to pay the United States their proportionate share of the cost of the Existing Dam and the United States has retained ownership of the Existing Dam and has operated and maintained the Existing Dam primarily for the furnishing of water for irrigation purposes; and

WHEREAS, the Existing Dam provides irrigation storage water for beneficial use on approximately 900,000 acres of land in southern Idaho to which said water is appurtenant; and

WHEREAS, the United States has determined the Existing Dam to be no longer structurally competent, and in 1972 restricted storage in the top 11.3 feet of the Existing Dam on a year-round basis for safety reasons, and additional restrictions may possibly be required to continue to meet applicable safety standards as the deterioration of the Existing Dam advances, which present and future storage restrictions have and will cause severe economic losses to the Waterusers, reductions in recreational benefits and adverse effects on fish and wildlife facilities associated with the Existing Dam; and

WHEREAS, Chapter 22 of Title 43, Idaho Code, as amended, ("State Act"), authorizes the Constructing Agency, for the purpose of preserving, restoring, protecting and maintaining rights of storage, diversion and delivery of water necessary and appurtenant to the purposes for which the Constructing Agency and other like similarly situated irrigation districts were organized: (1) to reconstruct, rehabilitate, replace and improve dams and other related structures and works together with all necessary appurtenances related thereto whether located within or without its boundaries and whether or not legal title thereto is owned by it, including without limitation as a part thereof the reconstruction and relocation of all roads, bridges and highways made necessary by reason of such reconstruction, rehabilitation, replacement and improvement, the construction of penstocks and other facilities related to hydroelectric production plant which are made necessary in order to carry out the provisions of this Falling Water Contract and facilities for flood control, public recreation and fish and wildlife mitigation purposes made necessary in order to comply with applicable state and Federal requirements; (2) to enter into all necessary agreements, contracts and other legal arrangements with the United States and its agencies and departments, the State of Idaho and its agencies, departments and political subdivisions, and public and private persons, firms, corporations and associations in order to carry out such reconstruction, rehabilitation, replacement and improvement; and (3) to issue its Bonds ("Bonds") in the manner provided therein for the purpose of paying all or part of the cost of such reconstruction, rehabilitation, replacement and improvement, together with all expenses preliminary and incidental thereto; and

WHEREAS, the State Act provides that any Bonds issued and sold pursuant to the provisions thereof shall be payable solely out of a special fund into which the Constructing Agency shall be obligated to deposit, as from time to time received: (1) the proceeds of the collection of certain assessments to be levied and collected by the Constructing Agency on lands contained within its boundaries; (2) payments pursuant to contracts to be entered into by the Constructing Agency with other irrigation districts; (3) payments pursuant to contracts to be entered into by the Construction Agency with other public or private persons, firms, corporations and associations; and (4) when so authorized by Act of Congress, the proceeds from the sale or use of falling water released from the dam to be so reconstructed, rehabilitated, replaced and improved, pursuant to a contract for the use of such falling water for power generation to be entered into by the Construction Agency with a public or private person, firm, corporation or association; and

WHEREAS, pursuant to the provisions of the Act of Congress of December 28, 1973 ("Act of December 28, 1973"), the United States, acting through the Regional Director, Pacific Northwest Region, Bureau of Reclamation ("Contracting Officer") upon authorization of the United States Secretary of the Interior ("Secretary") has entered into an agreement with the Constructing Agency ("Government Contract") of even date herewith, authorizing the Constructing Agency to finance and provide for the construction of a new dam ("Replacement Dam") and related structures and works to replace the Existing Dam (which Replacement Dam and related structures and works, together with the storage reservoir to be created behind the Replacement Dam, are hereinafter collectively referred to as the "American Falls Replacement Dam Program"); and

WHEREAS, the Government Contract provides that delivery of water is to be contingent upon the execution by each Wateruser of a contract with the Constructing Agency and the United States (which contracts are collectively referred to as "Spaceholder Contracts") providing for the repayment by such Wateruser of its proportionate share of the total costs to be incurred by the Constructing Agency for engineering, financing, designing and constructing the American Falls Replacement Dam Program not returned by this Falling Water Contract, and providing that the delivery of water to each Wateruser shall be contingent upon the fulfillment of the obligations thereunder, said Spaceholder Contracts being otherwise consistent with the terms of the various existing contracts between the Secretary and the Waterusers for the delivery of water from and the payment of costs associated with the Existing Dam; and

WHEREAS, an appropriate number of the Waterusers satisfactory to the Secretary and the Constructing Agency have entered into Spaceholder Contracts of even date herewith to pay their proportionate share of the cost of the American Falls Replacement Dam Program (which Waterusers which have entered into Spaceholder Contracts being herein referred to as "Spaceholders"); and

WHEREAS, the Act of December 28, 1973, also authorizes the Constructing Agency to contract with a non-Federal entity, as herein provided, for the use by such non-Federal entity for power generation of the falling water released from the Replacement Dam for irrigation and other purposes incidental thereto, which contract shall provide for a monetary return to the Constructing Agency to defray in part the costs of financing and constructing the American Falls Replacement Dam Program and for the coordination of the construction of hydroelectric power facilities with the construction of the Replacement Dam, provided said contract shall be approved by the Secretary and shall not impair the efficiency of the Replacement Dam to serve the other purposes of the Minidoka Project; and

WHEREAS, the State Act provides that the contract for the use of falling water may contain such provisions as are contemplated in the Act of December 28, 1973, providing for the reconstruction, rehabilitation, replacement and improvement of such dam and other related structures and works and appurtenances, the coordination of the construction of the hydroelectric power facilities, the conditions under which the non-Federal entity shall make payments to the Construction Agency, the rights and remedies of the parties to such contract in the event of a failure of the non-Federal entity to make the required payments, and the securing of all necessary permits and licenses required in connection therewith; and

WHEREAS, the Idaho Power Company is a Wateruser and is also the owner and operator of a hydroelectric generating powerplant located on the Snake River below the Existing Dam adjacent to the City of American Falls, Idaho pursuant to a license issued by the Federal Power Commission on March 31, 1975, for Project No. 2258; and

WHEREAS, the construction and operation by Idaho Power Company of a new hydroelectric generating facility ("Powerplant") attached to the Replacement Dam will increase power generation over that produced by the existing powerplant by utilizing the additional head and more of the water released from the Replacement Dam for irrigation and other purposes incidental thereto; and

WHEREAS, as contemplated in Section 4 of the Act of December 28, 1973 and in the State Act (Section 43-2201(D)(4), Idaho Code), the Idaho Power Company heretofore proposed to pay an amount necessary to amortize, at a tax exempt interest rate in 40 approximately equal annual installments, for utilization by it for power generation at the Powerplant of falling water released from the Replacement Dam for irrigation and other purposes incidental thereto, within the limitations specified in the Government Contract, $19,550,000 of the principal amount of the cost of financing and constructing the American Falls Replacement Dam Program, and subsequently further agreed to increase such amount by the cost of the facilities included in the American Falls Replacement Dam Program for the purpose of meeting the amended State of Idaho water quality dissolved oxygen standard as approved on April 17, 1975, by the United States Environmental Protection Agency for water released from the Replacement Dam ("Water Quality Facilities") and if necessary by approximately 50% of the costs of financing and constructing the American Falls Replacement Dam Program in excess of $38,000,000; and

WHEREAS, under the provisions of Section 4 of the Act of December 28, 1973, and the provisions of the State Act (Section 43-2201(D)(4), Idaho Code), the Constructing Agency and the Idaho Power Company have agreed to enter into this falling water contract (hereinafter referred to as the "Falling Water Contract"), but only upon satisfaction of the conditions set forth herein; and

WHEREAS, the Constructing Agency has made provision for the estimation of the cost of financing and constructing the American Falls Replacement Dam Program, and, as required in the State Act, the allocation of the costs of financing and constructing the American Falls Replacement Dam Program as between the sums to be paid pursuant to this Falling Water Contract and the Spaceholder Contracts, and has made provision for a determination as to the actual amount of Bonds of the Constructing Agency to be issued, depending upon the amounts to be prepaid pursuant to the provisions of the several Spaceholder Contracts, it being contemplated that the United States will, pursuant to Section 7 of the Act of December 28, 1973, pay, as provided in the Michaud Division, Fort Hall Indian Reservation Spaceholder Contract entered into between the Constructing Agency and the United States, the proportionate share of the Michaud Division, Fort Hall Indian Reservation of the total cost of financing and constructing the American Falls Replacement Dam Program not returned pursuant to this Falling Water Contract; and

WHEREAS, pursuant to authority contained in the State Act the Constructing Agency has heretofore authorized the issuance of not to exceed $44,750,000 Bonds of the Constructing Agency for the purpose of paying all or part of the costs of financing and constructing the American Falls Replacement Dam Program, and further the Constructing Agency has called and held an election at which the Constructing Agency was authorized to impose assessments on lands within the Constructing Agency, approving said assessments, and was authorized to execute a Spaceholder Contract with the United States and to execute the Government Contract; and

WHEREAS, the Constructing Agency will institute proceedings pursuant to the provisions of the State Act for the purpose of obtaining confirmation decrees approving this Falling Water Contract, the Spaceholder Contracts, the Government Contract, and the levy and collection of the assessments, which confirmation proceedings will, prior to the issuance of the Bonds, be completed in accordance with the provisions of the State Act; and

WHEREAS, the Constructing Agency has entered into an agreement dated November 27, 1974, with the State of Idaho, acting by and through the Department of Transportation, Division of Highways, providing for construction of a two-lane highway on the crest of the Replacement Dam and construction of a two-lane highway bridge located immediately downstream from the Replacement Dam, and providing for the payment by the Constructing Agency of 50% of the total cost of the construction of said highway and bridge as part of the American Falls Replacement Dam Program; and

WHEREAS, the Constructing Agency has entered into an agreement dated July 2, 1974, with the Idaho Fish and Game Department providing for the payment by the Constructing Agency of costs relating to the mitigation of anticipated loss of existing recreational and fish and wildlife resources and constituting the Recreation and Fish and Wildlife Mitigation Facilities (as hereinafter defined); and

WHEREAS, it is provided in the Act of December 28, 1973, that this Falling Water Contract shall be approved by the Secretary and all requirements and conditions of the Act of December 28, 1973 have or will have been satisfied prior to the delivery of any of the Bonds of the Constructing Agency herein contemplated to be issued; and

WHEREAS, the Idaho Power Company has received a fifty (50) year license for Project No. 2736 issued March 31, 1975 by the Federal Power Commission authorizing it to construct, operate, and maintain the Powerplant; and

WHEREAS, the Constructing Agency has executed the Government Contract with the United States, as contemplated in the Act of December 28, 1973, to which Government Contract a copy of this Falling Water Contract is attached as an exhibit, and by the execution of the Government Contract the Secretary, in accordance with the provisions of the Act of December 28, 1973, approves this Falling Water Contract as though incorporated in and made a part of the Government Contract; and

WHEREAS, the Constructing Agency and the Idaho Power Company desire to provide that the issuance, sale and delivery by the Constructing Agency of its Bonds pursuant to the authority contained in the State Act, in an amount which shall be sufficient to pay the estimated cost of financing and constructing the American Falls Replacement Dam Program not paid in advance by Spaceholders pursuant to the Spaceholder Contracts, shall be a condition precedent to the obligation of the Idaho Power Company to make the payments to the Constructing Agency provided for in this Falling Water Contract in consideration of the utilization by the Idaho Power Company at the Powerplant for power generation, within the limitations specified in the Government Contract, of the falling water released from the Replacement Dam for irrigation and other purposes incidental thereto; and

WHEREAS, the Idaho Power Company and the Constructing Agency desire to enter into an arrangement hereunder whereby the Constructing Agency, having entered into the Spaceholder Contracts and the Government Contract, and as a Spaceholder having imposed assessments on lands within its boundaries, will issue and sell its Bonds for the purpose of paying the costs of financing and constructing the American Falls Replacement Dam Program not paid in advance by the Spaceholders, and whereby the Idaho Power Company in accordance with the provisions of the Federal Power Commission license, will finance, construct and own the Powerplant, and will make the payments to the Constructing Agency contemplated hereunder; and

WHEREAS, the Constructing Agency and the Idaho Power Company wish to delineate their mutual responsibilities and to set forth the terms and conditions for the use of the Falling Water by the Idaho Power Company, for the engineering, financing, construction, ownership and operation of the American Falls Replacement Dam Program and the Powerplant and the coordination of the construction of the Powerplant with the construction of the Replacement Dam;

NOW, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is agreed by and between the parties hereto as follows:

ARTICLE I

DEFINITIONS

The following words and phrases shall have the following meanings, unless the context clearly indicates to the contrary:

"Act of December 28, 1973" shall mean the Act of Congress approved December 28, 1973 (87 Stat. 904).

"Additional Bonds" shall mean any additional parity Bonds authorized to be issued by the Constructing Agency pursuant to the terms and conditions of Section 207 of the Indenture.

"American Falls Replacement Dam Program" shall mean the program to be undertaken by the Constructing Agency consisting of the Replacement Dam including the two-lane highway on the crest of the Replacement Dam, the two-lane highway bridge located immediately downstream from the Replacement Dam, the Related Facilities, the Recreation and Fish and Wildlife Mitigation Facilities, and the Water Quality Facilities, to be accomplished pursuant to the Act of December 28, 1973, and under the authority of Section 43-2201(A), Idaho Code, which provides for the reconstruction, rehabilitation, replacement, and improvement of dams and other related structures and works together with all necessary appurtenances related thereto.

"Assessments" shall mean the Assessments to be levied pursuant to Title 43, Idaho Code, as contemplated in the State Act (Section 43-2201(D)(1) and (2), Idaho Code), representing the amount of benefits to accrue to each tract or subdivision in an irrigation district based upon the allocation of the Cost of Construction of the American Falls Replacement Dam Program, in the proportion that the right to the storage, diversion and delivery of water appurtenant to each such tract or subdivision bears to the total right to the storage, diversion and delivery of water from the Replacement Dam.

"Authorized Company Representative" shall mean the person at the time designated to act in behalf of the Idaho Power Company by written certificate furnished to the Contracting Officer, the Constructing Agency and the Trustee, containing the specimen signature of such person, and signed on behalf of the Idaho Power Company by its President or any Vice President thereof. Such certificate shall designate an alternate or alternates. The Authorized Company Representative may be an employee of the Idaho Power Company.

"Authorized Constructing Agency Representative" shall mean the person at the time designated to act in behalf of the Constructing Agency by written certificate furnished to the Contracting Officer, the Idaho Power Company and the Trustee, containing the specimen signature of such person, and signed on behalf of the Constructing Agency by the President of the Board, or the Vice President thereof. Such certificate shall designate an alternate or alternates. The Authorized Constructing Agency Representative may be an employee of the Constructing Agency.

"Authorized Representatives" shall mean collectively the Authorized Company Representative, the Authorized Constructing Agency Representative, and the Authorized Spaceholder Representative.

"Authorized Spaceholder Representative" shall mean the person at the time designated to act in behalf of the Spaceholders, pursuant to the provisions of Article 46 of the Spaceholder Contracts, by written certificate furnished to the Contracting Officer, the Constructing Agency, the Idaho Power Company, and the Trustee, containing the specimen signature of such person, and signed on behalf of the Spaceholders by the Chairman of the meeting of the Spaceholders at which such representative is designated. Such certificate shall designate an alternate or alternates. The Authorized Spaceholder Representative may be an employee of a Spaceholder.

"Board" shall mean the Board of Directors of the Constructing Agency.

"Bond Fund" shall mean the Bond Fund created in Section 502 of the Indenture for the purpose of paying principal of and interest on the Bonds.

"Bonds" shall mean bonds issued, and to be issued, by the Constructing Agency under authority contained in the State Act, pursuant to the Indenture to pay the costs of the American Falls Replacement Dam Program.

"Completion Date" shall mean the date of completion of the construction of the Replacement Dam, the Related Facilities and the Water Quality Facilities within the meaning of the Act of December 28, 1973, which shall be deemed to be the date upon which the Constructing Agency, the Idaho Power Company and the Trustee are given the completion notice by the Secretary as provided in Article 14(d) of the Government Contract.

"Constructing Agency" shall mean the American Falls Reservoir District, an instrumentality of the State of Idaho, being an irrigation district organized and existing under the provisions of Title 43, Idaho Code, as amended, and its successors and assigns.

"Construction Fund" shall mean the Construction Fund created by Section 602 of the Indenture for the purpose of paying the cost of financing and constructing the American Falls Replacement Dam Program.

"Construction Period" shall mean the period commencing upon the initiation of construction of the American Falls Replacement Dam Program and ending on the Completion Date.

"Construction Work Schedule" shall mean a schedule showing each item of major construction activity of the American Falls Replacement Dam Program including detailed coordination arrangements for the construction of the Powerplant with the construction of the Replacement Dam, and the time period within which each item is proposed to be started and concluded.

"Contracting Officer" shall mean the Regional Director, Pacific Northwest Region, Bureau of Reclamation, or his duly authorized representative.

"Cost of Construction" shall mean all or part of the total cost of the engineering, financing, designing and constructing of the American Falls Replacement Dam Program, and all expenses preliminary and incidental thereto, including all engineering, fiscal, and legal expenses, and costs of issuance, printing and advertising, as authorized in the Act of December 28, 1973 and the State Act and for which funds may be disbursed from the Construction Fund pursuant to Section 8.4 hereof.

"Defaulted Spaceholder(s)" shall mean the Spaceholders determined to be in default in all or any part of the Spaceholder Payments required to be made under a Spaceholder Contract, in accordance with the provisions of Article 29(a) thereof.

"Designs and Specifications" shall mean the final Designs and Specifications of any facility required pursuant to Article 10(a) of the Government Contract to be constructed by the Constructing Agency as a part of the American Falls Replacement Dam Program, as approved by the Contracting Officer pursuant to Article 10(b) of the Government Contract.

"Existing Dam" shall mean the American Falls Dam and Reservoir owned by the United States located on the Snake River in southern Idaho adjacent to the City of American Falls, Idaho.

"Falling Water" shall mean the water released from the Replacement Dam for irrigation and other purposes incidental thereto, the utilization of which during the Original Term of this Falling Water Contract, within the limitations specified in the Government Contract, is granted to the Idaho Power Company for power generation at the Powerplant in return for the Falling Water Payments to the Constructing Agency, which utilization shall be subordinate to the furnishing of water for irrigation purposes.

"Falling Water Contract" shall mean this contract entered into between the Constructing Agency and the Idaho Power Company as the same may be supplemented or amended.

"Falling Water Payments" shall mean the principal amount, plus applicable interest, to be paid to the Constructing Agency in 40 approximately equal annual Installments by the Idaho Power Company pursuant to this Falling Water Contract as a part of the consideration for the utilization for power generation at the Powerplant of the Falling Water released from the Replacement Dam.

"Government Contract" shall mean the contract of even date herewith entitled: "Contract between the United States of America and the American Falls Reservoir District for the Construction and Operation and Maintenance of the American Falls Replacement Dam Program" as the same may be supplemented or amended.

"Idaho Power Company" shall mean the Idaho Power Company, a Maine corporation authorized to do business in the State of Idaho, and its permitted successors and assigns.

"Indenture" shall mean the Indenture of Trust to be entered into between the Constructing Agency and the Trustee in connection with the issuance of the Series 1976 Bonds (including any indenture supplemental thereto).

"Independent Engineer" shall mean an engineer or engineering firm registered or licensed to practice the profession of engineering under the laws of Idaho, together with an appropriate staff and supporting equipment and who or which is not a full-time engineer of either the Constructing Agency or the Idaho Power Company.

"Interim Notes" shall mean interim notes of the Constructing Agency issued, and to be issued, under authority contained in the State Act, for the purpose of borrowing funds on a temporary basis in advance of the issuance of the Series 1976 Bonds.

"Installment" shall mean an annual payment of the principal and interest of the Falling Water Payments as such Installments are set forth in the Schedule of Falling Water Payments to be filed with the Idaho Power Company and the Trustee pursuant to the provisions of Section 9.8 hereof and which are assigned to the Trustee pursuant to Section 501 of the Indenture.

"License" shall mean the license for Project No. 2736 issued by the Federal Power Commission on March 31, 1975, and expiring on March 31, 2025, and any continuation or renewal thereof, authorizing the Idaho Power Company to construct, operate, and maintain the Powerplant.

"Minidoka Project" shall mean the Minidoka Reclamation Project of the United States, located on the Snake River in the States of Idaho and Wyoming.

"Non-Participating Wateruser(s)" shall mean the Waterusers which have not executed Spaceholder Contracts. The initial Non-Participating Waterusers are set forth in *Exhibit H* 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 cast may be, of such amounts, if any, as shall be necessary to reimburse the Constructing Agency, Waterusers, or the Idaho Power Company in full for advances and payments made or costs incurred by them or any of them, prior to or after the execution of this Falling Water Contract, for expenditures in connection with the construction of the American Falls Replacement Dam Program, including, but not limited to preparation of the Plans, Designs and Specifications and review thereof by the Contracting Officer;

(3) all costs representing interest on advancements made in connection with the construction of the American Falls Replacement Dam Program prior to the sale of the Series 1976 Bonds;

(4) payments to the Contracting Officer for costs incurred in reviewing the Plans, Designs, Specifications and for costs incurred pursuant to Article 20(a) of the Government Contract in reviewing the construction of the American Falls Replacement Dam Program; costs for the obtaining of any insurance policy or policies by the Constructing Agency during the Construction Period; and costs related to the obtaining of all real and personal properties deemed necessary in connection with the construction of the American Falls Replacement Dam Program by the Constructing Agency, or any one or more of said expenditures;

(5) payment for labor, services, materials and supplies used or furnished in site improvement and in the construction of the American Falls Replacement Dam Program, all as provided in the Plans, Designs and Specifications, payment for the cost of the construction, acquisition and installation of utility services or other facilities, and all real and personal property deemed necessary in connection with the construction of the American Falls Replacement Dam Program and payment for the miscellaneous expenses incidental to any thereof, including the premium on any surety bond;

(6) payment of sums due to the State of Idaho pursuant to that certain agreement dated November 27, 1974, between the Constructing Agency and the State of Idaho providing for the two-lane highway on the crest of the Replacement Dam and the two-lane highway bridge located immediately downstream from the Replacement Dam;

(7) payment of the sums contemplated in Sections 1 and 3 of that certain agreement dated July 2, 1974, between the Constructing Agency and the Idaho Fish and Game Department with respect to the Recreation and Fish and Wildlife Mitigation Facilities;

(8) payment of audit fees and expenses for maintenance of records required to be kept hereunder, and of the fees, if any, for architectural, engineering and supervisory services with respect to the construction of the American Falls Replacement Dam Program;

(9) compensation to be paid to the Authorized Constructing Agency Representative and the Authorized Spaceholder Representative in connection with the performance of their duties and the reimbursement of their expenses incurred in connection with such duties;

(10) payment of expenses incurred in seeking to enforce any remedy against any contractor or subcontractor in respect of any default under a contract relating to the construction of the American Falls Replacement Dam Program;

(11) payment of costs of issuance of the Bonds, and Interim Notes, any necessary litigation and confirmation proceedings, and the obtaining of all necessary permits and rulings;

(12) payment of the legal, accounting and underwriting fees and expenses and printing and engraving costs, including fees of rating agencies, incurred in connection with the authorization, sale and issuance of the Bonds and Interim Notes, the preparation of this Falling Water Contract, the Government Contract, the Spaceholder Contracts, the Water Quality Facilities Agreement, and the Indenture;

(13) payments required to be made pursuant to Article 17(g) of the Government Contract; and

(14) payment of any other costs and expenses relating to the construction of the American Falls Replacement Dam Program which would constitute a cost or expense for which moneys in the Construction Fund may be used under the Act of December 28, 1973, the State Act and the Indenture, including fees and expenses of the Trustee during the Construction Period.

SECTION 8.5. *Award or Rejection of Construction Bids.* If, in accordance with Section 8.3 hereof, joint bidding for the construction of the Replacement Dam and the construction of the Powerplant is undertaken by the Constructing Agency and the Idaho Power Company, each of the Authorized Representatives must concur in the award of any contract for construction or the purchase of equipment. If separate construction contracts are to be entered into for the construction of the Replacement Dam and the construction of the Powerplant, each of the Authorized Representatives must concur in the award of the contract for the construction of the Replacement Dam and in the award of the contracts for the purchase of equipment for the Replacement Dam; however the Authorized Constructing Agency Representative and the Authorized Spaceholder Representative need not concur in the award of contracts for the construction and equipping of the Powerplant. Nothing contained in this Falling Water Contract shall prevent the Board from exercising its discretion and rejecting any and all bids pertaining to the construction of the American Falls Replacement Dam Program or the purchase of equipment in connection therewith, and readvertising for bids.

SECTION 8.6. *Recomputation of Obligations.* If the amounts deposited into the Construction Fund pursuant to Section 8.3 hereof are or will be insufficient to pay in full the total Cost of Construction of the American Falls Replacement Dam Program, the Authorized Representatives shall from time to time revise the estimated Cost of Construction and determine the additional amounts necessary to be deposited into the Construction Fund from the Prepayment Fund and from the proceeds of Additional Bonds in order to pay the total revised Cost of Construction. The Constructing Agency shall, to the extent necessary, issue Additional Bonds as permitted under Section 207 of the Indenture for completion purposes and as contemplated in Sections 9.10 and 9.11 hereof.

In the event Additional Bonds need only be issued pursuant to Section 9.10 hereof within the initial authorization, the Authorized Representatives shall recompute the obligation of the Idaho Power Company, of each Spaceholder and, to the extent applicable, attributable to the space of each Non-Participating Wateruser, based on the revised Cost of Construction of the American Falls Replacement Dam Program and shall prepare a revised schedule of such obligations showing the increase over the initial determination for each.[1] Such schedule of obligation shall be approved by the Constructing Agency and shall be filed with the Idaho Power Company, the Contracting Officer and each Spaceholder. The Constructing Agency shall, on or prior to the date of delivery of the Additional Bonds transfer from the

[1] The respective obligations of the Idaho Power Company, each Spaceholder and, to the extent applicable, attributable to the space of each Non-Participating Waterusers, to pay the revised cost, shall be computed according to the computation set forth in Section 8.3 hereof, but substituting for the words "estimated cost" the words "revised cost" wherever they appear in the description of the computation.

Prepayment Fund to the Construction Fund the amount above computed by the Authorized Representatives which is attributable to Spaceholder prepayments. The Authorized Representatives shall also notify the Contracting Officer to increase the payments under the Michaud Division, Fort Hall Indian Reservation Spaceholder Contract accordingly.

In the event it is determined necessary to issue Additional Bonds pursuant to Section 9.11 hereof in excess of the initial authorization, and appropriate supplements to this Falling Water Contract and the Spaceholder Contracts are entered into, the Authorized Representatives shall recompute the obligation of the Idaho Power Company, of each Spaceholder and, to the extent applicable, attributable to the space of each Non-Participating Wateruser, in accordance with the principles of allocation of responsibility for the payment of the total Cost of Construction of the American Falls Replacement Dam Program in excess of the initial authorization set forth in Section 9.11 hereof and shall prepare a schedule showing the respective obligations in accordance therewith. Such schedule shall be consistent with the supplements to Spaceholder Contracts and the Falling Water Contract contemplated to be executed in Section 9.11 hereof, shall be approved by the Constructing Agency, and shall be filed with the Idaho Power Company, the Contracting Officer and each Spaceholder.

SECTION 8.7. *Computation of Actual Cost of Construction.* The Authorized Representatives, after computing the actual Cost of Construction as contemplated in Section 7.10 hereof, shall compute the obligations of Idaho Power Company, of each Spaceholder and, to the extent applicable, attributable to the space of each Non-Participating Wateruser, to pay the actual total Cost of Construction. If Additional Bonds are not issued under Section 9.11 hereof in excess of the initial authorization, then such obligations shall be computed in accordance with the computation set forth in Section 8.3 hereof, but substituting for the words "estimated cost" the words "total cost" wherever they appear in the description of the computation. If Additional Bonds are issued under Section 9.11 hereof in excess of the initial authorization, then such computation of the respective obligations shall be made in accordance with the provisions of Section 8.3 hereof as above modified and supplemented by the principles of allocation of the total Cost of Construction of the American Falls Replacement Dam Program set forth in Section 9.11 hereof and in any supplements to this Falling Water Contract and the Spaceholder Contracts. A schedule showing the final obligation of each to pay the actual total Cost of Construction shall be prepared, approved by the Constructing Agency and filed with the Idaho Power Company, the Contracting Officer and each Spaceholder. The Authorized Representatives shall then determine what sums, if any, should be retained in the Construction Fund in order to complete the American Falls Replacement Dam Program.

After the determination of the amounts needed to be retained in the Construction Fund in order to pay any Cost of Construction not then due and payable, the Constructing Agency shall cause a certificate to be filed with the Trustee pursuant to the provisions of Section 603 of the Indenture concerning the completion of the American Falls Replacement Dam Program. Such certificate shall direct the Trustee to dispose of any balance remaining in the Construction Fund, other than the amounts to be retained by the Trustee as provided in the certificate, as follows:

(A) That portion of the sums remaining in the Construction Fund attributable to prepayment by Spaceholders of their obligations under the Spaceholder Contracts shall be returned by the Trustee to the Spaceholders which made such prepayments in accordance with the percentage of active storage capacity of each such Spaceholder; and

(B) That portion remaining in the Construction Fund attributable to Spaceholders who elected to pay annual Spaceholder Bond Payments or to Idaho Power Company shall be transferred by the Trustee to the Bond Fund.

The Authorized Representatives shall also make a separate computation of the actual Cost of Construction, according to the assignment of such costs, of the Water Quality Facilities. This computation shall be filed with the Idaho Power Company, the Contracting Officer, and the Constructing Agency so that the computation contemplated to be made under paragraph 11 of the Water Quality Facilities Agreement can be completed by the Constructing Agency and the Idaho Power Company.

Any insurance rebates or dividends arising from policies taken out by the Constructing Agency in connection with the American Falls Replacement Dam Program shall, when received, be deposited into the Construction Fund. If any such rebates or dividends are received by the Constructing Agency subsequent to the closing of the Construction Fund, such rebates and dividends shall be distributed to the Spaceholders and the Idaho Power Company as their interests then appear.

ARTICLE IX

Issuance of Constructing Agency Bonds

SECTION 9.1. *Bonds; Source of Payment.* In order to provide funds for payment of all or part of the Cost of Construction of the American Falls Replacement Dam Program as set forth in Section 8.4 hereof, the Constructing Agency agrees that it will use its best efforts, at one time or from time to time, to sell and cause to be delivered to the purchasers thereof, one or more series of its Bonds in the principal amounts determined as provided in Sections 9.3, 9.10 and 9.11 hereof.

The Bonds shall be issued by the Constructing Agency pursuant to the provisions of the State Act then in force, and shall be payable solely from the special fund contemplated to be established in the State Act (Section 43-2201(D), Idaho Code).

SECTION 9.2. *Interim Notes; Idaho Power Company Guarantee of Interim Notes.* Either at or before the time the estimated Cost of the Construction of the American Falls Replacement Dam Program has been determined pursuant to Section 8.3 hereof, the Board, pursuant to the provisions of the State Act (Section 43-2202, Idaho Code), may determine it to be advisable and to be in the interests of the Constructing Agency to borrow funds temporarily in advance of the permanent financing for the payment of all or part of the Cost of Construction of the American Falls Replacement Dam Program by the issuance of one or more series of Interim Notes of the Constructing Agency. Such Interim Notes shall be issued, sold and delivered from time to time and shall be secured as provided in the State Act (Section 43-2202, Idaho Code), and the proceeds thereof shall be deposited in a fund in the hands of a bank or trust company doing business in the State of Idaho, to be disbursed by the Constructing Agency for the purposes specified in Section 8.4 hereof.

The Constructing Agency and the Idaho Power Company recognize that in order to meet the Construction Work Schedule for the American Falls Replacement Dam Program, it may be necessary to issue Interim Notes prior to the time that the Constructing Agency could market its Series 1976 Bonds. The Idaho Power Company, therefore, agrees that, in order to improve the marketability of any Interim Notes issued by the Constructing Agency, and in order to reduce the costs of borrowing represented by such Interim Notes, it will, with the consent of all regulatory agencies having jurisdiction over the Idaho Power Company for such purpose, whether state or Federal, and with the consent of all mortgage, indenture or other lien holders whose contracts or agreements with the Idaho Power Company require such consent for such purpose, simultaneously with the issuance of any Interim Notes by the Constructing Agency, to the issuance of which Interim Notes, the Idaho Power Company shall have prior thereto indicated its approval in writing, execute a guaranty agreement to the purchasers of such Interim Notes. Under the terms of the guaranty agreement the Idaho Power Company shall unconditionally guarantee to the holders at any time, and from time to time, of the Interim Notes of the Constructing Agency (a) the full and prompt payment of the principal of any Interim Note when and as the same shall become due, whether at the stated maturity thereof, by acceleration, or call for redemption or otherwise, and (b) the full and prompt payment of any interest on any Interim Note when and as the same shall become due, and shall agree to pay all expenses and charges (including court costs and attorneys' fees) paid or incurred by the holders of the Interim Notes in collecting any of the payments so guaranteed or in enforcing the guaranty agreement by the holders of the Interim Notes.

SECTION 9.3. *Determination of Details of Falling Water Payments, Spaceholder Bond Payments and Amount and Term of Series 1976 Bonds.* After the estimated Cost of Construction of the American

Falls Replacement Dam Program shall have been determined as provided in Section 8.3 hereof and the Authorized Representatives shall have recommended to the Board the amount of the Series 1976 Bonds to be sold, the Board, in consultation with the Authorized Representatives, shall then determine the date upon which the first Installment of Falling Water Payments will be made and the date upon which the first Spaceholder Bond Payments will be made, the date from which interest shall be deemed to accrue on the Falling Water Payments and the date from which interest shall be deemed to accrue on the Spaceholder Bond Payments. The Board in fixing the date upon which the first Installment of the Falling Water Payments will be made shall to the extent practicable provide that the date of the first Installment shall be not more than twelve (12) months from the date of the Series 1976 Bonds. The last Installment shall be forty (40) years from the year in which the Series 1976 Bonds first begin to mature either by their terms or by option of redemption from a sinking fund. The dates and terms of the Spaceholder Bond Payments fixed by the Board shall conform to those specified for the Falling Water Payments, taking into account the applicable provisions of the Spaceholder Contracts providing for the payment of the Spaceholder Bond Payments on April 1 of each year. The Board shall fix the due date of the Installments of the Falling Water Payments so that such payments shall become due and payable by the Idaho Power Company on the first day of the month preceding the date on which principal on the Series 1976 Bonds will fall due if such Installments are to be paid annually or on the first days of the months preceding the dates on which interest and principal, or interest alone, will fall due if such Installments are to be paid semi-annually.

The Board shall then determine the term of the Series 1976 Bonds, which term shall not exceed the maximum term specified in the proceedings taken in connection with the issuance of the Bonds and which shall be coordinated with the dates upon which the Installments of the Falling Water Payments and the Spaceholder Bond Payments will be made.

The Board shall thereupon fix the amount of the Series 1976 Bonds, which amount, within the Bond authorization, shall be sufficient, together with any prepayment of obligations under Spaceholder Contracts to be transferred into the Construction Fund from the Prepayment Fund to pay the estimated Cost of Construction of the American Falls Replacement Dam Program, and sufficient to pay, as to both principal and interest, any of the Interim Notes which shall have been issued by the Constructing Agency for such purposes pursuant to the applicable provisions of the State Act and which will be outstanding on the date of delivery of the Series 1976 Bonds. In determining the amount of the Series 1976 Bonds or of any Additional Bonds to be issued, the Constructing Agency shall increase the obligation of Idaho Power Company, determined under the provisions of Article VIII hereof, by the amount necessary to round off the total amount of Series 1976 Bonds or Additional Bonds to be issued to the next highest $5,000.

SECTION 9.4. *Details of Series 1976 Bonds.* After the amount and term of the Series 1976 Bonds shall have been determined by the Board, the Board shall thereupon fix the various details of the Series 1976 Bonds, including the date, maturity or maturities, sinking funds, serial or term nature, and option of redemption. In determining the date of the Series 1976 Bonds, the date upon which the first interest on the Series 1976 Bonds will become payable, the date upon which the first principal of the Series 1976 Bonds will become due, the maturity schedule or sinking fund of the Series 1976 Bonds, the redemption features of the Series 1976 Bonds, the Board shall take into account the requirements of Section 9.3 hereof with respect to the details of the Falling Water Payments and of the Spaceholder Bond Payments. Copies of the Indenture shall then be prepared in final form for execution. Such changes may be made in the February 1, 1976 draft of the Indenture which do not conflict with the provisions of this Falling Water Contract, the Spaceholder Contracts, the Government Contract, the Act of December 28, 1973, or the State Act and which are agreed to by the Constructing Agency and the Idaho Power Company, and bond counsel to the Constructing Agency in connection with the issuance and sale of the Series 1976 Bonds.

SECTION 9.5. *Option of Redemption of Series 1976 Bonds.* The Constructing Agency agrees that the Indenture shall provide that the Series 1976 Bonds shall be subject to redemption in whole or

in part at any time from and after ten (10) years from the date of the Series 1976 Bonds and at such premium or premiums which shall be established by the Board pursuant to the provisions of Section 9.4 hereof. If the Series 1976 Bonds are issued as term obligations with a mandatory sinking fund, the Series 1976 Bonds shall also be made subject to redemption in part on interest payment dates from the sinking fund established in the Indenture.

SECTION 9.6. *Sale of Series 1976 Bonds.* After the details of the Series 1976 Bonds shall have been fixed and determined by the Board as herein contemplated, and after the form of the Indenture shall have been agreed upon, the Constructing Agency shall sell the Series 1976 Bonds in such manner and at such price or prices as shall be determined by resolution of the Board, pursuant to the provisions of the State Act then in force. Prior to any offering of the Series 1976 Bonds the Constructing Agency shall obtain the opinion of bond counsel that interest on the Series 1976 Bonds will be excludable from Federal gross income taxes under the provisions of the Internal Revenue Code in effect on the date of the offering. No proposal or bond purchase agreement for the purchase of the Series 1976 Bonds shall be accepted or entered into by the Constructing Agency unless the Board shall determine and find that the proceeds of the Falling Water Payments together with the Spaceholder Bond Payments, computed as provided in Section 9.7 hereof, will be sufficient to pay the principal of and interest on the Series 1976 Bonds as the same shall fall due. Thereafter the Board shall complete the blanks in the Indenture and shall cause the Indenture to be executed by its duly authorized officers and the Trustee. Nothing contained in this Falling Water Contract shall prevent the Board from exercising its discretion and rejecting any and all proposals for the purchase of the Bonds, and advertising for bids or seeking new proposals for the purchase of the Bonds.

SECTION 9.7. *Computation of Falling Water Payments and Spaceholder Bond Payments.* The Falling Water Payments and the Spaceholder Bond Payments shall be calculated by the Authorized Representatives in accordance with the provisions of this Section 9.7. A schedule of the annual combined principal and interest requirements on the Series 1976 Bonds shall be prepared. The annual Installments of the Falling Water Payments shall consist of that portion of the annual combined principal and interest requirements on the Series 1976 Bonds as is represented by the proportion of the total of (A), (B) and (C) below to the principal amount of the Series 1976 Bonds:

(A) $19,550,000,

(B) the estimated cost of the Water Quality Facilities determined under the procedures of Section 8.3 hereof, and

(C) .486405[1] times the amount by which the total estimated cost of the American Falls Replacement Dam Program exceeds $38,000,000.

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[1] The .486405 is computed according to the following formula:

(i) Where .026471 equals the portion of total active storage capacity of Idaho Power Company in the Replacement Dam as a Spaceholder;

(ii) Where B equals the Idaho Power Company portion of the excess above $38,000,000 of the total estimated cost of the American Falls Replacement Dam Program in addition to its payment as a Spaceholder; and

(iii) Where A equals the cost of the American Falls Replacement Dam Program in excess of $38,000,000:

$$B + .026471\ (A-B) = .5A$$
$$.973529B - .473529A$$
$$B - \frac{.473529}{.973529}A = .486405A$$

The balance of the annual combined principal and interest requirements on the Series 1976 Bonds, after the deduction of the Falling Water Payments, shall constitute the annual Spaceholder Bond Payments, and shall be used by the Authorized Representatives in calculating the Schedule of Spaceholder Bond Payments for each of the Spaceholders which did not prepay its obligation as permitted in Article 23 of the Spaceholder Contracts and attributable to the space of each Non-Participating Wateruser to the extent applicable.[1]

SECTION 9.8. *Schedules of Falling Water Payments and Spaceholder Bond Payments.* After the receipt of a proposal for the purchase of the Series 1976 Bonds and the execution of a bond purchase agreement, but before the delivery of the Series 1976 Bonds to the Underwriters, the Authorized Representatives shall calculate the details of the Falling Water Payments and the Spaceholder Bond Payments and shall prepare the Schedule of Falling Water Payments and the Schedules of Spaceholder Bond Payments, and the percentage of the fees, charges and expenses of the Trustee and any paying agent bank for which each Spaceholder and the Idaho Power Company is responsible. Schedules of Spaceholder Bond Payments shall also be prepared with respect to the space attributable to Non-Participating Waterusers.

Each schedule shall be approved by the Trustee and shall be filed with the Trustee, the Idaho Power Company, the Contracting Officer and the Constructing Agency. Each Spaceholder which did not prepay its obligation shall be furnished with its applicable Schedule of Spaceholder Bond Payments. When the Schedule of Falling Water Payments and the Schedules of Spaceholder Bond Payments have been approved by the Trustee and filed as contemplated herein, each schedule shall be conclusively binding on the Idaho Power Company and each Spaceholder.

In the event the Constructing Agency issues Additional Bonds, either under the provisions of Section 9.10 or Section 9.11 hereof, the Authorized Representatives shall prepare a supplemental Schedule of Falling Water Payments and supplemental Schedules of Spaceholder Bond Payments for each Spaceholder which does not prepay its obligation and for the space attributable to Non-Participating Waterusers, in accordance with the calculations contemplated to be made by the Authorized Representatives in Section 9.10 and Section 9.11 hereof. Such supplemental schedules shall be approved by the Trustee, shall be filed and become conclusive as above provided with respect to the original schedules.

SECTION 9.9. *Delivery of Series 1976 Bonds; Disposition of Proceeds.* After the acceptance of the proposal of the Underwriters for the purchase of the Series 1976 Bonds and the execution of a bond purchase agreement with respect thereto, the acceptance of the bids for the construction of the Replacement Dam and the execution of the contracts for the construction of the Replacement Dam, the Series

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[1] Such calculation shall be made under the following formula:

where:

DS = each annual combined principal and interest requirement

DSsp = the amount of each annual combined principal and interest requirement attributable to non-prepaid space

P = total percentage of the active storage capacity attributable to non-prepaid space

p = the percentage of total storage capacity of a Spaceholder which did not prepay or attributable to a Non-Participating Wateruser (p = P)

K = 100% ÷ P

S = the total amount to be paid by each Spaceholder which did not prepay or attributable to the space of each Non-Participating Waterusers (S = DSsp)

then:

$$S = (K)(p)(DSsp)$$

1976 Bonds shall be delivered in accordance with the requirements of the bond purchase agreement for the purchase of the Series 1976 Bonds to be entered into between the Constructing Agency and the Underwriters, and the proceeds thereof shall be deposited in the Bond Fund and the Construction Fund, pursuant to Sections 601 and 602 of the Indenture, and disbursements shall be made from the Construction Fund, in accordance with the provisions of Section 602 of the Indenture. The Constructing Agency and the Idaho Power Company agree to cooperate, one with the other, in furnishing the Trustee with the documents referred to in Section 602 of the Indenture that are required to effect payments out of the Construction Fund.

SECTION 9.10. *Issuance of Additional Bonds Within Initial Authorization for Completion.* It is intended by the Constructing Agency that an amount of Bonds has been authorized and will be issued which will be sufficient, together with any prepayments, to pay the total cost of the American Falls Replacement Dam Program. If it is determined necessary, subsequent to the issuance of the Series 1976 Bonds, to issue all or part of the balance of any of the initially authorized but as then unissued Bonds in order to complete the payment of the total cost of the American Falls Replacement Dam Program, the Constructing Agency will, to the extent then legally permitted, issue and sell a series of Additional Bonds as permitted under Section 207 of the Indenture for completion purposes. In the event the balance of the initially authorized Bonds is issued, the annual Installments of the Falling Water Payments shall be increased by that portion of the annual combined principal and interest requirements on such series of Additional Bonds as is represented by the proportion of the total of (A) and (B) below (but as to each only to the amount of any initially authorized but as then unissued Bonds) to the principal amount of such series of Additional Bonds:

(A) any increased cost of the Water Quality Facilities determined under the procedures of Section 8.7 hereof over the estimated cost thereof determined under the procedures of Section 8.3 hereof, and

(B) .486405 (see Section 9.7 hereof) times the amount by which the total cost of the American Falls Replacement Dam Program determined under the procedures of Section 8.7 hereof less the increased cost of the Water Quality Facilities included in (A) above exceeds the higher of (1) the estimated cost of the American Falls Replacement Dam Program determined under the procedures of Section 8.3 hereof or (2) $38,000,000.

The Spaceholder Bond Payments shall be increased in an amount sufficient to pay the balance of the annual combined principal and interest requirements on such series of Additional Bonds not returned pursuant to the increased Falling Water Payments. The calculation of such increases shall be in accordance with the formula set forth in Section 9.7 hereof. No such Additional Bonds shall be issued unless the Constructing Agency shall receive a written opinion by an attorney or firm of attorneys of recognized standing on the subject of municipal bonds to the effect that the exemption from Federal income tax of interest on the Series 1976 Bonds and any series of Additional Bonds theretofore issued will not be affected by the issuance of such series of Additional Bonds then being issued.

SECTION 9.11. *Issuance of Additional Bonds in Excess of the Initial Authorization for Completion.* If the amount of the Bonds which has been initially authorized together with any prepayments, is not sufficient to complete the payment of the total cost of the American Falls Replacement Dam Program and therefore it is determined necessary for the Constructing Agency to issue and sell a series of Additional Bonds as permitted under Section 207 of the Indenture for completion purposes in excess of the Bonds initially authorized to be issued, the Constructing Agency will, to the extent then legally permitted, issue and sell Additional Bonds in excess of the initial authorization under the conditions set forth in this Section 9.11:

(A) If the amount of such series of Additional Bonds is determined to be $1,000,000 or less, the Idaho Power Company shall enter into a supplement to this Falling Water Contract pursuant to which the annual Installments of the Falling Water Payments shall be increased by an amount necessary to pay principal of and interest on such series of Additional Bonds.

(B) If the amount of such series of Additional Bonds is determined to be an amount over $1,000,000 but not over $2,000,000:

(1) the Idaho Power Company shall enter into a supplement to this Falling Water Contract pursuant to which the annual Installments of the Falling Water Payments shall be increased by an amount sufficient to pay that portion of the annual combined principal and interest requirements on such series of Additional Bonds as is represented by the proportion of the total of (a) and (b) below to the principal amount of such series of Additional Bonds:

(a) $1,000,000,

(b) the remaining increased cost, if any, of Water Quality Facilities determined under the procedures of Section 8.7 hereof over the estimated cost thereof determined under the procedures of Section 8.3 hereof, which is in excess of the total of (i) the increased cost of the Water Quality Facilities provided for in Section 9.10(A) hereof and (ii) $1,000,000; and

(2) supplements to Spaceholder Contracts shall be executed pursuant to which increased Spaceholder Bond Payments will be made by Spaceholders, other than Idaho Power Company, which did not prepay their obligations, in an amount sufficient to pay the balance of the annual combined principal and interest requirements on such series of Additional Bonds not returned pursuant to this Falling Water Contract as so supplemented.

(C) If the amount of such series of Additional Bonds is determined to be an amount over $2,000,000:

(1) the Idaho Power Company shall enter into a supplement to this Falling Water Contract pursuant to which the annual Installments of the Falling Water Payments shall be increased by an amount sufficient to pay that portion of the annual combined principal and interest requirements on such series of Additional Bonds as is represented by the proportion of the total of (a), (b) and (c) below to the principal amount of such series of Additional Bonds:

(a) $1,000,000;

(b) the remaining increased cost, if any, of the Water Quality Facilities determined under the procedures of Section 8.7 hereof over the estimated cost thereof determined under the procedures of Section 8.3 hereof which is in excess of the total of (i) the increased cost of the Water Quality Facilities provided for in Section 9.10(A) hereof and (ii) $1,000,000; and

(c) .486405 (see Section 9.7 hereof) times the amount by which the total cost of the American Falls Replacement Dam Program determined under the procedures of Section 8.7 hereof less (i) the total increased cost of the Water Quality Facilities, (ii) the obligation of Idaho Power Company for other than Water Quality Facilities under Section 9.11(A)[1] hereof, and (iii) the obligations of Spaceholders other than Idaho Power Company under Section 9.11(B)[2], exceeds the higher of (1) the estimated cost of the American Falls Replacement Dam Program determined under the procedures of Section 8.3 hereof or (2) $38,000,000;

(2) supplements to Spaceholder Contracts shall be executed pursuant to which increased Spaceholder Bond Payments will be made by Spaceholders, other than Idaho Power Company, which did not prepay their obligations, in an amount sufficient to pay that portion of the annual combined principal and interest requirements on such series of Additional Bonds as is represented by the proportion of $1,000,000, less the amount determined pursuant to Section 9.11(B)(1)(b)[2] hereof to the principal amount of such series of Additional Bonds; and

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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. VISSIA
Regional Director

Pacific Northwest Region
Bureau of Reclamation
Box 043—550 West Fort Street
Boise, Idaho 83724

STATE OF IDAHO }
COUNTY OF ADA } ss.

On this 24th day of March. in the year 1976, before me, John A. Rosholt, a Notary Public, personally appeared John M. Barker and Dianne Bridegum, known to me to be, respectively, the President and the Secretary of the American Falls Reservoir District that executed the said instrument, and acknowledged to me that the American Falls Reservoir District executed the same.

IN WITNESS WHEREOF, I set my hand and affix my official seal the day and year first above written.

/s/ JOHN A. ROSHOLT
Notary Public in and for the State of Idaho
Residing at: Twin Falls, Idaho

My commission expires: 1979

(SEAL)

STATE OF IDAHO }
COUNTY OF ADA } ss.

On this 24th day of March, in the year 1976, before me, Mary L. Morton, a Notary Public, personally appeared James E. Bruce and Paul L. Jauregui, known to me to be the President and Secretary of the corporation that executed the said instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I set my hand and affix my official seal the day and year first above written.

/s/ MARY L. MORTON
Notary Public in and for the State of Idaho
Residing at: Boise, Idaho

My commission expires: 4-1-76

(SEAL)

SPACEHOL
HOLDINGS OF SPACE IN AMER. .. FALLS RESERVOIR

Water User	Contract No.	Date	Date of Supplemental Contract	Approximate Acre-Feet	Percent of Active Capacity—Percent to Distribute Construction Costs	Percent to Distribute Annual Replacement-Dam Operation and Maintenance Costs	Percent to Distribute Annual Water Quality Operation and Maintenance Costs
UPPER VALLEY ORGANIZATIONS							
Aberdeen-Springfield Canal Company(1)	14-06-W-24	10-22-52	9-26-63	32,572	1.9160	1.8276	1.9680
Andrus, Ray	14-06-100-7771	5-16-73	None	191	0.0112	.0107	.0115
The Blackfoot Irrigating Company	14-06-W-39	12-12-52	2-6-63	12,763	0.7508	.7161	.7712
The Butte and Market Lake Canal Company	14-06-W-38	12-12-52	2-6-63	4,666	0.2745	.2618	.2819
Clement Brothers, a partnership	14-05-100-7446	9-9-72	None	71	0.0042	.0040	.0043
Corbet Slough Ditch Company	14-06-W-12	12-12-52	2-6-63	3,396	0.1998	.1905	.2052
The Enterprize Canal Company, Ltd.	14-06-W-15	12-12-52	2-1-63	8,923	0.5249	.5007	.5392
Enterprise Irrigation District	14-06-100-1912	6-2-60	None	10,188	0.5993	.5716	.6156
Harrison Canal and Irrigation Company	14-06-W-30	12-12-52	2-1-63	12,025	0.7074	.6747	.7266
Michaud Division, Fort Hall Indian Reservation	Memorandum of Agreement	4-25-57	None	47,700	2.8059	2.6764	2.8822
New Sweden Irrigation District	14-06-W-14	12-12-52	2-1-63	25,731	1.5136	1.4438	1.5547
Poplar 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 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)	IIr-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 36

1976 Falling Water Contract - Falling Water Contract by and between AFRD and Idaho Power Company (Mar. 31, 1976)

[CONFORMED COPY]

JUN 9 1 55 PM '77

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

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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

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, title

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

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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.

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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
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Percent of Active Capacity
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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)	IIr-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 37

1976 Spaceholder Contract - Spaceholder Contract among the United States, the AFRD, 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

[CONFORMED COPY]

SPACEHOLDER CONTRACT
AMONG
THE UNITED STATES,
THE AMERICAN FALLS RESERVOIR DISTRICT,
AND
IDAHO POWER COMPANY
FOR STORAGE IN THE
AMERICAN FALLS REPLACEMENT DAM
AND FOR
CONSTRUCTION AND OPERATION
AND MAINTENANCE OF THE
AMERICAN FALLS REPLACEMENT DAM PROGRAM

Dated as of March 31, 1976

Contract No. Ilr-733S

SPACEHOLDER CONTRACT AMONG THE UNITED STATES, THE AMERICAN FALLS RESERVOIR DISTRICT, AND IDAHO POWER COMPANY FOR STORAGE IN THE AMERICAN FALLS REPLACEMENT DAM AND FOR CONSTRUCTION AND OPERATION AND MAINTENANCE OF THE AMERICAN FALLS REPLACEMENT DAM PROGRAM

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Contract No. Ilr-733S

SPACEHOLDER CONTRACT AMONG THE UNITED STATES, THE AMERICAN FALLS RESERVOIR DISTRICT, AND IDAHO POWER COMPANY FOR STORAGE IN THE AMERICAN FALLS REPLACEMENT DAM AND FOR CONSTRUCTION AND OPERATION AND MAINTENANCE OF THE AMERICAN FALLS REPLACEMENT DAM PROGRAM

THIS SPACEHOLDER CONTRACT, made this 31st day of March, 1976, among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States", acting through the Regional Director, Pacific Northwest Region, Bureau of Reclamation, upon authorization of the Secretary of the Interior and pursuant to Section 3 of the Act of Congress approved December 28, 1973 (87 Stat. 904) the AMERICAN FALLS RESERVOIR DISTRICT, an instrumentality of the State of Idaho, with its offices in Twin Falls, Idaho, hereinafter referred to as the "Constructing Agency"; and IDAHO POWER COMPANY, a corporation organized under the laws of the State of Maine, authorized to do business in the State of Idaho, with its principal office therein located in Boise, Idaho, hereinafter called "Spaceholder", when referring to it in its capacity as a Spaceholder pursuant to Section 3 of the Act of December 28, 1973 and called the "Idaho Power Company" when referring to it in its capacity as the entity contracting to utilize for power generation at the Powerplant the water released from the Replacement Dam;

WITNESSETH THAT:

EXPLANATORY RECITALS

2. WHEREAS, the United States has constructed the Existing Dam of the Minidoka Project pursuant to the Federal Reclamation Laws primarily for the furnishing of water for irrigation purposes and, due to alkali-aggregate reactions in the concrete portions of the Existing Dam, the United States is operating the Existing Dam at less than full active capacity; and

3. WHEREAS, continued operation at less than full active capacity could result in irrigation water shortages to some 900,000 acres of land which obtain a water supply from the Existing Dam; and

4. WHEREAS, the active capacity in the Existing Dam is held by Waterusers which desire that the Existing Dam be replaced at the earliest possible time; and

5. WHEREAS, the United States and the Spaceholder are parties to that certain contract hereinafter referred to as the "Existing Spaceholder Contract" dated June 15, 1923, symbol and No. Ilr-733, wherein the Spaceholder conveyed to the United States certain lands and water rights and obtained the right to use the stored water accruing to 2.6471% of the active water storage capacity of the Existing Dam as well as other rights relating to the use of water for power generation; and

6. WHEREAS, the Constructing Agency pursuant to the Act of December 28, 1973, desires to undertake the replacement of the Existing Dam on behalf of all the Spaceholders by financing and constructing the American Falls Replacement Dam Program and to issue Bonds to finance all or part of the costs thereof pursuant to the provisions of Chapter 22, Title 43, Idaho Code, as amended, and upon substantial completion thereof to transfer title to the Replacement Dam to the United States to be operated and maintained primarily for the furnishing of water for irrigation purposes as a feature of the Minidoka Project; and

7. WHEREAS, the Waterusers have advanced monies, and the Constructing Agency has employed engineers, and done those things necessary in the preparation of plans, designs and specifications, in order to begin work on the American Falls Replacement Dam Program; and

8. WHEREAS, pursuant to the provisions of the Act of December 28, 1973, the United States has entered into a contract of even date herewith with the Constructing Agency ("Government Contract") which Government Contract authorizes the Constructing Agency to finance and provide for the construction of the American Falls Replacement Dam Program; and

9. WHEREAS, the Idaho Power Company heretofore proposed to pay an amount necessary to amortize at a tax exempt interest rate in 40 approximately equal annual installments, $19,550,000 of the costs of financing and constructing the American Falls Replacement Dam Program and subsequently further agreed to increase such amount by the cost of the Water Quality Facilities, and if necessary by

approximately 50% of the costs of financing and constructing the American Falls Replacement Dam Program in excess of $38,000,000; and

10. WHEREAS, the Constructing Agency pursuant to the Act of December 28, 1973, entered into a Falling Water Contract of even date herewith with the Idaho Power Company to utilize for power generation at the Powerplant the water released from the Replacement Dam (which utilization shall be subordinate to the furnishing of water for irrigation purposes) in consideration for the Falling Water Payments in order to pay part of the costs of financing and constructing the American Falls Replacement Dam Program and the Federal Power Commission has granted to the Idaho Power Company a License to construct, operate, and maintain the Powerplant attached to the Replacement Dam for such purpose; and

11. WHEREAS, the United States is responsible for the construction of specific facilities for public recreation and fish and wildlife enhancement in accordance with Section 7 of the Act of December 28, 1973; and

12. WHEREAS, the Constructing Agency and the Idaho Power Company have entered into the Water Quality Facilities Agreement of even date herewith attached hereto as *Exhibit A* providing for the construction, operation, and maintenance of the Water Quality Facilities; and

13. WHEREAS, Section 3 of the Act of December 28, 1973, provides in part that the Secretary and the Constructing Agency may enter into contracts with the Waterusers for the repayment of their proportionate share of the costs incurred by the Constructing Agency for engineering, financing, designing and constructing the replacement of the Existing Dam and that the delivery of water to the Waterusers shall be contingent upon the execution of Spaceholder Contracts and the fulfillment of the obligations thereunder; and

14. WHEREAS, the Constructing Agency is responsible under the Government Contract and the Falling Water Contract for the preparation of the plans for the American Falls Replacement Dam Program in order to accomplish the replacement of the Existing Dam as contemplated in Section 3 of the Act of December 28, 1973; and

15. WHEREAS, an appropriate number of the Waterusers satisfactory to the Secretary and the Constructing Agency have entered into Spaceholder Contracts of even date herewith to pay their proportionate share of the cost of the American Falls Replacement Dam Program; and

16. WHEREAS, the Spaceholder desires to repay its proportionate share of the costs of financing and constructing the American Falls Replacement Dam Program and has, as required by law, authorized the execution hereof; and

17. WHEREAS, the Spaceholder will pay its proportionate share of operation and maintenance costs associated with the Replacement Dam, the Related Facilities, and the Water Quality Facilities;

NOW, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is agreed by and among the parties hereto as follows:

PART I

DEFINITIONS AND TERM

(Articles 18-19)

DEFINITIONS

18. The following terms, whenever used in this Spaceholder Contract, shall have the following respective meanings:

"Act of December 28, 1973" shall mean the Act of Congress approved December 28, 1973 (87 Stat. 904).

"Additional Bonds" shall mean any additional parity Bonds authorized to be issued by the Constructing Agency pursuant to the terms and conditions of Section 207 of the Indenture.

"Advisory Committee" shall mean the committee known as the "Committee of Nine", or its successors.

"American Falls Replacement Dam Program" shall mean the program to be undertaken by the Constructing Agency consisting of the Replacement Dam including the two-lane highway on the crest of the Replacement Dam, the two-lane highway bridge located immediately downstream from the Replacement Dam, the Related Facilities, the Recreation and Fish and Wildlife Mitigation Facilities, and the Water Quality Facilities to be accomplished pursuant to the Act of December 28, 1973, and under the authority of Section 43-2201(A), Idaho Code, which provides for the reconstruction, rehabilitation, replacement, and improvement of dams and other related structures and works together with all necessary appurtenances related thereto.

"Authorized Company Representative" shall mean the person at the time designated to act in behalf of the Idaho Power Company by written certificate furnished to the Contracting Officer, the Constructing Agency and the Trustee, containing the specimen signature of such person, and signed on behalf of the Idaho Power Company by its President or any Vice President thereof. Such certificate shall designate an alternate or alternates. The Authorized Company Representative may be an employee of the Idaho Power Company.

"Authorized Constructing Agency Representative" shall mean the person at the time designated to act in behalf of the Constructing Agency by written certificate furnished to the Contracting Officer, the Idaho Power Company and the Trustee, containing the specimen signature of such person, and signed on behalf of the Constructing Agency by the President of the Board, or the Vice President thereof. Such certificate shall designate an alternate or alternates. The Authorized Constructing Agency Representative may be an employee of the Constructing Agency.

"Authorized Representatives" shall mean collectively the Authorized Company Representative, the Authorized Constructing Agency Representative, and the Authorized Spaceholder Representative.

"Authorized Spaceholder Representative" shall mean the person at the time designated to act in behalf of the Spaceholders, pursuant to the provisions of Article 46 hereof, by written certificate furnished to the Contracting Officer, the Constructing Agency, the Idaho Power Company, and the Trustee, containing the specimen signature of such person, and signed on behalf of the Spaceholders by the Chairman of the meeting of the Spaceholders at which such representative is designated. Such certificate shall designate an alternate or alternates. The Authorized Spaceholder Representative may be an employee of a Spaceholder.

"Bond Fund" shall mean the Bond Fund created in Section 502 of the Indenture for the purpose of paying principal of and interest on the Bonds.

"Bonds" shall mean bonds issued, and to be issued, by the Constructing Agency under Authority contained in the State Act, pursuant to the Indenture to pay the costs of the American Falls Replacement Dam Program.

"Constructing Agency" shall mean the American Falls Reservoir District, an instrumentality of the State of Idaho, being an irrigation district organized and existing under the provisions of Title 43, Idaho Code, as amended, and its successors and assigns.

"Construction Fund" shall mean the construction fund created by Section 602 of the Indenture for the purpose of paying the cost of financing and constructing the American Falls Replacement Dam Program.

"Construction Work Schedule" shall mean a schedule showing each item of major construction activity of the American Falls Replacement Dam Program including detailed coordination arrangements for the construction of the Powerplant with the construction of the Replacement Dam, and the time period within which each item is proposed to be started and concluded.

"Contracting Officer" shall mean the Regional Director, Pacific Northwest Region, Bureau of Reclamation, or his duly authorized representative.

"Cost of Construction" shall mean all or part of the total cost of the engineering, financing, designing and constructing of the American Falls Replacement Dam Program, and all expenses preliminary and incidental thereto, including all engineering, fiscal, and legal expenses, and costs of issuance, printing and advertising, as authorized in the Act of December 28, 1973 and the State Act and for which funds may be disbursed from the Construction Fund pursuant to Article 20(c) hereof.

"Defaulted Spaceholder(s)" shall mean the Spaceholders determined to be in default in all or any part of the Spaceholder Payments required to be made under a Spaceholder Contract, in accordance with the provisions of Article 29(a) hereof.

"Existing Dam" shall mean the American Falls Dam and Reservoir owned by the United States located on the Snake River in southern Idaho adjacent to the City of American Falls, Idaho.

"Existing Spaceholder Contract" shall mean that certain contract dated June 15, 1923, symbol and No. I1r-733, between the United States and the Spaceholder.

"Falling Water Contract" shall mean the contract of even date herewith entitled "Falling Water Contract by and between American Falls Reservoir District and Idaho Power Company", as the same may be supplemented or amended.

"Falling Water Payments" shall mean the principal amount, plus applicable interest, to be paid to the Constructing Agency in 40 approximately equal annual installments by the Idaho Power Company pursuant to the Falling Water Contract as a part of the consideration for the utilization for power generation at the Powerplant of the water released from the Replacement Dam.

"Government Contract" shall mean the contract of even date herewith entitled "Contract between the United States of America and the American Falls Reservoir District for the Construction and Operation and Maintenance of the American Falls Replacement Dam Program" as the same may be supplemented or amended.

"Idaho Power Company" shall mean the Idaho Power Company, a Maine corporation authorized to do business in the State of Idaho, and its permitted successors and assigns, acting in the capacity as the entity contracting to utilize for power generation at the Powerplant the water released from the Replacement Dam.

"Indenture" shall mean the Indenture of Trust to be entered into between the Constructing Agency and the Trustee in connection with the issuance of the Bonds (including any indenture supplemental thereto).

"Interim Notes" shall mean interim notes of the Constructing Agency issued, and to be issued, under authority contained in the State Act, for the purpose of borrowing funds on a temporary basis in advance of the issuance of the Series 1976 Bonds.

"License" shall mean the license for Project No. 2736 issued by the Federal Power Commission on March 31, 1975, and expiring on March 31, 2025, and any continuation or renewal thereof, authorizing the Idaho Power Company to construct, operate, and maintain the Powerplant.

"Minidoka Project" shall mean the Minidoka Reclamation Project of the United States, located on the Snake River in the States of Idaho and Wyoming.

"Non-Participating Wateruser(s)" shall mean the Waterusers which have not executed Spaceholder Contracts. The initial Non-Participating Waterusers are set forth in *Exhibit B* to the Government Contract. Upon the execution of a Spaceholder Contract by a Non-Participating Wateruser, such Non-Participating Wateruser shall be deemed to be a Spaceholder.

"Plan of Operation" shall mean a schedule of the storage and release of water from the Existing Dam and the Replacement Dam during the construction of the Replacement Dam.

"Powerplant" shall mean the hydroelectric generating facility, attached to the Replacement Dam, to be constructed, operated, and maintained by the Idaho Power Company in accordance with the License.

"Recreation and Fish and Wildlife Mitigation Facilities" shall mean the facilities to be included in the American Falls Replacement Dam Program pursuant to that certain agreement between the Constructing Agency and the Idaho Fish and Game Department dated July 2, 1974, to mitigate the anticipated loss of existing recreational and fish and wildlife resources.

"Related Facilities" shall mean the facilities included in the American Falls Replacement Dam Program which are required by the United States as part of the construction of the Replacement Dam and which are to be transferred to the United States to operate and maintain, consisting of the warehouse, shop, offices, scenic overlook including health and safety facilities, hydrologic and meteorologic data collection facilities.

"Replacement Dam" shall mean the new dam, including the reservoir, to be constructed by the Constructing Agency on the Snake River in southern Idaho adjacent to the City of American Falls, Idaho, to replace the Existing Dam.

"Schedule of Spaceholder Bond Payments" shall mean that schedule supplied to the Spaceholder, pursuant to the provisions of Section 9.8 of the Falling Water Contract, showing the annual sums to be paid to the Trustee for deposit into the Bond Fund under the Indenture.

"Secretary" shall mean the Secretary of the Interior.

"Series 1976 Bonds" shall mean the initial series of Bonds to be issued by the Constructing Agency under the State Act for the purpose of paying all or part of the Cost of Construction of the American Falls Replacement Dam Program pursuant to the terms and conditions of Section 202 of the Indenture.

"Spaceholder" shall mean the Idaho Power Company, a Maine corporation authorized to do business in the State of Idaho, acting in the capacity of a Spaceholder pursuant to Section 3 of the Act of December 28, 1973.

"Spaceholder(s)" shall mean the Waterusers which have executed Spaceholder Contracts, together with their successors and assigns. The initial Spaceholders are set forth in *Exhibit A* to the Government Contract.

"Spaceholder Bond Payments" shall mean the payments obligated to be made by the Spaceholders to the Constructing Agency pursuant to the Spaceholder Contracts to pay the Spaceholders' portion of the principal of and interest on the Bonds and which are assigned to the Trustee.

"Spaceholder Contract" shall mean this contract entered into among the United States, the Constructing Agency, and the Spaceholder for storage in the Replacement Dam and the payment of the construction, operation, and maintenance costs of the American Falls Replacement Dam Program as the same may be supplemented or amended.

"Spaceholder Contracts" shall mean the contracts of even date herewith entered into among the United States, the Constructing Agency, and the Spaceholders for storage in the Replacement Dam and the payment of construction, operation, and maintenance costs of the American Falls Replacement Dam Program as the same may be supplemented or amended.

"Spaceholder Payments" shall mean collectively the payments to be made by the Spaceholder pursuant hereto as follows:

1. Spaceholder Bond Payments.
2. Spaceholder Replacement Dam Operation and Maintenance Payments.
3. Spaceholder Water Quality Facilities Operation and Maintenance Payments.
4. The fees, charges and expenses of Trustee and any paying agent bank.

"Spaceholder Replacement Dam Operation and Maintenance Payments" shall mean the payments obligated to be made hereunder by the Spaceholder to the United States to pay the annual costs of operation and maintenance of the Replacement Dam and the Related Facilities and to return the unpaid costs of the Existing Dam as set forth in Article 28(c) hereof.

"Spaceholder Water Quality Facilities Operation and Maintenance Payments" shall mean the payments obligated to be made by the Spaceholder to the Constructing Agency in accordance with paragraph 13 of the Water Quality Facilities Agreement.

"State Act" shall mean Chapter 22, Title 43, Idaho Code, as enacted by Chapter 1, Session Laws of Idaho, 1974, as amended by Chapter 48, Session Laws of Idaho, 1975.

"Supplemental Falling Water Payments" shall mean the supplemental amounts agreed to be paid to the Constructing Agency by Idaho Power Company pursuant to the Falling Water Contract representing the obligations of the Defaulted Spaceholders or of Non-Participating Waterusers, or both.

"Trustee" shall mean the bank, Trustee or bank co-trustee, or either, at the time serving as such under the Indenture.

"Water Quality Facilities" shall mean facilities included in the American Falls Replacement Dam Program for the purpose of meeting the amended State of Idaho water quality dissolved oxygen standard, as approved on April 17, 1975, by the United States Environmental Protection Agency, for water released from the Replacement Dam through the Powerplant, including necessary monitoring equipment to be installed immediately downstream from the tailrace of the Powerplant to measure the dissolved oxygen in the water.

"Water Quality Facilities Agreement" shall mean the agreement of even date herewith between the Constructing Agency and the Idaho Power Company providing for the construction, operation, and maintenance of the Water Quality Facilities, as the same may be supplemented or amended.

"Wateruser(s)" shall mean the organizations and individuals which have heretofore contracted for storage space in the Existing Dam.

Purpose and Term

19. (a) This Spaceholder Contract is entered into in accordance with Section 3 of the Act of December 28, 1973, to provide for repayment by the Spaceholder of its proportionate share of the total costs incurred by the Constructing Agency for engineering, financing, designing, and constructing the replacement of the Existing Dam by financing and constructing the American Falls Replacement Dam Program. Nothing herein shall in any way alter or change the present proportionate storage rights of the Spaceholder, and this Spaceholder Contract and the American Falls Replacement Dam Program constitute a reaffirmation by the United States of the rights of the Spaceholder under the Existing Spaceholder Contract, except as modified by this Spaceholder Contract as authorized in the Act of December 28, 1973, and in the Government Contract. The provisions of the Existing Spaceholder Contract shall in all respects remain in full force and effect except that the provisions of this Spaceholder Contract with respect to the Replacement Dam, including but not limited to the operation and maintenance thereof and the distribu-

tion of water therefrom, shall prevail over the provisions of the Existing Spaceholder Contract wherever and to whatever extent the provisions of the Existing Spaceholder Contract are in conflict with the provisions of this Spaceholder Contract. The provisions of the Existing Spaceholder Contract which have application to any other reserved works of the Minidoka Project shall, in all respects, continue in effect and shall continue to apply to any other reserved works of the Minidoka Project. Due to events which have occurred since the execution of the Existing Spaceholder Contract, the United States and the Spaceholder recognize that certain provisions of the Existing Spaceholder Contract may no longer be applicable, and it is the intention of the United States and the Spaceholder to subsequently meet and review the Existing Spaceholder Contract for possible revision.

(b) After execution by the Constructing Agency and Spaceholder, this Spaceholder Contract shall become effective upon execution by the Contracting Officer and shall remain in effect unless terminated as provided in Articles 19(c) or 29 hereof.

(c) If the Government Contract is terminated as provided in Article 9(b) or 9(c) thereof, this Spaceholder Contract shall be deemed terminated and of no further force and effect. In the event of the termination of the Government Contract pursuant to Article 9(c) thereof, the Spaceholder's relationship with the United States, as it relates to the Existing Dam, shall be governed by the terms and conditions of the Existing Spaceholder Contract, except that the Spaceholder shall be obligated to pay its proportionate share of the costs expended or incurred by the Constructing Agency for the engineering, financing, designing, and planning of the construction of the American Falls Replacement Dam Program.

PART II

AMERICAN FALLS REPLACEMENT DAM PROGRAM AND SPACEHOLDER STORAGE CAPACITY

(Articles 20-21)

American Falls Replacement Dam Program

20. (a) The American Falls Reservoir District is the "Constructing Agency" contemplated in Section 1 of the Act of December 28, 1973, and in the Government Contract which is authorized to finance and construct the American Falls Replacement Dam Program in order to replace the Existing Dam.

(b) The Constructing Agency has entered into the Government Contract under authority contained in the Act of December 28, 1973, and will issue its Bonds under authority contained in the State Act and pursuant to the Indenture to finance and construct the American Falls Replacement Dam Program. Pursuant to the provisions of Article 10(a) of the Government Contract, the Constructing Agency is responsible for the preparation of the plans for the American Falls Replacement Dam Program. Such plans for the Replacement Dam shall be substantially in accordance with the construction plans for the Replacement Dam contemplated at the Engineering Review Session in San Francisco, California, on October 8 and 9, 1974, and shall provide, among other things, for the following:

(1) The construction of a Replacement Dam having:

(i) a reservoir with an active capacity of 1,700,000 acre-feet;

(ii) a spillway, outlet works, and power penstocks capable of passing an approved design flood without exceeding a maximum water surface elevation of 4,354.5 feet above mean sea level U.S.C.&G.S. datum;

(iii) a two-lane highway on the crest of the Replacement Dam adequate to meet the then current United States Department of Transportation Standards for Federal-Aid Secondary Highway Two-Lane Traffic;

(iv) appropriate controls of spillway, intake, and sluiceway gates for operation of the Replacement Dam in the event of an emergency at the Powerplant; and

(v) sufficient portions of the Existing Dam removed to permit evacuation of the total active capacity of the Replacement Dam at a satisfactory rate to permit full utilization of the storable water.

(2) The construction of the Related Facilities.

(3) The construction, operation, and maintenance of the Water Quality Facilities.

(4) The construction, operation, and maintenance of the Recreation and Fish and Wildlife Mitigation Facilities.

(5) Provision for the relocation or replacement of the residence occupied by the Falls Irrigation District's personnel. The plan for the construction of the Replacement Dam and the Powerplant shall be such as not to interfere with the Falls Irrigation District pumping plant, nor destroy the Old Island Powerplant unless first approved by the Contracting Officer.

(6) A proposed Construction Work Schedule and a proposed Plan of Operation.

(7) Provision for power intake structures, power penstocks, and attachment facilities to the penstocks of the Powerplant with a precise boundary line between the Replacement Dam and the Powerplant.

(8) The two-lane highway bridge located immediately downstream from the Replacement Dam adequate to meet the then current United States Department of Transportation Standards for Federal-Aid Secondary Highway Two-lane Traffic, pursuant to the agreement dated November 23, 1973, between the United States and the State of Idaho, and the agreement dated November 27, 1974, between the Constructing Agency and the State of Idaho, and which two-lane highway bridge shall be utilized to satisfy the requirements of Section 2(c) of the Act of December 28, 1973.

(c) The Cost of Construction of the American Falls Replacement Dam Program shall consist of:

(A) payment of principal of and interest on outstanding Interim Notes, if any, issued by the Constructing Agency pursuant to the authority contained in the State Act, and

(B) payments made under Section 602 of the Indenture for:

(1) payment of the initial or acceptance fee of the Trustee;

(2) payment to the Construction Agency, Waterusers, or Idaho Power Company, as the case may be, of such amounts, if any, as shall be necessary to reimburse the Constructing Agency, Waterusers, or the Idaho Power Company in full for advances and payments made or costs incurred by them or any of them, prior to or after the execution of the Falling Water Contract, for expenditures in connection with the construction of the American Falls Replacement Dam Program, including, but not limited to preparation of the Plans, Designs and Specifications (as defined in the Falling Water Contract) and review thereof by the Contracting Officer;

(3) all costs representing interest on advancements made in connection with the construction of the American Falls Replacement Dam Program prior to the sale of the Series 1976 Bonds;

(4) payments to the Contracting Officer for costs incurred in reviewing the Plans, Designs, Specifications and for costs incurred pursuant to Article 20(a) of the Government Contract in reviewing the construction of the American Falls Replacement Dam Program; costs for the obtaining of any insurance policy or policies by the Constructing Agency during the construction period; and costs related to the obtaining of all real and personal properties

deemed necessary in connection with the construction of the American Falls Replacement Dam Program by the Constructing Agency, or any one or more of said expenditures;

(5) payment for labor, services, materials and supplies used or furnished in site improvement and in the construction of the American Falls Replacement Dam Program, all as provided in the Plans, Designs and Specifications, payment for the cost of the construction, acquisition and installation of utility services or other facilities, and all real and personal property deemed necessary in connection with the construction of the American Falls Replacement Dam Program and payment for the miscellaneous expenses incidental to any thereof, including the premium on any surety bond;

(6) payment of sums due to the State of Idaho pursuant to that certain agreement dated November 27, 1974, between the Constructing Agency and the State of Idaho providing for the two-lane highway on the crest of the Replacement Dam and the two-lane highway bridge located immediately downstream from the Replacement Dam;

(7) payment of the sums contemplated in Sections 1 and 3 of that certain agreement dated July 2, 1974, between the Constructing Agency and the Idaho Fish and Game Department with respect to the Recreation and Fish and Wildlife Mitigation Facilities;

(8) payment of audit fees and expenses for maintenance of records required to be kept hereunder, and of the fees, if any, for architectural, engineering and supervisory services with respect to the construction of the American Falls Replacement Dam Program;

(9) compensation to be paid to the Authorized Constructing Agency Representative and the Authorized Spaceholder Representative in connection with the performance of their duties and the reimbursement of their expenses incurred in connection with such duties;

(10) payment of expenses incurred in seeking to enforce any remedy against any contractor or subcontractor in respect of any default under a contract relating to the construction of the American Falls Replacement Dam Program;

(11) payment of costs of issuance of the Bonds, and Interim Notes, any necessary litigation and confirmation proceedings, and the obtaining of all necessary permits and rulings;

(12) payment of the legal, accounting and underwriting fees and expenses and printing and engraving costs, including fees of rating agencies, incurred in connection with the authorization, sale and issuance of the Bonds and Interim Notes, the preparation of the Falling Water Contract, the Government Contract, the Spaceholder Contracts, the Water Quality Facilities Agreement, and the Indenture;

(13) payments required to be made pursuant to Article 17(g) of the Government Contract; and

(14) payment of any other costs and expenses relating to the construction of the American Falls Replacement Dam Program which would constitute a cost or expense for which moneys in the Construction Fund may be used under the Act of December 28, 1973, the State Act and the Indenture, including fees and expenses of the Trustee during the construction period.

(d) The Constructing Agency has entered into the Falling Water Contract with Idaho Power Company in accordance with Section 4 of the Act of December 28, 1973, and has entered into Spaceholder Contracts with an appropriate number of the Waterusers satisfactory to the Secretary in accordance with Section 3 of the Act of December 28, 1973, in order to finance the construction of the American Falls Replacement Dam Program. The Constructing Agency will use its best efforts to authorize, pursuant to the provisions of the State Act as then in force, and issue the Bonds in an amount which shall be sufficient to pay the Cost of Construction of the American Falls Replacement Dam Program not prepaid

by the Spaceholders and when issued such Bonds shall be payable solely from a special fund into which the Constructing Agency will be obligated to deposit the Spaceholder Bond Payments made by the Spaceholder pursuant to the provisions of the State Act representing its respective proportionate share of the Cost of Construction and allocated to the Spaceholder by the Constructing Agency pursuant to the requirements of the State Act if the Spaceholder does not exercise its right to prepay its obligation hereunder as provided in Article 23 hereof. The Constructing Agency covenants and agrees with the Contracting Officer and the Spaceholder that all Falling Water Payments and Supplemental Falling Water Payments received from the Idaho Power Company pursuant to the Falling Water Contract and all Spaceholder Bond Payments received from the Spaceholders pursuant to the Spaceholder Contracts will be assigned to the Trustee for deposit into the Bond Fund created in the Indenture for the purpose of paying principal of, premium, if any, and interest on the Bonds.

Storage Capacity to be Made Available to Spaceholder

21. (a) The United States will continue to operate and maintain the Existing Dam during the construction of the Replacement Dam and upon substantial completion of such construction will operate and maintain the Replacement Dam.

(b) The United States will continue to make available to the Spaceholder stored water accruing to 2.6471% of the active capacity of the Replacement Dam unless the Spaceholder is in default under the terms and conditions of the Existing Spaceholder Contract or this Spaceholder Contract.

(c) The Spaceholder acknowledges that the proposed Plan of Operation provides for the evacuation of stored water from the Existing Dam and the passing of inflow in lieu of storing. The Spaceholder has heretofore advised the Constructing Agency and the Contracting Officer that such operation is acceptable to the Spaceholder.

PART III

SPACEHOLDER COST OBLIGATIONS, PREPAYMENT, AND SPACEHOLDER PAYMENTS

(Articles 22-27)

Spaceholder Cost Obligation

22. In consideration of the preservation, restoration, protection, and maintenance of the rights of storage, diversion and delivery of water from the Replacement Dam resulting from the construction of the American Falls Replacement Dam Program by the Constructing Agency, the Spaceholder, pursuant to the provisions of Section 3 of the Act of December 28, 1973, shall pay its proportionate share of the total cost of engineering, financing, designing, and constructing the American Falls Replacement Dam Program as set forth in Article 20(c) hereof and which is assigned to the Spaceholder by the Constructing Agency pursuant to the State Act, either by prepayment as permitted under Article 23 hereof or by electing to make Spaceholder Bond Payments as permitted under Article 24 hereof.

Pursuant to the State Act, the Constructing Agency has authorized the issuance of $44,750,000 principal amount of Bonds to pay the Cost of Construction of the American Falls Replacement Dam Program. In accordance with the provisions of Section 8.3 of the Falling Water Contract, the Authorized Representatives will, after receipt of construction bids, prepare an estimate of such cost. If such construction bids are accepted, the Constructing Agency will issue an initial series of the Bonds in an amount sufficient to pay the estimated costs. Additional Bonds for completion purposes will be issued by the Constructing Agency, if necessary, to pay the total costs which are over the estimated costs, either by selling the balance of the authorized but as yet unissued Bonds or by authorizing an additional issue of Bonds in accordance with the applicable provisions of the State Act as then in force. The obligation of

the Spaceholder to pay its proportionate share of the total cost of the American Falls Replacement Dam Program is set forth in this Part III.

PREPAYMENT

23. (a) The Spaceholder shall have the option, until 10 days from and after the Constructing Agency shall give notice to the Spaceholder of the expiration of the prepayment period, to prepay the principal amount of $576,651, without interest, to the Constructing Agency for deposit by the Constructing Agency into the Prepayment Fund to be established by the Constructing Agency and to be used by the Constructing Agency solely for the purpose of paying the proportionate share of the Spaceholder of the total Cost of Construction of the American Falls Replacement Dam Program. If the Constructing Agency does not issue its Series 1976 Bonds, the Constructing Agency shall cause the prepayment to be returned to the Spaceholder, without interest. In accordance with the provisions of Section 8.3 of the Falling Water Contract, after the final estimated cost of the American Falls Replacement Dam Program has been determined and the amount of the Series 1976 Bonds to be initially issued has been determined, the Constructing Agency on or prior to the delivery of the Series 1976 Bonds, shall transfer from the Prepayment Fund into the Construction Fund that portion of the Spaceholder's prepayment so deposited into the Prepayment Fund as is shown on the schedule of the obligation of the Spaceholder to be filed with the Spaceholder in accordance with the provisions of Section 8.3 of the Falling Water Contract. If additional Bonds are issued pursuant to the provisions of Section 9.10 of the Falling Water Contract, the Constructing Agency, on or prior to the delivery of such Additional Bonds, shall transfer from the Prepayment Fund to the Construction Fund that portion of the Spaceholder's prepayment shown on the schedule contemplated to be filed with the Spaceholder in accordance with the provisions of Section 8.6 of the Falling Water Contract.

(b) At such time as the Secretary shall have given notice in accordance with Article 14(d) of the Government Contract that the construction of the Replacemeent Dam, the Related Facilities and the Water Quality Facilities has been completed, and the Authorized Representatives shall have determined the total costs of the American Falls Replacement Dam Program as provided in Section 7.10 of the Falling Water Contract and filed with the Trustee the certificate contemplated in Section 603 of the Indenture, the Constructing Agency shall cause the Trustee to return to the Spaceholder that portion, if any, of the prepayment made by the Spaceholder under Article 23(a) hereof which remains in the Construction Fund and which was not utilized by the Constructing Agency for the purposes of paying the cost of the American Falls Replacement Dam Program. The Constructing Agency shall return to the Spaceholder that portion, if any, of the prepayment made by the Spaceholder under Article 23(a) hereof which remains in the Prepayment Fund and which was not utilized by the Constructing Agency for the purpose of paying the cost of the American Falls Replacement Dam Program.

(c) All prepayments collected by the Constructing Agency under Article 23(a) of this Spaceholder Contract shall be placed in a separate account to be known as the "Prepayment Fund" by the Constructing Agency, to be held and used in accordance with the provisions of the Spaceholder Contracts and the Falling Water Contract. The Prepayment Fund shall be established in The Idaho First National Bank, Twin Falls, Idaho, and the Authorized Representatives shall cause an annual audit of the Prepayment Fund to be made and a copy of each such annual audit to be supplied upon request to each Spaceholder which prepaid its obligation pursuant to the provisions of Article 23(a) hereof.

SPACEHOLDER BOND PAYMENTS

24. (a) If the Spaceholder does not make the prepayment within the time and in the manner as permitted under Article 23(a) hereof, it shall be deemed that the Spaceholder has elected to pay the principal amount of its proportionate share of the total Cost of Construction of the American Falls Replacement Dam Program, plus applicable interest, in 40 approximately equal annual installments to be shown on the Schedule of Spaceholder Bond Payments to be furnished to the Spaceholder by the Authorized Representatives in accordance with the provisions of Section 9.8 of the Falling Water

Contract or as such Schedule of Spaceholder Bond Payments may be revised in the event that Additional Bonds are issued by the Constructing Agency pursuant to either Section 9.10 or Section 9.11 of the Falling Water Contract. Unless sooner terminated as provided in Article 19(c) hereof, and subject only to the issuance by the Constructing Agency of its Bonds, the Spaceholder shall pay the Spaceholder Bond Payments on April 1 of each of the years as shown on the Schedule of Spaceholder Bond Payments to be filed with the Spaceholder directly to the Trustee for the account of the Constructing Agency, in lawful money of the United States, at the Trustee's address shown in the Indenture, or at such other place as the Trustee from time to time shall designate. The Spaceholder shall pay to the Trustee annually at the same time as it pays the Spaceholder Bond Payments that portion of the yearly fees, charges and expenses of the Trustee and any paying agent bank contemplated in Section 1002 of the Indenture, not paid from funds in the Bond Fund and as are assigned to the Spaceholder by the Authorized Representatives.

(b) Any amounts remaining in the Bond Fund after payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture) and the fees, charges and expenses of the Trustee and paying agents in accordance with the Indenture and all other amounts required to be paid under the Spaceholder Contracts, the Falling Water Contract and the Indenture, shall be paid to the Constructing Agency in accordance with Section 14.9 of the Falling Water Contract. Such amounts shall be distributed to the Spaceholders which did not prepay in accordance with their respective interests.

ARBITRAGE

25. (a) The Constructing Agency and the Spaceholder hereto covenant and represent to each other that:

(1) On the basis of its own knowledge, and on examination of the reports and cost projections in connection with the construction of the American Falls Replacement Dam Program:

(i) All of the principal proceeds of the Bonds are needed for the purpose of paying the Cost of Construction of the American Falls Replacement Dam Program, including expenses preliminary and incidental thereto and to the issuance of the Bonds.

(ii) At least 85% of the expendable proceeds of the Bonds, including investment proceeds, will be expended for the Cost of Construction of the American Falls Replacement Dam Program on or before three years following the date of issue of the Bonds.

(iii) The Constructing Agency, prior to the issuance of the Bonds, will have incurred substantial binding obligations equal to at least 2½% of the total Cost of Construction of the American Falls Replacement Dam Program.

(iv) Work on the construction of the American Falls Replacement Dam Program is expected to proceed with due diligence to completion.

(v) Except as required pursuant to the provisions of the Act of December 28, 1973, the American Falls Replacement Dam Program is not expected to be sold or otherwise disposed of, in whole or in part, prior to the maturity of the Bonds.

(vi) Accrued interest received upon the sale of the Bonds is to be applied to the first interest due thereon.

(2) On the basis of the foregoing certifications and representations, it is not expected by either the Constructing Agency or the Spaceholder that the proceeds of the Bonds will be used in a manner that would cause the Bonds to be classified as an "arbitrage bond" under Section 103(d) of the Internal Revenue Code of 1954, as amended, and the regulations promulgated under that section; that to the best knowledge and belief of the Constructing Agency and the Spaceholder, there are no facts or circumstances that would materially change the foregoing conclusion.

(b) The Constructing Agency and the Spaceholder jointly and severally covenant that so long as any of the Bonds shall remain outstanding and any provision in this Spaceholder Contract or the Indenture to the contrary notwithstanding with respect to an investment of monies, whether such monies were derived from the proceeds of the Bonds, or from any other source, no use will be made of such monies which, if such use could have been reasonably expected on the date of the issue of the Bonds, would have caused the Bonds to be classified as an "arbitrage bond" within the meaning of Section 103(d) of the Internal Revenue Code of 1954, as amended, and further jointly and severally covenant to comply with the requirements of said Section 103(d) and any regulations promulgated thereunder.

REFUNDING BONDS

26. In the event that it is mutually agreed among the Constructing Agency, the Idaho Power Company, and the Spaceholders obligated to make Spaceholder Bond Payments that an attempt should be made to authorize the issuance of Bonds by the Constructing Agency for the purpose of refunding all of the outstanding Bonds in accordance with the State Act (Sections 43-2202 and 43-2203, Idaho Code), as then in force, the Idaho Power Company and the Spaceholders obligated to make Spaceholder Bond Payments shall share the costs of such refunding effort, whether successful or unsuccessful, in direct proportion to their respective obligations to pay the annual principal and interest falling due on the Bonds to be refunded.

ADDITIONAL BONDS

27. (a) If it is determined necessary for the Constructing Agency to issue all or part of the balance of any authorized but as then unissued Bonds, the Constructing Agency will, to the extent then legally permitted, issue and sell a series of Additional Bonds as permitted under Section 207 of the Indenture for completion purposes and the Schedule of Spaceholder Bond Payments shall be increased in accordance with the provisions of Section 9.8 and Section 9.10 of the Falling Water Contract.

(b) If the amount of the Bonds which has been initially authorized, together with any prepayments, is not sufficient to complete the payment of the total cost of the American Falls Replacement Dam Program, the Constructing Agency will, to the extent then legally permitted, issue and sell a series of Additional Bonds in excess of the initial authorization as permitted under Section 207 of the Indenture for completion purposes. In recognition of the Spaceholder's obligation under the Act of December 28, 1973, to pay its proportionate share of the total cost of the American Falls Replacement Dam Program not paid pursuant to the Falling Water Contract, the Spaceholder shall cause supplements to the Spaceholder Contract to be executed with the Contracting Officer and the Constructing Agency and may elect to prepay or to make additional Spaceholder Bond Payments. The Schedule of Spaceholder Bond Payments shall be increased in accordance with the provisions of Section 9.11 of the Falling Water Contract for all Spaceholders which do not prepay.

(c) No such Additional Bonds shall be issued unless the Constructing Agency shall receive a written opinion by an attorney or firm of attorneys of recognized standing on the subject of municipal bonds to the effect that the exemption from Federal income tax of interest on the Series 1976 Bonds and any series of Additional Bonds theretofore issued will not be affected by the issuance of such series of Additional Bonds then being issued.

(d) If the Constructing Agency shall issue a series of Additional Bonds, pursuant to the provisions of Section 207 of the Indenture, as contemplated in Sections 9.10 and 9.11 of the Falling Water Contract, for the purpose of paying the costs of completing the construction of the American Falls Replacement Dam Program not paid from the proceeds of the Series 1976 Bonds, and the Constructing Agency thereafter levies additional assessments and enters into supplementary Spaceholder Contracts with the Spaceholders increasing the amount of Spaceholder Bond Payments obligated to be made to the Constructing Agency by the Spaceholders for the purpose of repaying the Cost of Construction of the American Falls Replacement Dam Program, the Idaho Power Company shall be obligated to make

Supplemental Falling Water Payments representing the obligations of the Spaceholder for the increased amounts if there is a default by the Spaceholder in the payments of such increased amounts attributable to such Additional Bonds for completion purposes and shall be entitled to the use of stored water of the Defaulted Spaceholder all in accordance with the provisions of Section 3.4 of the Falling Water Contract.

PART IV

OPERATION AND MAINTENANCE

(Article 28)

28. (a) Upon substantial completion of construction of the Replacement Dam and the Related Facilities, the United States will operate and maintain the Replacement Dam and the Related Facilities as a part of the Minidoka Project for the beneficial use of the water on the land within the service areas of the Spaceholders pursuant to Section 8 of the Reclamation Act of June 17, 1902 (32 Stat. 388).

(b) Commencing with the year the first Spaceholder Bond Payments are due, the Spaceholder Replacement Dam Operation and Maintenance Payments shall be paid by the Spaceholder to the United States and shall be (7.1388%) of the total cost of operation and maintenance of the Existing Dam during the Construction of the Replacement Dam and of the Replacement Dam and the Related Facilities not paid by the Idaho Power Company pursuant to Section 10.6 of the Falling Water Contract. Such costs shall be determined in accordance with the applicable provisions of the Existing Spaceholder Contract and shall continue to be due and payable to the United States on or before April 1 of each calendar year under procedures established therein, except that the operation and maintenance charge notice shall be furnished to the Spaceholder on or before February 20 of the calendar year for which the notice is issued.

(c) The United States has allocated for return from power revenues $293,978.17 of the costs of constructing the Existing Dam which amount has been excluded from the existing repayment obligations of the Spaceholders. The Spaceholder shall pay its proportionate share of the annual amount necessary to return this sum in 40 years to the United States, such share to be in accordance with the percentage in Article 21(b) hereof. The annual payments will be made as part of the Spaceholder Replacement Dam Operation and Maintenance Payments, unless the Secretary is authorized to find that this obligation need not be assumed by the Spaceholders.

(d) Pursuant to Article 15(b) of the Government Contract, the United States shall continue an annual program for the correction and prevention of erosion related to the Replacement Dam or for the full and adequate compensation of adjacent landowners, including owners of land subject to a flowage easement for the Replacement Dam, if such erosion cannot be corrected or prevented. The costs thereof shall be billed to the Spaceholder as a part of the Spaceholder Replacement Dam Operation and Maintenance Payments as provided in (c) of Article 15 of the Government Contract.

(e) The Replacement Dam will be operated by the United States pursuant to the operating criteria set forth in Article 16 of the Government Contract in a manner so that (1) the present proportionate storage rights of the Spaceholders shall not be altered or changed except as provided in the Government Contract and in the Spaceholder Contracts, (2) the water surface elevation of the Replacement Dam shall not exceed a maximum of 4354.5 feet above mean sea level U.S.C.&G.S. datum, and (3) the primary irrigation purpose and the incidental purposes of the Minidoka Project shall not be impaired by the subordinate utilization for power generation at the Powerplant of the water released from the Replacement Dam. The United States is not obligated to operate the Replacement Dam in a manner to have water in the Replacement Dam at elevations for power generation or to operate to increase the head in the Replacement Dam for power generation.

(f) (1) The Water Quality Facilities are included as a part of the American Falls Replacement Dam Program and pursuant to Article 15(a) of the Government Contract the Constructing Agency is responsible for the operation and maintenance of the Water Quality Facilities. The Constructing Agency

has provided for the operation and maintenance of the Water Quality Facilities in the Water Quality Facilities Agreement attached hereto as Exhibit A, to the provisions of which the Spaceholder consents and agrees as if the Water Quality Facilities Agreement were set forth in full herein and made a part hereof.

(2) The Spaceholder shall pay on or before April 1 of each calendar year, the Spaceholder Water Quality Facilities Operation and Maintenance Payments to the Constructing Agency, at its office or at such other place from time to time designated by the Constructing Agency, on the basis of annual billings by the Constructing Agency submitted to the Spaceholder on or before February 20 commencing with the year in which it is anticipated that the Water Quality Facilities will become operational. The Spaceholder Water Quality Facilities Operation and Maintenance Payments shall consist of: (i) (0%) of the obligation of the Spaceholders, excluding Idaho Power Company, to pay the costs of operation and maintenance of the Water Quality Facilities under Paragraph 13 of the Water Quality Facilities Agreement; and (ii) (7.1388%) of the obligation of the Spaceholders, including Idaho Power Company, to pay the cost of the audit and other incidental costs incurred in the administration of the Water Quality Facilities Operation and Maintenance Fund under Paragraph 13 of the Water Quality Facilities Agreement.

(3) The Constructing Agency shall not bill Non-Participating Waterusers or Spaceholders for the operation and maintenance costs of the Water Quality Facilities which are assignable to the space of Non-Participating Waterusers and shall maintain accountings of such amounts that are assignable to the space of Non-Participating Waterusers until a permanent disposition of the water accruing to the space of a Non-Participating Wateruser has been made as provided in the Government Contract.

PART V

DEFAULT AND REMEDIES

(Articles 29-31)

DEFAULT

29. (a) Failure by the Spaceholder to make all or any part of any Spaceholder Payment required to be made pursuant to the provisions of Articles 24 and 28 hereof at the times and places specified in this Spaceholder Contract and (i) continuation of said failure for a period of 5 days after notice by telegram or, in the alternative, after notice by mail given to the Spaceholder by the Constructing Agency, or the Trustee on behalf of the Constructing Agency, or the Contracting Officer that the payment referred to in such notice has not been received, or (ii) continuation of said failure for a period of 12 days, shall constitute a default under the provisions of this Spaceholder Contract. Notice of any such default shall be given to, or as the case may be, by the Contracting Officer, the Constructing Agency and the Trustee, and to the Idaho Power Company and to the Spaceholder within 7 days after such default has occurred. Inasmuch as the delivery of water from the Replacement Dam to the Spaceholder is contingent upon the continued fulfillment of its obligations under this Spaceholder Contract, upon receipt of such notice of default or upon failure to receive in full any Spaceholder Replacement Dam Operation and Maintenance Payment, the Contracting Officer shall withhold the delivery of the water to the Spaceholder from the Existing Dam or from the Replacement Dam accruing to the space of the Spaceholder, for the year in which such default occurs and until such time as the Contracting Officer determines that the default has been cured as provided in (c) of this Article.

(b) If the Spaceholder is deemed to be a Defaulted Spaceholder, the Contracting Officer shall make the water accruing to the space of the Defaulted Spaceholder available for use in the year in which the default occurs: first, for irrigation water use by other Spaceholders not in default; second, for irrigation water use by a person or entity which is not a Spaceholder; and third, for use by the Contracting Officer. In no event shall such water be made available for use by a Defaulted Spaceholder or a Non-Participating Wateruser in such year. Charges for such use shall be at least sufficient to pay the

Spaceholder Payments, or any portion thereof, including interest and penalties, due on behalf of the Spaceholder. If the Contracting Officer does not arrange for the use of such space as provided herein on or before May 15 of such year, such space will be made available by the Contracting Officer to the Idaho Power Company for power generation subject to the provisions of Article 18(b) of the Government Contract, in return for the payment by the Idaho Power Company of Supplemental Falling Water Payments pursuant to the Falling Water Contract in order to prevent a default in the payment of the principal of and interest on the Bonds of the Constructing Agency and in order to pay the balance of the Spaceholder Payments then due.

(c) At any time on or before the April 1 next succeeding any default under (a) of this Article, the Defaulted Spaceholder may cure the default by paying to the Contracting Officer: (i) the amount of the Spaceholder Bond Payment which is in default, plus a penalty consisting of 1% per month; (ii) the amount of the Spaceholder Replacement Dam Operation and Maintenance Payment which is in default, plus a penalty consisting of 1% per month; and (iii) the amount of the Spaceholder Water Quality Facilities Operation and Maintenance Payment which is in default, plus a penalty consisting of 1% per month. Thereafter, so long as the Spaceholder is not in default hereunder, the Spaceholder shall be entitled to the use of the water from the Existing Dam or from the Replacement Dam accruing to the space of the Spaceholder in years subsequent to the year in which the default occurred.

(d) Any monies received by the Contracting Officer pursuant to (b) or (c) of this Article in excess of those required to meet all or any part of the Spaceholder Payments including interest and penalties which is in default and which is due on behalf of the Defaulted Spaceholder under the provisions of this Spaceholder Contract or to reimburse the Idaho Power Company for Supplemental Falling Water Payments, including interest, shall be applied by the Contracting Officer toward future operation and maintenance costs of the Spaceholders on the Replacement Dam and the Related Facilities.

(e) The Contracting Officer shall give notice to the Spaceholder on or before December 31 of the year in which a default hereunder has occurred and is continuing, that if the Spaceholder remains in default hereunder and does not cure the default on or prior to the next succeeding April 1 as provided in (c) of this Article, this Spaceholder Contract shall, on April 2, be terminated and the United States will no longer make available to the Defaulted Spaceholder the stored water described in Article 21(b) hereof. If the default is not cured by the Defaulted Spaceholder within the time specified in the foregoing notice, this Spaceholder Contract shall be terminated as provided in such notice, and the Spaceholder thereafter shall have no right, title or interest in, to or with respect to storage capacity in the Existing Dam or the Replacement Dam, but if at the time of such termination the Idaho Power Company shall then be in default in the payment of Falling Water Payments or Supplemental Falling Water Payments under the Falling Water Contract, the Spaceholder shall remain liable as provided in Article 30 hereof.

Remedies on Default

30. Whenever a default referred to in Article 29 hereof shall have happened and be subsisting, but only if the Idaho Power Company shall then be in default in the payment of Falling Water Payments or Supplemental Falling Water Payments under the Falling Water Contract and if this Spaceholder Contract has not theretofore been terminated as provided in Article 29 hereof:

(a) *the Constructing Agency*, or *the Trustee* on behalf of the Constructing Agency, or the Contracting Officer, may take any one or more of the following remedial actions in addition to those provided in Article 29 hereof.

(1) In the event of the termination of this Spaceholder Contract as provided in Article 29(e) hereof, the Constructing Agency or the Trustee, as provided in the Indenture, or the Contracting Officer, shall forthwith, notwithstanding any other provision of this Spaceholder Contract to the contrary, be entitled to recover in accordance with their respective interests from the Defaulted Spaceholder, as and for liquidated damages (in lieu of all other claims for damages on account of such termination) and not as a penalty, an amount equal to the unpaid amount of the Spaceholder Replacement Dam Operation and Maintenance Payment, and amount equal to the unpaid amount

of the Spaceholder Water Quality Facilities Operation and Maintenance Payment and an amount equal to that portion of the unpaid principal amount of the Bonds then outstanding as defined in the Indenture which would be required to be paid by the Spaceholder under the provisions of Article 24 hereof.

(2) The Spaceholder agrees that, in addition to its other obligations under this Spaceholder Contract, upon demand it will pay to the Trustee, the Constructing Agency and the Contracting Officer all expenses incurred in connection with any suspension of the use of water and any grant of the suspended rights to another person, and that the Spaceholder will be and remain liable to make all Spaceholder Payments, when due, required to be made by the Spaceholder hereunder, without regard to any such suspension and as if any suspended rights exercised by another person were exercised by the Spaceholder. The Constructing Agency, or the Trustee acting on behalf of the Constructing Agency, or the Contracting Officer, shall have the right from time to time to begin and maintain successive proceedings against the Spaceholder for the recovery of damages or for a sum equal to all or any part of any Spaceholder Payments and any other payments required to be made by the Spaceholder pursuant to this Spaceholder Contract, and to recover the same upon the liability of the Spaceholder herein provided.

(3) Any amounts collected pursuant to action taken under this Article shall be paid into the Bond Fund and must be applied in accordance with the provisions of the Indenture, except that any amounts remaining after all payments required to be made under the Indenture have been made may be applied by the Constructing Agency to payment of the operation and maintenance expenses of the Water Quality Facilities and by the Contracting Officer to the operation and maintenance of the Replacement Dam.

(b) No suspension of any or all of the Spaceholder's rights to the use of the water from the Replacement Dam accruing to the space of the Spaceholder shall be construed as an election on the part of the Constructing Agency, the Trustee, or the Contracting Officer to terminate the Spaceholder's interest in, to and under this Spaceholder Contract unless a notice of intention be given to the Spaceholder or such termination be decreed at the instance of the Constructing Agency, the Trustee or the Contracting Officer by a court of competent jurisdiction.

NO REMEDY EXCLUSIVE

31. (a) No right or remedy herein conferred upon or reserved to the Constructing Agency, or to the Trustee on behalf of the Constructing Agency, or the Contracting Officer, is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing, upon the occurrence of a default hereunder. The failure of the Constructing Agency, or the Trustee on behalf of the Constructing Agency, or the Contracting Officer, to insist at any time upon the strict observance or performance by the Spaceholder of any of the provisions of this Spaceholder Contract, or to exercise any right or remedy provided for in this Spaceholder Contract, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof for the future. Receipt by the Trustee, on behalf of the Constructing Agency, of any Spaceholder Bond Payment, receipt by the Contracting Officer of any Spaceholder Replacement Dam Operation and Maintenance Payment, or receipt by the Constructing Agency of any Spaceholder Water Quality Facilities Operation and Maintenance Payment, with knowledge of the breach of any provisions of this Spaceholder Contract, shall not be deemed a waiver of such breach. In addition to all other remedies provided in this Spaceholder Contract, the Constructing Agency or the Trustee on behalf of the Constructing Agency, or the Contracting Officer, shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the provisions of this Spaceholder Contract, or to a decree concerning performance of any of the provisions of this Spaceholder Contract, or to any other remedy legally allowed to the Constructing Agency, or to the Trustee on behalf of the Constructing Agency, or to the Contracting Officer.

(b) The Constructing Agency, or the Trustee on behalf of the Constructing Agency, or the Contracting Officer, may take whatever action at law or in equity may appear necessary or desirable to collect

all or any part of the Spaceholder Payments payable by Spaceholder hereunder, then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Spaceholder under this Spaceholder Contract.

(c) If any proceeding shall be brought for the enforcement of any right or remedy provided for in this Spaceholder Contract in which it shall be determined that a default hereunder has occurred and was continuing at the time of commencement thereof, the Spaceholder shall pay to the Constructing Agency, or to the Trustee on behalf of the Constructing Agency, all expenses incurred in connection therewith including, without limitation, reasonable attorneys' fees and expenses.

(d) At any time the Trustee on behalf of the Constructing Agency or the holders of the Bonds, is entitled to enforce any of the rights or remedies provided for in this Spaceholder Contract, it may proceed either in its own name and as Trustee of an express trust or otherwise to protect and enforce its rights and those of the Constructing Agency under this Spaceholder Contract, whether or not the Constructing Agency shall have complied with any of the provisions hereof or proceeded to take any action authorized or permitted under applicable law. Such rights and remedies as are given the Constructing Agency hereunder shall also extend to the Trustee, and the Trustee and the holders of the Bonds, subject to the provisions of the Indenture, shall be entitled to the benefit of all covenants and agreements herein contained.

(e) Any waiver by a party of its rights with respect to a default under this Spaceholder Contract, or with respect to any other matter arising in connection with this Spaceholder Contract, shall not be deemed to be a waiver with respect to any other matter arising in connection with this Spaceholder Contract. No delay in asserting or enforcing any rights by the Contracting Officer, Constructing Agency, or the Trustee hereunder shall be deemed a waiver of such rights.

PART VI

GENERAL PROVISIONS

(Articles 32-51)

Books, Records, and Reports

32. Reports on water usage and to other matters related to the American Falls Replacement Dam Program which the Contracting Officer may require shall be furnished to the United States in such form and on such date or dates as the Contracting Officer may require. Pursuant to applicable Federal laws and regulations each party shall have the right during office hours to examine and make copies of each other's books and records relating to matters covered by this Spaceholder Contract.

Rules, Regulations, and Determinations

33. (a) The Contracting Officer, after an opportunity has been offered to the Constructing Agency and Spaceholder for consultation, shall have the right to make rules and regulations consistent with the provisions of the Government Contract and this Spaceholder Contract and the laws of the United States, to add to or to modify such rules and regulations as may be deemed proper and necessary to carry out this Spaceholder Contract, and to supply necessary details of its administration which are not covered by express provisions of this Spaceholder Contract. Such rules and regulations shall (1) not limit the right of the Spaceholder to the stored water pursuant to the provisions of this Spaceholder Contract so long as the Spaceholder is not in default hereunder, and (2) not limit the right of the Constructing Agency under the laws of the State of Idaho to collect the Falling Water Payments or the Supplemental Falling Water Payments under the Falling Water Contract or the Spaceholder Bond Payments and the Spaceholder Water Quality Facilities Operation and Maintenance Payments under this Spaceholder Contract. The Spaceholder and the Constructing Agency shall observe such rules and regulations.

(b) Where the terms of this Spaceholder Contract provide for action to be based upon the opinion or determination of any party to this Spaceholder Contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the event that the Constructing Agency or Spaceholder questions any factual determinations made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with the Constructing Agency and Spaceholder and shall be conclusive upon the parties.

Water and Air Pollution

34. The Spaceholder shall, within its legal authority, comply fully with all applicable Federal laws, orders, and regulations, and the laws of the State of Idaho, all as administered by appropriate authorities, concerning the pollution of streams, reservoirs, groundwater, or water courses with respect to thermal pollution, dissolved gases or the discharge of refuse, garbage, sewage effluent, industrial waste, oil, mine tailings, mineral salts or other pollutants, and concerning the pollution of the air. The United States is under no obligation to operate, maintain, or replace the Water Quality Facilities or to construct or to acquire water treatment facilities in order to maintain or to better the quality of the water stored in, released, or downstream from the Replacement Dam as a result of the construction, operation, and maintenance of the Replacement Dam.

No Liability for Water Shortage or Interruptions

35. No liability shall accrue against the United States or any of its officers, agents, or employees or the Constructing Agency for damage, direct or indirect, arising by reason of shortages in the quantity of water available through the Existing Dam or the Replacement Dam or interruptions in water releases resulting from drought, inaccuracy in distribution, hostile diversion, prior or superior claims, accident to or failure of the Existing Dam or the Replacement Dam, or the bypassing of water around the Powerplant pursuant to Article 18(d) of the Government Contract, whether or not attributable to negligence of officers, agents, or employees of the United States or of the Constructing Agency, or other causes of whatsoever kind; nor shall the obligations of the Spaceholder to the United States or to the Constructing Agency under this Spaceholder Contract be reduced by reason of such shortages or interruptions.

Changes in Organization of Spaceholder

36. While this Spaceholder Contract is in effect, no change shall be made in the organization of the Spaceholder by dissolution, consolidation or merger, except upon the compliance with Section 12.4 of the Falling Water Contract.

All Benefits Conditioned Upon Payment

37. The Spaceholder shall use all the authority and resources of the Spaceholder to meet the obligations of the Spaceholder under the Existing Spaceholder Contract and this Spaceholder Contract.

Assignment Limited—Successors and Assigns Obligated

38. (a) The provisions of this Spaceholder Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Spaceholder Contract or any part thereof or interest therein by the Spaceholder shall be valid until approved by the Contracting Officer

and by the Trustee but only so long as any of the Bonds are outstanding and unpaid. The assignment to the Trustee of the Spaceholder Bond Payments shall not be considered such an assignment or transfer.

(b) No instrument of transfer or assignment shall be executed unless the successor, assignee or transferee Spaceholder shall agree to assume all obligations of the Spaceholder hereunder including making the Spaceholder Payments.

(c) So long as any of the Bonds are outstanding and unpaid, the Trustee and the Idaho Power Company shall be given 30 days notice prior to the execution of any instrument of transfer or assignment.

Title VI, Civil Rights Act of 1964

39. (a) The Spaceholder agrees that it will comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241) and all requirements imposed by or pursuant to the Department of the Interior Regulation (43 CFR 17) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the grounds of race, color, sex, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Spaceholder receives financial assistance from the United States and hereby gives assurance that it will immediately take any measures to effectuate this Spaceholder Contract.

(b) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Spaceholder by the United States, this assurance obligates the Spaceholder, or in the case of any transfer of such property, any transferee for the period during which the real property or structure is used for a purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance obligates the Spaceholder for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Spaceholder for the period during which the Federal financial assistance is extended to it by the United States.

(c) This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal financial assistance extended after the date hereof to the Spaceholder by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Spaceholder recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on the Spaceholder, its successors, transferees, and assignees.

Election Costs—Authorizing Resolution

40. (a) The Spaceholder recognizes that the costs of the American Falls Replacement Dam Program include the costs of any election at which the Bonds of the Constructing Agency were authorized and the confirmation proceedings required to authorize the Constructing Agency to proceed in accordance with the provision of the Act of December 28, 1973, and the State Act to finance and construct the American Falls Replacement Dam Program.

(b) A copy of the appropriate resolution and minutes of the meetings of the Board of Directors of the Spaceholder authorizing the execution of this Spaceholder Contract shall be certified and furnished to the Contracting Officer and the Constructing Agency.

Officials Not to Benefit

41. No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Spaceholder Contract or to any benefit that may arise herefrom. This restriction

shall not be construed to extend to this Spaceholder Contract if made with a corporation or company for its general benefit.

Contingent on Appropriation or Allotment of Funds

42. The expenditure or advance of any money or the performance of any work by the United States hereunder which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made. The failure of the Congress to appropriate funds or the absence of any allotment of funds shall not relieve the Spaceholder from any obligations under this Spaceholder Contract. No liability shall accrue to the United States in case such funds are not appropriated or allotted.

Advanced Monies

43. Upon the filing with the Trustee of a written statement of the Authorized Representatives in conformity with the provisions of Section 602 of the Indenture, the Trustee shall repay to the Spaceholder from the Construction Fund such monies, if any, which have been and may be hereafter, prior to the delivery of the Bonds, advanced to the Constructing Agency to pay costs of the American Falls Replacement Dam Program, as contemplated in Article 20(c) hereof, plus interest on the principal amount of such advancement at the rate of 6½% per annum.

Disclaimer and Release

44. The Spaceholder further acknowledges that the approved plans, designs and specifications for the American Falls Replacement Dam Program are in the best interest of the Spaceholder, and the Spaceholder hereby waives any and all rights, claims or causes of action which the Spaceholder may have against the Constructing Agency or the Contracting Officer by reason of the loss of use of storage space or storage water in any year during the construction of the American Falls Replacement Dam Program which might have otherwise been available to the Spaceholder if said construction had not been undertaken.

Advisory Committee

45. In its operation and maintenance of the Replacement Dam and the other various dams and reservoirs of the Minidoka Project, the United States, acting through the Regional Director of the Bureau of Reclamation or his designee or such other officer as may be designated in writing by the Secretary, shall consult from time to time with the Advisory Committee on the various matters specifically requiring consultation under the terms of this Spaceholder Contract and on such other matters as will have a substantial bearing on the determination of the amount of stored water to be available in the various reservoirs in the Minidoka Project and on the costs of operation and maintenance of those reservoirs which are required to be borne by the space allocated to irrigation storage, all as provided in the Existing Spaceholder Contract.

Authorized Spaceholder Representative

46. (a) Recognizing the need to coordinate the construction of the Powerplant with the Construction of the American Falls Replacement Dam Program, the interests of the Spaceholders in effecting construction cost savings which will result in minimizing their Spaceholder Bond Payments and as a means of securing effective cooperation between the Constructing Agency and the Contracting Officer, and among the Constructing Agency, the Idaho Power Company and the Spaceholders in resolving,

on a prompt and orderly basis, the various administrative, technical, financing, construction, ownership and operating issues which may arise in connection with the performance of the Falling Water Contract, the Spaceholder Contracts, and the Water Quality Facilities Agreement, the Constructing Agency, the Idaho Power Company and the Spaceholders shall each name an Authorized Representative. Each Authorized Representative shall be authorized by the party or parties by whom he is designated to act on their behalf with respect to those matters herein provided to be responsibilities of the Authorized Representative.

(b) The Authorized Spaceholder Representative shall be elected for a one year term by a majority vote of the Spaceholders, excluding the Constructing Agency and the Idaho Power Company, at a meeting of the Spaceholders called for that purpose by the Authorized Constructing Agency Representative. Each Spaceholder shall be entitled to one vote for each acre-foot of storage space to which such Spaceholder is entitled in the Replacement Dam. The Idaho Power Company and the Constructing Agency shall be advised promptly of the designation of the Authorized Spaceholder Representative. The Constructing Agency, the Idaho Power Company and the Spaceholders shall each have the power to appoint an alternate Authorized Representative.

(c) The responsibilities of the Authorized Representatives prior to the completion date (as defined in the Falling Water Contract) shall be: (i) to approve the award of any construction or equipment contract in connection with the American Falls Replacement Dam Program; (ii) to establish general policies to be followed in the administration of the Falling Water Contract, in the construction of the American Falls Replacement Dam Program as it relates to the Falling Water Contract, and, to the extent such policies are relevant to the subject matter of the Falling Water Contract in the construction of the Powerplant; (iii) to establish general policies and practices to be followed in the administration and coordination of the construction of the Powerplant with the construction of the Replacement Dam; (iv) to consult with the Contracting Officer concerning any policies which might hereafter be required among the Constructing Agency, the Idaho Power Company, the Spaceholders, and the Contracting Officer, or any of them, concerning the Construction of the American Falls Replacement Dam Program or the construction of the Powerplant; (v) to establish procedures for consultation with respect to notices received by the Constructing Agency from the Contracting Officer under Article 12(d) of the Government Contract; and (vi) to do such other things as are specifically assigned to the Authorized Representatives during the construction period.

(d) The responsibilities of the Authorized Representatives after the completion date (as defined in the Falling Water Contract) shall be limited to: (i) matters pertaining to the collection and payment of the Spaceholder Bond Payments, the Spaceholder Water Quality Facilities Operation and Maintenance Payments, the Falling Water Payments, and the Supplemental Falling Water Payments, to the extent necessary; (ii) consultation concerning any policies which might hereafter be required among the Contracting Officer, the Constructing Agency, the Idaho Power Company and the Spaceholders, or any of them, concerning operation and maintenance of the Water Quality Facilities and payment of the costs thereof as provided in the Spaceholder Contracts and the Water Quality Facilities Agreement; and (iii) collection of and payment by the Idaho Power Company and the Spaceholders of the fees, charges and expenses of the Trustee and any paying agent bank contemplated in Section 1002 of the Indenture.

(e) The establishment of any procedure or practice and any other action or determination by the Authorized Representatives shall be made by unanimous agreement to become effective when signed by each of the Authorized Representatives.

(f) The Authorized Representatives shall have no authority to modify any of the provisions of the Falling Water Contract, the Spaceholder Contracts, the Government Contract, or the Water Quality Facilities Agreement, nor shall they establish policies, rules, or regulations which are not in accordance with policies, rules, or regulations established by the Contracting Officer with respect to the construction of the American Falls Replacement Dam Program or the operation and maintenance of the Replacement

Dam, the Related Facilities or the Water Quality Facilities or which conflict with the approved plan of construction, the Plan of Operation, or the designs and specifications.

(g) With respect to all matters contemplated in Article IX of the Falling Water Contract, the Constructing Agency shall consult with the Authorized Representatives in connection with the issuance of the Bonds, however, the Constructing Agency shall at all times comply with the State Act in the performance of its duties contemplated hereunder in connection with the issuance of the Bonds. The Constructing Agency shall conform to any public bidding requirements applicable to it in connection with the construction of the American Falls Replacement Dam Program.

(h) If, at any time, it is determined by a court of competent jurisdiction that any responsibilities assigned to the Authorized Representatives under the Falling Water Contract constitute an undue delegation of power by the Constructing Agency, action shall be taken by the Constructing Agency, the Idaho Power Company and the Spaceholders in order to comply with the court determination and, if legally permissible and desirable under the determination of the court the Constructing Agency shall be substituted for the Authorized Representatives appointed by the Constructing Agency.

Prohibition Against Amendment

47. Subsequent to the sale of the Bonds of the Constructing Agency, and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Spaceholder Contract may not be effectively supplemented, amended, changed, modified, altered or terminated without the written consent of the Trustee and of the Contracting Officer, nor may the Existing Spaceholder Contract be effectively supplemented, amended, changed, modified, altered or terminated in any way so as to adversely affect the obligation of the Spaceholder to make Spaceholder Bond Payments hereunder without the written consent of the Trustee, or so as to adversely affect the obligation of the Spaceholder to make Water Quality Facilities Operation and Maintenance Payments without the consent of the Constructing Agency.

Status of Existing Spaceholder Contract

48. This Spaceholder Contract is supplemental and in addition to the Existing Spaceholder Contract between the United States and the Spaceholder as to the Replacement Dam, as set out in Article 19(a) hereof.

Acknowledgment As To Water Rights

49. The Spaceholder acknowledges that the water storage rights evidenced by permits, licenses and court decrees for the Existing Dam are held in the name of the United States and by this Spaceholder Contract the water rights are reaffirmed and neither the United States, the Constructing Agency or the Spaceholders are required to make additional filings for the Replacement Dam.

Notices; Manner of Giving; Duplicate Copies to Contracting Officer and Trustee

50. Any notice, demand, or request authorized or required by this Spaceholder Contract shall be deemed to have been given when mailed, postage prepaid, or delivered to the Regional Director, Pacific Northwest Region, Bureau of Reclamation, Box 043, 550 West Fort Street, Boise, Idaho 83724, on behalf of the United States, and to the Secretary of the Constructing Agency, 1132 Locust Street, Twin Falls, Idaho 83301, on behalf of the Constructing Agency. Notices required by this Spaceholder Contract to be given to the Spaceholder shall be deemed to have been given when mailed, postage prepaid, or delivered to 550 West Fort Street, Boise, Idaho 83724. Notices required by this Spaceholder Contract to be given to the Idaho Power Company shall be deemed to have been given when mailed, postage prepaid, or delivered to the President of the Idaho Power Company, 1220 Idaho Street, Boise, Idaho

83701, on behalf of the Idaho Power Company. Notices required by this Spaceholder Contract to be given to the Trustee shall be deemed to have been given when mailed, postage prepaid, or delivered to the Corporate Trust Office of the Trustee on behalf of the Trustee. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

EFFECTIVE DATE OF THIS CONTRACT

51. Notwithstanding the execution hereof, this Spaceholder Contract shall not be effective until the Government Contract has been executed. The Contracting Officer shall give immediate notice thereof to the Spaceholder and the Constructing Agency.

IN WITNESS WHEREOF, the parties hereto have signed their names as of the day and year first above written.

UNITED STATES OF AMERICA

By: /s/ RODNEY J. VISSIA
Regional Director

Pacific Northwest Region
Bureau of Reclamation
Box 043—550 West Fort Street
Boise, ID 83724

AMERICAN FALLS RESERVOIR DISTRICT

By: /s/ JOHN M. BARKER
President

Attest:

/s/ DIANNE BRIDEGUM
Secretary (SEAL)

SPACEHOLDER

By: /s/ JAMES E. BRUCE
President

Attest:

/s/ PAUL L. JAUREGUI
Secretary (SEAL)

STATE OF IDAHO }
COUNTY OF ADA } ss.

On this 31st day of March, in the year 1976, before me, Gary E. Carlen, a Notary Public, personally appeared Rodney J. Vissia, known to me to be the Regional Director, Pacific Northwest Region, Bureau of Reclamation, United States Department of the Interior, that executed the said instrument, and acknowledged to me that the United States of America executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

/s/ GARY E. CARLEN

Notary Public in and for the State of Idaho

Residing at: Boise, Idaho

My commission expires: 5-5-79

(SEAL)

STATE OF IDAHO }
COUNTY OF ADA } ss.

On this 24th day of March, in the year 1976, before me, Mary L. Morton, a Notary Public, personally appeared James E. Bruce and Paul L. Jauregui, known to me to be the President and Secretary of the corporation that executed the said instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I set my hand and affix my official seal the day and year first above written.

/s/ MARY L. MORTON

Notary Public in and for the State of Idaho

Residing at: Boise, Idaho

My commission expires: 4-1-76

(SEAL)

STATE OF IDAHO
COUNTY OF ADA } ss.

On this 24th day of March, in the year 1976, before me, John A. Rosholt, a Notary Public, personally appeared John M. Barker and Dianne Bridegum, known to me to be, respectively, the President and the Secretary of the American Falls Reservoir District that executed the said instrument, and acknowledged to me that the American Falls Reservoir District executed the same.

IN WITNESS WHEREOF, I set my hand and affix my official seal the day and year first above written.

/s/ JOHN A. ROSHOLT

Notary Public in and for the State of Idaho

Residing at: Twin Falls, Idaho

My commission expires: 1979

(SEAL)

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 38

Memorandum in Support of Defendants Motion to Dismiss, Kerner v. United States, Civ. No. 1-76-204 (D. Idaho Feb. 28, 1977).

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF IDAHO

U. S. DISTRICT COURT
DISTRICT OF IDAHO
Filed at 4:15 M
FEB 28 1977
JERRY L. CLAPP, Clerk
By Deputy

WILLIAM KERNER, et al.; DEL HIATT, et al.; DON WIXOM, et al.;

Plaintiffs

v

UNITED STATES OF AMERICA, et al; AMERICAN FALLS RESERVOIR DISTRICT, et al,; THE IDAHO POWER COMPANY; A & B IRRIGATION DISTRICT et al.; RAY B ANDRUS; CLEMENT BROTHER; MICHAUD DIVISION, FORT HALL INDIAN RESERVATION; UTAH-IDAHO SUGAR COMPANY; BALL CONSTRUCTION COMPANY; and JOHN DOES, Nos. 1 through 15,

Defendants

CIVIL NO. 1-76204

MEMORANDUM IN SUPPORT OF DEFENDANTS MOTION TO DISMISS

I

FACTUAL STATEMENT

The existing American Falls Dam was constructed by the Bureau of Reclamation in 1927 as part of the Minidoka Reclamation Project. Within a short time certain chemical reactions took place in the Dam, leading to adnormalities, cracking, and general deterioration over the years. At present, the Bureau of 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, Congress authorized the Secretary of the Interior to enter into certain agreements with the American Falls Reservoir District authorizing the District to fiannce and construct a replacement Dam at American Falls, title to which will pass to the Bureau of Reclamation upon its substantial completion. The Act of December 28, 1973, deams the replacement Dam to be a government dam as

defined in Sec. 3 (10) of the Federal Power Act. 16 U.S.C. Sec. 796 (10).

Pursuant to the 1973 Act, the District, as constructing agency was directed to execute contracts with an appropriate non-federal entity for the use of the falling water leaving the dam for power generation, which contract shall provide for monotary return to the District to defray the cost of construction of the replacement dam. The District could also contract with a non-federal entity to coordinate construction of the hydro-electric facilities and the replacement dam.

On September 25, 1973, Idaho Power Company, of Boise, Idaho filed application for major license under Sec. 4 (e) of the Federal Power Act 16 U.S.C. Sec. 797 (e) to authorize the construction, which will be located at the U.S. Department of the Interior, Bureau of Reclamation, American Falls Replacement Dam on the Snake River. The Federal Power Commission considered the application for a major license filed by Idaho Power Company and also granted petitions to intervine made on the behalf of various entities. After consideration of Idaho Power Company's application in conjunction with the petitions submitted by other various entities the Federal Power Commission granted Idaho Power Company a license dated March 31, 1975 for the construction and operation of the American Falls Power Plant No. 2736.

The Idaho State Legislature, past in 1974, legislation under Chapter 22, title 43 of the Idaho Code entitled, Reconstruction, Rehabilitation, Replacement and Approvement of Dams of Irrigation Districts, financial and other arrangements. Chapter 22 provides methods and procedures for obtaining approval of bond issues, and methods of judicial examination confirmation of all proceedings, contracts and provisions within Chapter 22 of title 43 of the Idaho Code.

Pursuant to the Federal Act dated December 28, 1973

American Falls Replacement Dam. This agreement was dated as of March 31, 1976. Pursuant to the Federal Act of December 20, 1973 and the State Act under Chapter 22 of title 43 of the Idaho Code the American Falls Reservior District entered into a Falling Water Contract with Idaho Power Company for the use of the falling water at the American Falls Reservior Project and for the construction and coordination of construction of the power plant facilities at the American Falls Reservior Project. Water contract was approved by the Secretary of Interior on March 31, 1976.

In May 1976, a judicial review and confirmation proceeding was initiated in the Idaho State District Court pursuant to title 43 Sec. 406 and 408 and title 43 Sec. 2204 of the Idaho Code providing for judicial examination determination of any power confirmed by Chapter 22 of title 43 of the Idaho Code. All evidence and petitions have been submitted to the Court and the confirmation proceedings are now pending decisions.

On May 18, 1976 the Idaho Power Company filed an application before the Idaho Public Utilities Commission requesting authority to construct a new Powerhouse on the Snake River in Power County, Idaho, approximately 300 ft. downstream from the American Falls Replacement Dam being constructed by the American Falls Reservior District as a constructing agency pursuant to Code, title 61-526 and the rules of practice and procedure by the Idaho Public Utilities Commission. By order of August 30, 1976 the Idaho Public Utilities Commission granted Idaho Power Company a certificate of Public Convenience and Necessity No. 279 authorizing the construction, operation and maintenance of the American Falls Power Plant and related facilities, as described in their application and designated by the Federal Power Commission as project No. 2736-Idaho.

II

PLAINTIFF'S CLAIMS FOR RELIEF

On [illegible] 1976 Plaintiffs [illegible] in three

irrigation districts and canal companies which have signed contracts to participate in the reconstruction of American Falls Dam filed the Complaint in this action. The claims set forth in the Complaint filed by the Plantiffs are somewhat difficult to determine, but this Defendant believes the Plaintiffs have claimed the following:

1. P.L. 930206 is unconstitutional as violative of the Fifth Amendment to the Constitution of the United States. (p.35)

2. Chapter 22 of Title 43, Idaho code, is unconstitutional under Article 1, Section 10 and the Fourteenth Amendment to the U.S. Constitution and Article 1, Sections 13 and 16 and Article XV, Sections 2 and 4 of the Idaho Constitution. (p. 35-36)

3. That the Commissioner of Reclamation can be compelled to exercise his authority under 43 U.S.C. Section 502 and 503. (p. 36, second claim for relief)

4. That Idaho Power Company and the American Falls Reservior District have conspired to monopolize to violate rights of various parties in violation of the antitrust laws of the United States. (Third, Fourth and Sixth Claims for Relief, pp. 36-37, 39-40)

5. That Plaintiffs own certain rights which are being taken including the right to force the installation of power facilities and the application of revenues therefrom to their benefits, and the value of the falling water. (Fifth Claim for Relief, pp. 38-39)

The issues of legal status and rights will first be addressed. Secondly, the memorandom will address the antitrust allegation set forth by the Plaintiff.

III

PLAINTIFFS HAVE NO LEGAL RIGHTS BEING INVADED

Plaintiffs are landowners within three irrigation districts

Plaintiffs have no contracts with the United States concerning water from the reservoir.

The rights of Plaintiffs which they apparently contend are being infringed are contractual rights under contracts between their districts and the United States and the rights to benefits to be derived from production of power. These claims will be discussed in that order.

1. Contract claims.

The Idaho Supreme Court has discussed the relationship between a landowner and an irrigation district on several occasions. In the case of Yaden v. Gem Irrigation District, 37 Idaho 300, 216 P 250 (1923):

> "The appropriation and diversions of waters by the district, through its officers, or the purchase of a system constructed in whole or in part by its funds, becomes the property of the district and is held in trust for the landowners within it . . . The ultimate purpose of a district's organization under the statutes of this state, is the improvement, by irrigation, of lands within the district." (37 Idaho at 309)

As of the enactment of Chapter 22 of Title 43, Idaho Code, demonstrates, one of the purposes of an irrigation district now is preservation of water rights by reconstruction or replacement of facilities necessary to the protection of the district water rights.

Plaintiffs, as landowners within the participating districts, have the right to receive water from the district if they pay for it. By vote of the electors within the district, one element of the assessment which must be paid by all waterusers within each district is the assessment to pay that district's proportionate share of the replacement project. As the Idaho Supreme Court pointed out in the case of Farmers Co-operative Ditch Co. v. Riverside Irrigation District, Ltd., 14 Idaho 450, 94 P 761 (1908):

> "The appropriation of waters carried in the ditch operated for sale, rental and distribution of waters does not belong to the waterusers, but rather to the ditch company. The right to the use

> by failure to pay annual water rents and comply with the lawful requirements as to the conditions of the use." (Emphasis the Court's) (14 Idaho at 458-459)

Plaintiffs cannot bootstrap themselves into a position where they represent their respective districts. Plaintiffs' only interest is as users of water within those districts. Their only obligation is to pay the assessments imposed on them. If they pay, then their right to the use of water is secure. The district, as the holder of the contract right, is the proper party to determine what needs to be done to preserve that right, obtain the consent of its landowners through election, and execute the contract.

In the case of Nampa & Meridian Irr. Dist. v. Barclay, 56 Idaho 12, 47 P2d 916 (1935) the Court said:

> "The consumers possess not water right which they can assert against any other appropriator,--their rights are acquired from the district which is the appropriator and owner and it is the district's business to protect the appropriation and defend it in any litigation which arises." (56 Idaho at p. 19) (emphasis supplied)

In summary, Plaintiffs' only interest in the project is in the matter of the assessments against their lands. Those assessments were imposed pursuant to a comprehensive state statutory scheme, and the validity of the assessments has been contested by Plaintiffs in the state court confirmation action.

2. Ownership of rights to falling water

The gist of Plaintiffs' contentions here seems to be that the contracts for use of water in the reservoir by their respective districts gives them as landowners some rights to power potential from the release of the water. This is clearly not the case as to the districts themselves, and even more clearly not true as to Plaintiffs.

Contrary to the allegation of Plaintiffs, prior to the enactment of Public Law 93-206, the Spaceholders in the American Falls Reservoir had not vested ownership rights in

Those contracts provided that a certain amount of space was available for the storage of irrigation water. It is clear that in the Congressional Act (Public Law 93-206), Congress lawfully delegated the right to sell the use of water leaving the dam for power purposes to the Constructing Agency (American Falls Reservoir District). The districts had not rights to the falling water until the passage of Public Law 93-206.

A review of the existing Palisades contracts negates any ownership by the contracting waterusers of the waters stored behind the existing dam. (AFRD's Palisades Contract is referred to in Para. 67-70 of the complaint, and may be included in Plaintiffs' Exhibit 2);

"10.(a) Beginning with the 1953 irrigation season, the District shall be entitled to have delivered to it during each irrigation season its proportionate share of all irrigation water stored in American Falls Reservoir . . ."

"(b) Stored water available under the rights in American Falls Reservoir, as defined in this contract, shall be available for delivery to the District during any irrigation season within these limitations;

(2) Deliveries of those amounts of water held for lower valley companies under (c) of article 7 shall be delived by means of the District's proportionate share of the outlet capacity, taking into account the requirement of passing through the reservoir water accruing to prior natural flow rights and the physical limitations of the existing outlet works.

"26.(a) Title to American Falls dam powerplant and all works incidental and appurtenant thereto, built

the United States until otherwise provided by the Congress.

"(b) All revenues derived from the sale or other use of disposal of power and energy developed at the American Falls dam power plant shall be and remain the property of the United States.

"27.(a) Title to American Falls and Jackson Lake dams and reservoirs and all works incidental and appurtenant thereto, built or to be built by the United States, (shall remain in the United States until otherwise provided by the Congress.)

From the above quoted contract provisions, it is apparent:

1. The water to be delivered to the contracting waterusers is for irrigation purposes.

2. The United States owns the dam and incidental and appurtenant works.

3. Revenues from power to be generated at any federal powerplant at American Falls belong to the United States.

Quite the contrary of Plaintiffs' contention appears from the Palisades contract, since it is clear that the rights the contracting waterusers have is to use the water stored in the reservoir for irrigation purposes, with the United States retaining the power rights. In addition, Plaintiffs' contention is contrary to the entire thrust of the law of Idaho relating to the ownership of water.

In Hutchins, "The Idaho Law of Water Rights, 5 Idaho law review 6-7, the author states the rule in Idaho to be:

> "It is a well recognized principle that a water right differs from other species of property in that the owner of the right does not own the water

> itself or have any property right in the corpus of the water; all the right he has is to use the same for a beneficial purpose."

In the case of Glavin v. Salmon River Canal Co., Ltd., 44 Idaho 583, 258 P. 532, (1927), the court said:

> "It has been variously held that one diverting water becomes, after the diversion and when the water is confined within his own reservoir or works, the owner of the corpus of the water,... We think it clear that whatever may be the exact nature of the ownership of water thus stored by him, any property rights in it must be considered and construed with reference to the reasonableness of the use to which the water stored is applied or to be applied."

Under the Glavin Case, an appropriator can be said to own the corpus of the water only when it is confined in his works. As to the various waterusers having contract rights to the use of water stored in American Falls Reservoir, the water itself is not their property until diverted from the reservoir or the river into the works of the contracting waterusers, whether an irrigation district or canal company. If any claim to ownership of the water could be made, it would best be made by the United States, since it owns the dam, and appurtenant works.

A claim of ownership by the United States as an appropriator, as opposed to ownership by the United States as "the public," would probably have no validity. In the case of State v. Red River Valley Co., 182 P 2d 421 (NM, 1945), the Supreme Court of New Mexico rejected a claim that impounding water behind a dam created ownership in the waters thus impounded:

> "So, if waters flowing in these two perennial streams . . . can be said to be public water prior to the construction of the dam, they are no less so after the construction and when a large volume of water . . . has been impounded . . . there must be a diversion and application to beneficial use to constitute an appropriation . . . these waters are not appropriated until application to use has been effected . . .
>
> ". . . It is all yet public water until it is

There is nothing inconsistent with the rights of the spaceholders for the United States to use the water to generate power, or to authorize others to generate power. The waterusers have the right to have the water delivered to them for use for irrigation. A non-consumption use prior to the time the water reaches their points of diversion does not injure them, and they would have no complaint about, nor interest in such use. Plaintiffs' contention that their respective districts and the land owners have rights in the use of the water leaving the dam for power purposes clearly has no merit under existing contracts and law.

ANTITRUST CLAIMS

The main thrust of Plaintiffs antitrust allegations are set forth in Paragraph 90 of the Complaint. The Plaintiffs allege that the American Falls Reservoir District and the Idaho Power Company:

> "unlawfully combined or conspired together with the intent to monpolize or intent to monopolize the full hydro-electric power generation capacity availabe at the American Falls Dam and Reservoir, or to unreasonably restrain trade by preventing the Bureau of Reclamation from constructing a competitive facility at the Dam." (emphasis added)

The Plaintiffs Complaint continues and alleges political opposition to the Bureau of Reclamation attempts to appropriate funds for the installation of a power unit during the 1930's Plaintiffs also allege efforts to divert support form the Department of Interior's plan for the replacement of the American Falls Dam.

Thee allegations of conspiracy with intent to monopolize or restrain trade fall within the Noerr-Pennington Doctrine set forth by the Supreme Court. This Doctrine was established in two Supreme Court Cases involving activity to influence legislative and administrative action. The Court held that this type of activity was not subject to Antitrust Laws.

In Eastern Railroad Presidents Conference v. Noerrmotor Freight Incorporated 365 U.S. 127 5 LEd 2d 464, 81 S Ct. 523,

(1961). The Court held that no voiloation of the Sherman Act could be predicted on the attempt of private persons to influence the passage or enforcement of State Laws ... The Court viewed it as:

> "equally clear that the Sherman Act does not prohibit two or more persons from associating together in an attempt to persuade the legislature or the executive to take particular action with respect to a law that would produce a restraint or monopoly".

The Court held that any contrary ruling:

> "would substantially impair the power of the government to take actions through its legislative and executive that operate to restrain trade. In a representative democracy such as this, these branches of government act on behalf of the people and to a very large extent the whole concept of representation depends upon the ability of the people to make their wishes known to their representatives".

The Supreme Court, in United Mine Workers v. Pennington 381 U.S. 657 14 LEd 2d 626, 85 S Ct. 1585 (1965) held that an attempt by a Union to influence administrative agency action was not violative of the antitrust laws. The Court stated,

> "joint efforts to influence public officials, either standing along or as a broader scheme itself violative of the Sherman Act, do not violate antitrust laws."

The Noerr-Pennington Doctrine has been broadened in recent cases involving activities to influence governmental bodies. The Seventh Circuit held:

> "where considered activities to influence a governmental body occur in legislative or other non-ajudicatory settings, they are not within Sherman Act (15 U.S.C. Stats 1 et seq) even though they include conduct that can be termed unethical, such as the deception and misrepresentation and this is true even when concerted efforts are part of a broader scheme itself violative of the act."

Metro Cable Company v. CATV of Rockford Incorporated 516 Fed 2d 220 (1975).

AMERICAN FALLS REPLACEMENT DAM PROJECT MANDATED BY FEDERAL LEGISLATION

By Act of December 28, 1973 the U.S. Congress inacted public law 93-206 authorizing the Secretary of Interior to

enter into an agreement with the American Falls Reservoir District representing the present space holders in the reservoir. This agreement provided for financing and construction of a dam and other related facilities to replace existing American Falls Dam. The act continues in Section 4, stating that the AFRD" may contact with an appropriate non federal entity for the use of the following water leaving dam for power generation..." Section 4 also states the American Falls Reservoir District:

> "may enter into agreements with an appropriate non-Federal entity to coordinate the construction of the hydroelectric facilities with the construction of the replacement dam".

The section also provides for Interior Secretary approval of the falling water contract. By enacting this statute, including the above language, Congress intended that the American Falls Dam replacement project should include power generation facilities other than those federally operated. The act sets forth language requiring that the contract for falling water may be entered into by an appropriate non federal entity. This language is important in establishing the congressional intent that the power generation facility be non-federal.

The Plaintiffs allege that Defendants, Idaho Power Company and American Falls Reservoir conspired with the intent to monopolize the hydroelectric generation of power at the American Falls Dam Porject, by preventing the Bureau of Reclamation from constructing a Federal Facility for power generation. The conspiracy allegedly took the form of political opposition to a federal power project at American Falls and resulted in Congress enacting Public Law 93-206 on December 28, 1973.

In the United Stated of American v. Rock Royal Cooperation Inc. 307 U.S. 533, 83 LEd 1446, 59 S Ct. 993, the Court was presented with a similar situation in that a Federal Act was passed by Congress, (Agricultural Marketing Agreement Act, 7 U.S. CA Sec. 601) and the Secretary of Agriculture issued certain

United Stated filed a suit seeking a manditory injunction against Rock Royal Cooperative Inc. and other defendants requiring that these Defendants comply with the provisions of the Secretary's order. The Defendants urged that the order was unenforceable because it resulted from a conspiracy of cooperatives to convert the federal statute and a state statute into instruments for the creation of a monopoly in large handlers in the sale of milk in the marketing area. The Court held:

> "assuming the validity in other respects of the Agricultural Marketing Act and of the Secretary of Agriculture there under regulating milk prices, the fact that the effect of the Act or order may give cooperatives a monopoly of the market in milk does not violate the Sherman Antitrust Act".

In Heck v. Pro Football Inc. 144 App DC 56, 444 F 2nd 1931, the Federal Appeals Court for the District of Columbia held that the proper inquiry involving cases of valid governmental action which are immune from the Antitrust Laws is "whether Congress knowingly adopted a policy inconsistant with the antitrust laws ..." Here, Congress knowingly adopted a policy inconsistent with the antitrust laws by including language within Public Law 93-206 whereby the Secretary of Interior was directed to contract with (non-federal agencies) for the replacement of the existing American Falls Dam and providing that the (AFRD constructing agency) could contract with non federal entities for the use of the falling water for power generation facilities, subject to the Secretary's approval.

DATED this 28th day of February, 1977.

IDAHO POWER COMPANY

By/s/ Michael B White
Michael B White

By/s/ William R Fleming
William R Fleming

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that a true and correct copy of the foregoing document was on this date served upon the persons named below, at the addresses set out below their names, by mailing to them a true and correct copy of said docuement in a properly addressed envelope in the United States mail, postage prepaid.

Dated this 28th day of February, 1977.

IDAHO POWER COMPANY

By Michael B White
Michael B White

Mr. Blair Grover
Lee, Ririe, Grover
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Mr. Ben Cavaness
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American Falls, Idaho 83440

Exhibit 39

Memorandum Decision, In the Matter of the Petition of the Boards of Directors of the American Falls Reservoir District, CV No. 28378 (Idaho 5th Dist. Ct. Mar. 7, 1977)

'77 DEC 7 AM 1 13

GARY WHITNEY

BY: _____ DEPUTY CLERK

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

* * *

IN THE MATTER OF THE PETITION OF THE BOARD OF DIRECTORS OF THE AMERICAN FALLS RESERVOIR DISTRICT, A & B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR DISTRICT NO. 2, ENTERPRISE IRRIGATION DISTRICT, HILLSDALE IRRIGATION DISTRICT, MILNER LOW LIFT IRRIGATION DISTRICT, NEW SWEDEN IRRIGATION DISTRICT, POPLAR IRRIGATION DISTRICT, PROGRESSIVE IRRIGATION DISTRICT, AND SNAKE RIVER VALLEY IRRIGATION DISTRICT, IRRIGATION DISTRICTS EXISTING UNDER THE LAWS OF THE STATE OF IDAHO,

Petitioners,

and

IDAHO IRRIGATION DISTRICT,

Supplemental Petitioner,

Civil No.28378

MEMORANDUM DECISION

* * *

APPEARANCES:

Counsel for Petitioners

Thomas G. Nelson
PARRY, ROBERTSON, DALY & LARSON

Roger Ling
LING & NIELSEN

Cecil D. Hobdey
JAMES, HOBDEY & VARIN

Counsel for Respondents

James Annest
Gleason Anderson
ANNEST & ANDERSON

SPECIAL PROCEEDINGS UNDER 43-2204 IDAHO CODE.

MAIL 103496

On May 12, 1976, the ten above designated districts, followed later by the supplemental petition of Idaho Irrigation District, initiated these proceedings by filing a petition entitled "Petition for examination, determination, approval and confirmation of the powers, assessments, apportionments, acts, proceedings, and contracts relating to the replacement of the American Falls Dam and Reservoir. The petition was filed under the provisions of 43-2204 I.C., which action is required prior to the sale and issuance of bonds authorized by Chapter 22 of Title 43 for the reconstruction, rehabilitation, replacement or improvement of dams and other related structures and works together with all necessary appurtenances thereto. (43-2201 (A) I.C.) The statute requires: "...each such petition shall pray for a judicial examination and determination of any power conferred hereby or by any amendment hereto or of any assessment levied or of any apportionment of costs or of any act, proceeding or contract of the district or districts, whether or not said contract shall have been executed, including proposed contracts for the reconstruction, rehabilitation, replacement and improvement of any such dam and other related structures and works and appurtenances, falling water contracts pursuant to 43-2201(D)(4), Idaho Code, contracts with other irrigation districts pursuant to 43-2201(D)(2), Idaho Code, and contracts with other public and private persons, firms, corporations and associations pursuant to 43-2201(D)(3), Idaho Code."

43-2204 I.C. further provides as follows:

> "Any owner of property in any district joining in the petition or any other person interested in the contracts or proposed contracts may appear and answer said petition at any time prior to the date fixed for said hearing or within such further time as may be allowed by the court;..."

Accordingly, formal appearances in opposition were made by the Minidoka Irrigation District, and individual protestants Don Wixom, Robert Rucker, Vernon Kinnear, William Kerner, Charles Barnes, Corwin Silva, Floyd Silva and Dell Hiatt. Concerning the formal appearance of the Minidoka Irrigation District, petitioners filed a "motion in limine" wherein they moved the court for an order of lack of jurisdiction over the existing contracts, relating to the use of the water stored in the American Falls Reservoir, of the non-participating water users including Minidoka Irrigation District and Burley Irrigation District. Later, the petitioners and the Minidoka and Burley Irrigation Districts entered into a stipulation to the effect the court indeed did not have jurisdiction over these contracts between the two districts and the Bureau of Reclamation, and consequently neither of these districts pursued their objections to the confirmation proceedings, even though Burley Irrigation District had not made a formal appearance. Thus, the individual objectors constituted the protestants, or respondents to the confirmation proceedings.

These individual objectors to the confirmation proceedings have been and will be referred to throughout the proceedings as "respondents". They filed their formal answers and objections in August of 1976. The answers and objections raised all manner of things which will be discussed herein. Formal hearings were held on the contents of the petition, supplemental petition, and answers and objections of the respondents beginning on September 13, 1976 and recessing on September 16, 1976. The hearings recommenced on November 8, 1976 and all evidence was deemed submitted on November 16, 1976 and time allowed by the court for the filing of briefs. The last brief, deemed petitioners responding brief after motion and hearing and order allowing ten days for the filing

of this last and final brief. was filed on February 22, 1977.

As a factual background for the project the following is quoted from Barker v. Wagner, 96 Idaho 214, 526 P.2d 174:

> "The American Falls Dam and the American Falls Storage Reservoir are located on the Snake River in Southern Idaho. The original dam was completed in 1928 and is owned by the United States government as part of a Federal Reclamation project. The construction of the original dam was financed in part by the District pursuant to a contract with the United States whereby the District purchased a 28.6% of the water storage capacity of the dam and agreed to pay to the United States 28.6% of the cost of constructing the dam.
>
> The United States Bureau of Reclamation has determined that the original dam is no longer structurally sound and has placed restrictions upon the maximum level of water in the reservoir. Currently the water level is set at less than 67% of the usuable water storage capacity. Furthermore the dam is continuing to deteriorate which will result in the water level being reduced in the future.
>
> There are 35 entities (spaceholders) that own shares of the water storage capacity of the original dam: 14 irrigation districts including the District, 16 canal and irrigation companies, 2 private companies, 2 individuals and the United States Indian Irrigation Service. Within the District there are 5 canal companies which have rights to the storage, diversion and delivery of water out of the storage rights of the District. The lands that the 35 spaceholders serve are arid and require irrigation to produce crops.
>
> The federal government has not appropriated the necessary funds for the construction of a replacement dam. The Congress of the United States has enacted public law 93-206[2] which authorizes the Secretary of the Interior to enter into an agreement with the District for construction of a replacement dam, title is to be transferred to the United States. It also authorizes the District, subject to approval by the Secretary of the Interior, to contract with non-federal electric power producers for the use of the falling water discharged by the dam. The monetary return from the falling water contract is to be used to defray part of the cost of construction of the replacement dam. Public Law 93-206 also provides that the District may enter into agreements with other spaceholders for repayment by them of their proportionate share of the total cost incurred in the replacement dam.
>
> The Idaho State Legislature has enacted Idaho

Sess. Laws ch. 1 (1974), which authorizes irrigation districts after approval at a special election of 2/3 of the qualified electors voting, to reconstruct and improve dams and to issue bonds for payment of the construction. Idaho Sess. Laws ch. 1 (1974) provides that the bonded indebtedness shall be payable solely out of a special fund into which the irrigation district shall deposit: (1) The collection of benefit assessments levied by the irrigation district; (2) Payments pursuant to contracts entered into with other public or private irrigation entities; (3) The proceeds from the sale or use of falling water for power production.

Idaho Power Company, which presently owns and operates a hydroelectric power plant below the original dam, has offered to enter into a falling water contract with the District. The proposed contract provides that Idaho Power Company would pay to the District for the use of falling water for power production 40 annual installments sufficient to retire $19,000,000 of bonds issued by the District. The falling water contract is subject to approval by the Secretary of the Interior as provided in Public Law 93-206"

According to the ruling in the Barker v. Wagner case, the American Falls Reservoir District is not a subdivision of the state or a governmental entity within the restrictions of Article 8, 3 of the Idaho Constitution dealing with limitations on indebtedness.

On November 4, 1975, the Board of Directors of the American Falls Reservoir District passed a resolution whereby the directors found it would be in the best interest of the American Falls Reservoir District and in the best public interest and necessity to reconstruct the existing American Falls Dam; to create a special fund for repayment of the construction costs, and to finance the reconstruction by the issuance of bonds of the American Falls Reservoir District in an amount not to exceed Fourty-four Million, Seven Hundred-fifty Thousand Dollars ($44,750,000.00), to pay for the reconstruction. The resolution also allocated the construction costs to the contractual obligation of the Idaho Power Company in the amount

of Twenty-two Million, Nine Hundred Sixty-five Thousand, Seven Hundred Thirty-four Dollars ($22,965,734.00) and further allocated a portion of the construction costs amongst the thirty-five districts and other entities comprising the total space holding capacity of the American Falls Reservoir.

Then on December 2, 1976, the Board of Directors of the American Falls Reservoir District adopted a further resolution authorizing the calling of an election within that district to allow landowners within the district to vote on:

> a: whether the district would enter into a contract with the United States, commonly called a government contract, which contract authorizes the American Falls Reservoir District to finance and construct the dam as the constructing agency and
>
> b: whether the district would obligate itself to pay its proportionate share of the construction costs and
>
> c: whether to impose and collect assessments on the lands within the district to pay the district's share of such construction costs.

Accordingly, the election was held on the 12th day of January, 1976 and more than two-thirds of the electors authorized the affirmative of the above three stated propositions.

Similar elections were held in the other petitioning districts, the only major difference being the form of the contracts. Since the American Falls Reservoir District was the constructing agency, the propositions put to the electors in the other districts was for authority of the particular district to execute a contract with the United States of America and the American Falls Reservoir District. The electors in the other petitioning districts voted for the affirmative of the above propositions, in addition to electing to pay the proportionate share of district and to assess the landowners in the district for that proportionate share.

Accordingly, the American Falls Reservoir District has

entered into the following contracts:

1) The government contract, authorized by the Act of Congress of December 28, 1973 (Public Law No. 93-206) with the Secretary of the Interior.

2) The contract between the American Falls Reservoir District and Idaho Power Company, commonly called the falling water contract, whereby Idaho Power Company agrees to make payments over a forty year period in the amount of Twenty-two Million Dollars ($22,000.000.00) as set forth previously.

3) A "water quality facilities" agreement with Idaho Power Company for the various contracts with the other districts.

4) A contract with the United States, the American Falls Reservoir District and the Idaho Power Company for payment by the Idaho Power Company of its proportionate share of the cost of the reconstruction as a space holder.

5) A contract between the United States and the American Falls Reservoir District in its capacity as a water user, as opposed to the constructing agency, for payment by the district of its proportionate share of the cost of financing the reconstruction of the dam.

Additionally, contracts were entered into by the United States, the American Falls Reservoir District and certain districts deemed non-irrigation district space holders for payment of their respective shares of the proportionate cost in accordance with the percentage of the space holder rights held by each of the entities.

In effect then, the purpose of the petitions filed by the petitioners in this proceeding is to confirm the regularity and legality of the proceedings thus far in order to allow and facilitate the sale of the bonds by the American Falls Reservoir District to finance the reconstruction of the American Falls Dam.

Respondents claim the new contracts entered into between

the various entities violate pre-existing rights acquired by the various districts. The rights violated are mainly the contract rights between the various districts and the federal government for the delivery of the stored water.

This contention is subdivided by respondents into three main classifications or arguments:

1) The project is violative of Section 4, Article 15 of the Idaho Constitution.

2) The Bureau of Reclamation is bound by its previous contracts with the districts.

3) The new contracts unconstitutionally impair previous contracts.

Underlying these arguments are the basic contentions of violation of the respective due process clauses of the United States and Idaho Constitutions and the taking of property without compensation under the Idaho Constitution.

These points raise an important jurisdictional or procedural point which should be discussed. Earlier in the proceedings before this court, when the Minidoka Irrigation District was a party in the nature of a respondent to the petitions, the parties stipulated this court had no jurisdiction to determine the rights of the non-participating districts as concerns their prior contractual rights with the federal government. The same stipulation was entered into with the Burley Irrigation District, although as previously stated the Burley Irrigation District was never a formal party to proceedings. The stipulation as to the lack of jurisdiction of this court to decide these questions was probably correct, since obviously the federal government would have to be a party to this proceeding to determine these rights and of course the federal government is not a party to these proceedings. Cf. Maricopa County Ariz. v. Valley Nat. Bank of

Phoenix, 63 S.ct. 587, 318 U.S. 357, 87 L.Ed. 834.

In addition, the second affirmative defense to the petition as plead by respondents states as follows:

> "The court lacks jurisdiction over the parties in that all parties whose rights to water storage in American Falls Reservoir are not before the Court, and the petitioners are by stipulations, entered on the 29th day of July, 1976, attempting to confer jurisdiction in this court--all contrary to the rights of the answering defendant and the law."

The various stipulations and the affirmative defenses above stated raise the issue of this court deciding the impairment of contracts defense and the other constitutional defenses involving the alleged potential loss of water rights by the non-participating districts and the members thereof.

It is true the individual respondents have no standing to represent the districts in which they reside and have no authority to represent any of the non-participating districts. However, the most significant legal problem attached to this project is the effect upon the non-participating districts. To the extent this court is called upon to ratify and confirm the proceedings, the subject of the effect of the project on the non-participating districts is relevant. In other words, if the effect of the basic legislation and the contracts is illegal and unconstitutional, the confirmation proceedings should so indicate, without necessarily determining the legal question of the exact or particular duties owed the non-participating districts by the United States or the Department of Interior. From this standpoint then, the effect of the plan on the non-participation districts ought to be limitedly considered from the standpoint of the legality of the proceed-

ings leading to the confirmation order under the provisions of the Section 43-2209 I.C.

Section 4 Article 15 of the Idaho Constitution has not been violated. The cases of Bradshaw v. Milner Low Lift Irrigation District, 85 Idaho 528, 381 P.2d 440 and Ickes v. Fox, 300 U.S. 82 basically involved a reapportionment of priorities and costs between landowners within the district to the extent that the owners of the "new lands" within the district would achieve priority equal to the owners of "old lands". This was wrong in that the old landowners could not be so deprived without their consent. It is questionable in the case here, whether there is any deprivation of priorities, or use, through a reallocation of priorities. This project does not deal with any reallocation of priorities. There is no unequal apportionment of increased costs. The possibility of the non-participating districts to lose water upon non-payment is prospective, that is it is a possible future event but obviously has not yet occurred. It is a contingency at best and an avoidable contingency. At any rate, I can see nothing in the project at this point which would sustain a legal finding of loss of vested water rights which would be violative of Section 15 of Article 4. The same would apply to the taking of property without due process argument. There has not been a taking at this point, and it cannot be said as a matter of law that the legislation or contracts authorize and empower the entity within the confines of the project to take the water of another indivudual or entity without due process of law or other various constitutional provisions.

The authority of the government to amend its existing contractual terms was authorized by Act of Congress. Public Law 93-206, the Act of December 28th, 1973 states as follows in Section 3:

"The constructing agency may enter into repayment contracts with the spaceholders in the existing American Falls Reservoir providing for the repayment by the spaceholders of proportionate shares of the total project cost incurred by the constructing agency for engineering, financing, designing, and constructing the replacement dam, and the secretary shall be a party to said contracts and the delivery of waters to the spaceholders shall be contingent upon the execution of such contracts and the fulfillment of the obligations thereunder: provided, that said contract shall be consistent with terms of existing contracts between the secretary and the spaceholders for repayment of the costs of the existing American Falls Dam."

Thus, Congress has specifically authorized the Secretary of Interior to deliver water to spaceholders contingent upon the execution of the contracts and the fulfillment of the respective districts' obligations thereunder.

In response to the court's request at the close of the evidence for respondents to specify wherein petitioners have failed to satisfy their obligations for confirmation, respondents have cited in paragraph 2 of their brief three categories, with sub-contentions, as follows:

1) "Petitioners have failed to comply with Public Law 93-206, the enabling legislation enacted by the 93rd Congress of the United States, December 28, 1973, (87 Stat. 904) herein referred to as the "act" in the following respects..."

2) "The petitioners have failed to comply with require-

ments of the Reclamation Acts of the United States, as follows:"

3) "The petitioners have failed to comply with state enactments, as follows:"

Subsection (a) of No. 1 above, the failure to comply with Public Law 92-206 contends the dam is not a "replacement dam" as required by Public Law 93-206. The term "replacement dam" is not a phrase of art which signifies a definite and established legal meaning. For whatever effect the semantics of the term "replacement" may have, it is broad enough to cover what may generally be phrased as the construction process necessary to facilitate a dam to return to its original, or better, operating capacity.

Under 1(b) it is alleged there has been no effective reaffirmation of the existing storage and contractual rights as required by Section 2 of Public Law 93-206. This is more in the nature of respondents' argument to the effect that existing rights will be changed by the project, but the spaceholders' contracts do affirm the existing storage and contractual rights. The preexisting storage and contractual rights have not been changed except as authorized by Public Law 93-206. Again, at this stage of the project, there has been no reapportionment of any existing storage or contractual rights, and no loss, and this was the obvious purpose of this provision of Section 2 of the Federal Act.

Subsection (c) raises the erosion contention in that it is alleged the project has not been in compliance with the erosion requirements of Public Law 93-206. There are erosion provisions, however, contained in both the government contract and the spaceholders' contracts.

Subparagraph (d) alleges the spaceholders contracts do not comply with Section 3 of Public Law 93-206. Section 3 of the Federal Act is quoted in this opinion. I fail to find

where any of the alleged deficiencies are contrary to Section 3 of the Act.

In subdivision (2), respondents claim there is a failure to comply with Reclamation Acts.

Public Law 93-206 obviously superseded certain previously enacted Reclamation Laws applicable to the parties involved and to the contractual and storage rights applicable to the American Falls Reservoir. The act further obviously changes the applicability of some of this existing law, in the form of superseding legislation. I find no merit in this contention.

Under paragraph 3, respondents question the compliance with state law in the proceedings preparatory to the filing of the petition for confirmation. Specifically, it is contended that the petitioners have not complied with the provisions of Section 43-404A I.C. It is apparent the provisions of Sec. 43-404A are in part in conflict with the provisions of Sec. 43-2204, the section of the code under which petitioners are proceeding. While it is difficult to understand the intent of the legislature in enacting Sec. 43-2204 in 1974 (Ch.1, 1974 Session Laws) without explicitly repealing the previously enacted Sec. 43-404A (Ch. 181, 1973 Session Laws), the only plausible answer is a repeal by implication. Respondents contention of non-compliance with Sec. 43-404(A) is based on the timeliness of the confirming election, that is, whether the election was held prior to the signing of the participating contracts by the Directors of the District, or after. Sec 404(A), by its wording, would require the election prior to execution. Petitioners contend Sec. 43-2204 is controlling. The latter statute authorizes the filing of a confirmation petition by a district prior to the election process provided for in 43-2201 (D)(2). Accordingly, to the extent Sec. 43-404 (A) is inconsistent with Sec. 43-2204 and more particularly

as Sec. 43-404(A) requires the approval of two-thirds of the electorate in a contracting district before the execution of the contract, the same must be held as being impliedly repealed by the enactment of Sec. 43-2204, I.C.

Under the provisions of 43-2204, the court, being the District Court in which the petitions were filed, does have jurisdiction by virtue of legislative enactment to hear the petition and to grant the relief prayed for in the petitions. While there are some jurisdictional questions involving interpretations of contracts between the districts or other entities and their contracts with the Federal Government, this does not preclude the court from determining the confirmation proceedings.

As far as the reallocation of the construction costs under Sec. 43-2201(e) I.C. to the nonparticipating district is concerned, the machinery for reallocation is provided and there apparently is no requirement that the reallocation details be provided prior to confirmation of the proceedings.

Respondents contend the statutory structure involved in the project allows American Falls Reservoir District to extend its credit to the Idaho Power Company, in violation of Art. 8 Sec. 4 and Art. 12 of Sec. 4 of the Idaho Constitution. The recent Idaho Supreme Court case of Idaho Water Resource Board v. Kramer, 97 Idaho _____, 548 P.2d 35, disposes of this contention. Therein, a venture whereby the bonds issued by the Idaho Water Resource Board would be repaid by the power company was held not to violate Art. 8, Section 2 of the Idaho Constitution. The comparable constitutional provision applicable to this situation now before us is Section 4 of Art. 8 of the Idaho Constitution. These same standards should apply to both constitutional provisions and the respective governmental entities governed thereby. On the basis of the Kramer case,

the finding of violation of the prohibition on lending of credit as contained in Section 4 of Art. 8 of Art. 12, Sec 4 of the Idaho Constitution cannot and will not be made. Also, because of the conflicts between Sec. 43-322 I.C. and Sec. 43-2203 I.C. the finding of repeal by implication must be made.

Respondents next contend the elections confirming the contracts are invalid since Art. 17(g) of the government contract was inserted after the election.

Art. 17(g) of the government contract is essentially an indemnity agreement which deals with the contingency of liability of the part of the government to nonparticipating users. The clause provides for the payment of any such liability from the construction fund as that fund is established in the falling water contract, if available, then from regular operating and maintenance payments.

This section and the corresponding section 20(g)(1)(13) of the spaceholder contracts was inserted in the contracts after ratification of the contracts by the electors. Petitioners contend these clauses were inserted for clarification purposes after the "Burpee" memo (Ex. 113) whereby Department of Interior Field Solicitor William Burpee made certain comments concerning prospective federal liability. Petitioners claim the inserts were for clarification purposes rather than adding any new obligations to the electors or "materially affecting" their rights and duties and obligations under the contract.

While the Burpee memo probably raises more substantial questions than the mere clarification of the indemnity procedure, namely, the status of the nonparticipating shareholders, it would appear the indemnity obligation was already existent in the project and the insertion of the specific clauses in the specific contracts after voter ratification was

more procedural than substantively affecting the rights of the parties under the provisions of Sec. 43-2204 I.C.

Respondents also allege: "The notices of election were insufficient to inform the electorate adequately of the issues presented by the election, the rights which were affected and the affect upon existing rights of water users". Respondents again reassert their argument of reapportionment. The basic point is the contention, the electors were not adequately advised of the alleged authority in the contracts to remove vested water rights. This point has been discussed elsewhere in this decision and again I would state the contracts do not allow or authorize a reapportionment of the water rights except insofar as loss of the rights may be contingent upon failure to fulfill the proportionate cost obligation. The notices of election were sufficient. See Durand v. Cline, 63 Idaho 304, 119 P.2d 891.

It is difficult to ascertain how the removal of Mr. Kerner as President of the Board of Directors of American Falls Reservoir District No. 2 has nay connection with these confirmation proceedings. Sec. 43-205 allows and authorizes, in effect, a mandamus proceeding against an official who is required but refuses to participate in certain acts. But this section cannot be taken as an exclusive remedy. The Board merely elected a new President, which was within their authority so to do.

I find no violation of the various constitutional provisions concerning the expression of subject, title of the acts or the manner in which various statutory provisions were revised and amended by the legislature.

The fact the legislature authorized, in Sec. 43-2203 I.C. the issuance of bonds on the referendum election principle, is not violative of the due process provision of

the Idaho Constitution, Art. 1, Section 13.

Idaho Power Company is not an indispensable party to these proceedings.

There is no violation of Public Law 93-206 by way of the allegation Idaho Power Company will not pay for the entire cost of replacement. The phrase "defray the cost of construction" does not import the meaning of full and total cost of construction.

The delegation of the fact-finding duty of public interest or necessity to the directors of the board is not an unconstitutional delegation of power. See Boise Redevelopment Agency v. Yick Kong Corp., 94 Idaho 876, 499 P.2d 575.

Throughout this entire proceeding, there have been allegations and accusations of fraud, collusion, oppression and concealment leveled against the participating entities in this project and certain individuals. Suffice it to say I have found no evidence of any fraud, collusion, conspiracy, or otherwise.

Underlying most all of respondents legal arguments against the project is the basic contention of unfairness to nonparticipating districts, the members thereof, and those who either voted against the various proposals at the elections or who oppose it now because of the increased costs to the landowners. This action has not been one merely to test the record as to the correctness of the proceedings preparatory to the issuance of the bonds, but instead, has evolved into a rather fiercely contested action to cancel, from a judicial standpoint, the entire project, because of the increased costs and the belief that the Bureau of Reclamation ought to rebuild the dam. It is important to comment on this latter point, which is really not an issue for this court to decide, because of what I believe to be one of the main reasons for

the opposition to the confirmation of the petitions. In the first place, both the Bureau of Reclamation and the Congressional Committee which conducted the hearings on the two prospective pieces of legislation were unwilling to rebuild the dam, as can plainly be seen by the contents of certain exhibits. The liability of the government to rebuild the dam is remote and speculative at the best. The Federal Government, both through the Department of the Interior and the Congressional Committee, indicated its unwillingness to rebuild the dam as a federal project. These are all factors within the political, as opposed to the judicial process. However, some comment is necessary since the Federal Government's responsibility has been used throughout these confirmation proceedings in the category of a defense to confirmation.

As to the other point, the basic unfairness to the landowner opponents of the project, we must return to the governmental process of majority (or in this instance three-fourths) rule. In this project a new or different entity of government has been created by the Idaho Legislature, namely, an irrigation district which can rebuild a dam, enter into contracts with other entities, including other districts, all for the improvement and continuation of the valuable and necessary function of the delivery of water. The fact that the land is bound or obligated to pay for the project is no different than any other bond election where the electors or the property owners all are obligated by a majority or two-thirds or three-fourths affirmative vote. It is governmental action whereby the will of the substantial majority authorizes an improvement for the benefit of all and a minority of objectors is not sufficient to defeat the project. It is a concept probably as old as democratic government itself. The novelty of this project is because

of the nature and number of entities involved, but the basic rationale is the same.

By the passage of the legislation, neither the Idaho Legislature nor Congress has authorized the taking of property without just compensation or without due process of law. There has been authorized no taking of property except for failure to pay the proportionate share for the improvement, the same as any other project of improvement which a governmental entity, through the individuals who make up the entity, elects to construct.

The relief prayed for by the petitioners will be approved and granted. Counsel for petitioners may prepare formal findings of fact, conclusions of law and order of confirmation.

Dated this 4th day of March, 1977.

Alfred C. Hagan
District Judge

Certificate of Maioing Attached.

Exhibit 40

Amended Findings of Fact and Conclusions of Law, In the Matter of the Petition of the Boards of Directors of the American Falls Reservoir District, CV No. 28378 (Idaho 5th Dist. Ct. May 18, 1977).

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

'77 MAY 18 PM 4:03

BY GARY WHITWELL
CLERK
DEPUTY CLERK

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

* * * * * *

In the Matter of the PETITION OF THE BOARDS OF DIRECTORS OF THE AMERICAN FALLS RESERVOIR DISTRICT, A & B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR DISTRICT No. 2, ENTERPRISE IRRIGATION DISTRICT, HILLSDALE IRRIGATION DISTRICT, MILNER LOW LIFT IRRIGATION DISTRICT, NEW SWEDEN IRRIGATION DISTRICT, POPLAR IRRIGATION DISTRICT, PROGRESSIVE IRRIGATION DISTRICT, AND SNAKE RIVER VALLEY IRRIGATION DISTRICT, IRRIGATION DISTRICTS EXISTING UNDER THE LAWS OF THE STATE OF IDAHO, PETITIONERS, AND IDAHO IRRIGATION DISTRICT, SUPPLEMENTAL PETITIONER	AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW Civil No. 28378

* * * * * *

A Petition having been filed in this matter on May 12, 1976, and a Supplemental Petition having been filed on August 13, 1976, and following hearings on June 11, 1976, and September 3, 1976, for which due and legal notice had been given and published as prescribed by law, and the Court having entered an order foreclosing further appearances, and a hearing having been held by this Court on September 13, 14, 15, 16, November 8, 9, 10, 15 and 16, 1976, at which hearing documentary and oral evidence and proof was offered on behalf of the Petitioners in support of said Petition and

MAIL 103508

documentary and oral evidence and proof was offered on behalf of Respondents, and

Whereupon the Court proceeded to hear and examine all the evidence and the proof produced and offered herein and the records, papers, files and exhibits in this action and the said cause having been submitted to the Court for decision and the Court having duly considered the same and all matters and things in connection with the filing of said petition and the hearing thereon and the matter being fully submitted to the Court, and this Court's Memorandum Decision having been rendered on March 4, 1977, and after the entry of Findings of Fact, Conclusions of Law and Judgment and Decree of Confirmation on March 16, 1977, various motions having been made by Petitioners and Respondents, and hearings having been held on April 11, 1977, and May 5, 1977, and the Court having rendered a Memorandum Decision on May 13, 1977, and the Court being fully advised in the premises, this Court makes the following:

AMENDED FINDINGS OF FACT

I.

The Petitioners have invoked the jurisdiction of this Court under Chapter 22, Title 43, Idaho Code.

II.

Notice of the hearing of the Petition and Supplemental Petition as required by law has been duly and regularly given. Harold A. Lancaster, the Clerk of this Court executed notices of hearing on said Petitions and filed the same herein and mailed a copy of said notices of hearing on the Petitions to each owner of land in each irrigation district, the board of directors of which joined in the above Petition, if known, or his agent, if known, addressed to such person at his post office address, if known, or if unknown, to the

post office serving the area where his land lays and that said notices were mailed on May 18, 1976, and August 17, 1976, being more than 15 days prior to the date of June 11, 1976, and September 3, 1976, the dates fixed for the hearing on the Petition and Supplemental Petition, respectively, and further notice was given of said hearing by publishing said notices in newspapers published in the counties wherein the respective irrigation districts' offices are located as follows:

NEWSPAPER	PUBLICATION(S)	IRRIGATION DISTRICT(S)
Times-News	Three successive issues, i.e., May 21, 23, 24, 1976	American Falls Reservoir District
		Milner Low Lift Irrigation District
Minidoka County News	One issue, i.e., May 25, 1976	A & B Irrigation District
Lincoln County Journal	One issue, i.e., May 20, 1976	American Falls Reservoir District No. 2
Chronicle News	One issue, i.e., May 20, 1976	Enterprise Irrigation District
Rexburg Journal	One issue, i.e., May 20, 1976	Enterprise Irrigation District
Northside News	One issue, i.e., May 20, 1976	Hillsdale Irrigation District
South Idaho Press	Three successive issues, i.e., May 25, 26, 27, 1976	Milner Low Lift Irrigation District
Post Register	Three successive issues, i.e., May 19, 20, 21, 1976	New Sweden Irrigation District
		Progressive Irrigation District
		Poplar Irrigation District
Shelley Pioneer	One issue, i.e., May 20, 1976	Snake River Valley Irrigation District
Post Register	Three successive issues, i.e., August 18, 19, 20, 1976	Idaho Irrigation District

III.

Answers and objections in opposition to the Petition were filed by individual protestants Don Wixom, Robert Rucker and Vernon Kinnear, landowners within the A & B Irrigation District; William Kerner, Charles Barnes, Corwin Silva, and Floyd Silva, landowners within American Falls Reservoir District No. 2; and Del Hiatt, a landowner within American Falls Reservoir District and a stockholder in the North Side Canal Company. These individual protestants are hereinafter collectively referred to as "Respondents".

IV.

The Court having entered an order foreclosing further appearances, the Court therefore finds that all those persons who have not appeared in this action have confessed the allegations contained in the Petition and Supplemental Petition herein.

V.

The irrigation districts, the boards of directors of which have joined in the filing of the Petition and Supplemental Petition, namely: American Falls Reservoir District, A & B Irrigation District, American Falls Reservoir District No. 2, Enterprise Irrigation District, Hillsdale Irrigation District, Milner Low Lift Irrigation District, New Sweden Irrigation District, Poplar Irrigation District, Progressive Irrigation District, Snake River Valley Irrigation District, and Idaho Irrigation District were each duly organized, and the first and present boards of directors of each were duly elected.

VI.

The American Falls Dam and Reservoir ("Existing Dam") is located on the Snake River in southern Idaho adjacent to the City of American Falls, and is operated by

the United States Bureau of Reclamation as part of the Minidoka Project, Idaho - Wyoming. The total designed active water storage capacity of the Existing Dam is 1,700,000 acre feet. Those persons and entities ("Waterusers") which have rights in the active water storage capacity of the Existing Dam pursuant to existing contracts with the Bureau of Reclamation, together with their respective percentage of total active water storage capacity, are as follows:

Name of Wateruser	Percentage of Total Active Storage Capacity
A & B Irrigation District	2.7996%
Aberdeen-Springfield Canal Company	1.9160%
American Falls Reservoir District	27.0688%
American Falls Reservoir District No. 2	23.5294%
Blackfoot Irrigating Company	.7508%
Burgess Canal & Irrigating Company	.5586%
Burley Irrigation District	9.2907%
Butte & Market Lake Canal Company	.2745%
Clement Brothers, a partnership	.0042%
Corbet Slough Ditch Company	.1998%
Dilts Irrigation Company, Ltd.	.0521%
Enterprize Canal Company, Ltd.	.5249%
Enterprise Irrigation District	.5993%
Falls Irrigation District	1.3706%
Harrison Canal & Irrigation Company	.7074%
Hillsdale Irrigation District	2.4203%
Ray B. Andrus	.0112%
Idaho Irrigation District	1.3477%
Idaho Power Company	2.6471%
Lenroot Canal Company	.2275%
Martin Canal Company	.0341%

Michaud Division, Fort Hall Indian Reservation	2.8059%
Milner Low Lift Irrigation District	2.6875%
Minidoka Irrigation District	4.9155%
New Sweden Irrigation District	1.5136%
North Side Canal Company, Ltd.	6.9635%
Peoples Canal & Irrigation Company	1.2597%
Poplar Irrigation District	.0396%
Progressive Irrigation District	.7344%
Reid Canal Company	.1499%
Rudy Canal Company, Limited	.1558%
Snake River Valley Irrigation District	1.5510%
Trego Ditch Company	.0773%
Utah-Idaho Sugar Company	.7917%
Woodville Canal Company	.0200%
	100.000%

VII.

Because the structural competency of the Existing Dam has been affected by alkali-aggregate reaction, the Bureau of Reclamation in October, 1972 restricted the maximum water level in the reservoir behind the Existing Dam to approximately two-thirds of usable reservoir capacity. Loss of storage at the Existing Dam exposes the lands served by the Waterusers to potential loss of production and a resulting detrimental effect upon the agricultural economy of southern Idaho.

VIII.

The Act of Congress of December 28, 1973 ("Act of December 28, 1973", Public Law 93-206), authorized the Secretary of the Interior to enter into an agreement with the American Falls Reservoir District which would authorize the American Falls Reservoir District, as the constructing

agency on behalf of the Waterusers, 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"). The Act of December 28, 1973 provides that delivery of water is to be contingent upon the execution by each Wateruser of a contract with the American Falls Reservoir District and the United States of America providing for the repayment by such Wateruser of its proportionate share of the total costs to be incurred by the American Falls Reservoir District for engineering, financing, designing and constructing the American Falls Replacement Dam Program and further provides that the continued delivery of water to each Wateruser shall be contingent upon the fulfillment of the obligations of the Wateruser thereunder. The Act of December 28, 1973, also authorized the American Falls Reservoir District to contract with a non-Federal entity 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 American Falls Reservoir District to defray 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.

IX.

The Legislature of the State of Idaho has enacted Chapter 22, Title 43, Idaho Code, as amended ("State Act"), which empowers irrigation districts, for the purpose of preserving, restoring, protecting and maintaining rights of storage, diversion and delivery of water, to reconstruct, rehabilitate, replace and improve dams, and other related structures and works, 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, and to issue bonds for the purpose of paying all or part of the cost thereof. The State Act provides that such bonds shall be payable solely out of a special fund into which the irrigation district issuing the bonds 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 on lands contained within its boundaries; (2) payments pursuant to contracts to be entered into with other irrigation districts; (3) payments pursuant to contracts to be entered into 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 with a public or private person, firm, corporation or association.

X.

In order to implement the provisions of the Act of December 28, 1973 and the State Act, the Idaho Power Company

has obtained a license from the Federal Power Commission for the construction and operation of a 100,000 k.w. hydroelectric powerplant ("Powerplant") at the site of the Replacement Dam. The Idaho Power Company initially agreed to pay an amount to the American Falls Reservoir District necessary to amortize, at a tax exempt interest rate in forty approximately equal annual installments, in return for utilization by it for power generation of the falling water released from the Replacement Dam for irrigation and other purposes incidental thereto, $19,000,000 (later increased to $19,550,000) of the principal amount of bonds of the American Falls Reservoir District to be issued under the State Act to pay the cost of financing and constructing the American Falls Replacement Dam Program. The Idaho Power Company 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, 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.

XI.

To implement the State Act, and pursuant to Section 43-2203, Idaho Code, as amended, the Board of Directors of the American Falls Reservoir District determined, in a resolution adopted on November 4, 1975, that the interest of the American Falls Reservoir District and the public interest and necessity demanded the reconstruction of the Existing Dam, the creation of an indebtedness of the American Falls Reservoir District payable solely from a special fund, and

the issuance of bonds of the American Falls Reservoir District, in an amount not to exceed $44,750,000, to pay all or part of the estimated cost of financing and constructing the American Falls Replacement Dam Program. The resolution further provided for the allocation of a portion of the estimated cost of the American Falls Replacement Dam Program to the Idaho Power Company and the balance of such estimated cost to the Waterusers in the proportion that the various rights to the storage, diversion and delivery of water from the Existing Dam bear to the total rights to the storage, diversion and delivery of water as required in Section 43-2201, Idaho Code. The allocation of the estimated cost of $44,750,000 between the Waterusers and the Idaho Power Company is as follows:

(i) the obligation of the Idaho Power Company:	$22,965,734
(ii) the allocation of the balance of the total estimated cost of the American Falls Replacement Dam Program among the Waterusers:	
A & B Irrigation District	$ 609,872
Aberdeen-Springfield Canal Company	417,387
American Falls Reservoir District	5,896,738
American Falls Reservoir District No. 2	5,125,707
Blackfoot Irrigating Company	163,556
Burgess Canal & Irrigating Company	121,687
Burley Irrigation District	2,023,911
Butte & Market Lake Canal Company	59,798
Clement Brothers, a partnership	915
Corbet Slough Ditch Company	43,525
Dilts Irrigation Company, Ltd.	11,350
Enterprize Canal Company, Ltd.	114,346
Enterprise Irrigation District	130,553

Falls Irrigation District	298,575
Harrison Canal & Irrigation Company	154,102
Hillsdale Irrigation District	527,245
Ray B. Andrus	2,440
Idaho Irrigation District	293,587
Idaho Power Company	576,651
Lenroot Canal Company	49,559
Martin Canal Company	7,428
Michaud Division, Fort Hall Indian Reservation	611,245
Milner Low Lift Irrigation District	583,452
Minidoka Irrigation District	1,070,805
New Sweden Irrigation District	329,727
North Side Canal Company, Ltd.	1,516,947
Peoples Canal & Irrigation Company	274,416
Poplar Irrigation District	8,627
Progressive Irrigation District	159,984
Reid Canal Company	32,655
Rudy Canal Company, Limited	33,940
Snake River Valley Irrigation District	337,874
Trego Ditch Company	16,839
Utah-Idaho Sugar Company	172,466
Woodville Canal Company	4,357
	$21,784,266
TOTAL	$44,750,000

No referendum petition was filed within fifteen days of the adoption on November 4, 1975 of the resolution providing for the issuance of the bonds to pay all or part of the cost of financing and constructing the American Falls Replacement Dam Program.

XII.

The irrigation districts, the boards of directors

of which joined in the filing of the Petition, pursuant to the provisions of Idaho Code Section 43-2201, passed an appropriate resolution calling a contract election, duly published notice of said election, duly posted notice of said election, held said election and canvassed the results of said election as follows:

Irrigation District	Date of Resolution Calling Election	Date Notice of Election Published	Date Notice of Election Posted	Date of Election	Date of Election Canvass and Result of Election
American Falls Reservoir District	Dec. 2, 1975 (Ex. 2)	Dec. 11, 18, 24, 1975, Jan. 1, 1976 Times News Jan. 8, 1976 Post Register, Mt. Home, Gooding County Leader, Aberdeen Times, Power County Press, North Side News (Ex. 4)	21 public places, Dec. 12, 1975 (Ex. 3)	Jan. 12, 1976	Jan. 19, 1976 3,286 yes 257 no (Ex. 5)
A & B Irrigation District	Dec. 8, 1975 (Ex. 6)	Dec. 11, 16, 23, 30, 1975 Minidoka County News Jan. 8, 1976 North Side News (Ex. 8)	15 public places, Dec. 12, 1975 (Ex. 7)	Jan. 12, 1976	Jan. 19, 1976 148 yes 64 no (Ex. 9)
American Falls Reservoir District No. 2	Dec. 2, 1975 (Ex. 10)	Dec. 11, 18, 24, 31, 1975 Gooding Co. Leader Dec. 31, 1975 Lincoln Co. Journal Jan. 1, 1976 North Side News (Ex. 12)	21 public places, Dec. 15, 1975 (Ex. 11)	Jan. 12, 1976	Jan. 19, 1976 912 yes 140 no (Ex. 13)
Enterprise Irrigation District	Nov. 13, 1975 (Ex. 14)	Dec. 18, 25, 1975, Jan. 1, 8, 1976, Chronicle News, Rexburg Journal (Ex. 16)	7 public places, Dec. 19, 1975 (Ex. 15)	Jan. 19, 1976	Jan. 26, 1976 38 yes 4 no (Ex. 17)

Irrigation District	Date of Resolution Calling Election	Date Notice of Election Published	Date Notice of Election Posted	Date of Election	Date of Election Canvass and Result of Election
Hillsdale Irrigation District	Dec. 9, 1975 (Ex. 18)	Dec. 11, 18, 25, 1975, Jan. 1, 1976 North Side News (Ex. 20)	9 public places, Dec. 10, 1975 (Ex. 19)	Jan. 12, 1976	Jan. 19, 1976 125 yes 8 no (Ex. 21)
Milner Low Lift Irrigation District	Dec. 2, 1975 (Ex. 22)	Dec. 12, 19, 26, 1975, Jan. 2, 1976, Times News South Idaho Press (Ex. 24)	9 public places, Dec. 11, 1975 (Ex. 23)	Jan. 12, 1976	Jan. 19, 1976 57 yes 6 no (Ex. 25)
New Sweden Irrigation District	Dec. 10, 1975 (Ex. 26)	Dec. 14, 21, 28, 1975, Jan. 4, 1976, Post Register (Ex. 28)	9 public places, Dec. 11, 1975 (Ex. 27)	Jan. 12, 1976	Jan. 19, 1976 101 yes 6 no (Ex. 29)
Poplar Irrigation District	Mar. 11, 1976 (Ex. 30b)	Jan. 25, Feb. 1, 8, 15, 1976, Post Register (Ex. 32)	3 public places, Feb. 1, 1976 (Ex. 31)	Mar. 19, 1976	Mar. 19, 1976 14 yes 0 no (Ex. 34)
Progressive Irrigation District	Dec. 9, 1975 (Ex. 35)	Dec. 14, 21, 28, 1975, Jan. 4, 1976, Post Register Dec. 18, 1975 Rigby Star (Ex. 37)	6 public places, Dec. 12, 1975 (Ex. 36)	Jan. 12, 1976	Jan. 19, 1976 61 yes 1 no (Ex. 38)
Snake River Valley Irrigation District	Dec. 10, 1975 (Ex. 39)	Dec. 18, 24, 31, 1975, Jan. 8, 1976 Shelley Pioneer (Ex. 41)	9 public places, Dec. 16, 1975 (Ex. 40)	Jan. 19, 1976	Jan. 26, 1976 61 yes 19 no (Ex. 42)

The Court further finds that due to the untimely death of the attorney for Poplar Irrigation District, the election was not held on the 1st day of March, 1976, as scheduled, but that the Board of Directors of Poplar Irrigation District passed a resolution on March 11, 1976, calling an election on the same proposition for March 19, 1976. Rather than incurring the expense of publishing and posting another

notice of election, the Board of Directors obtained from all 25 qualified electors a waiver of notice, its publication and acknowledgement of receipt of notice. The election held on March 19, 1976, resulted in a vote of 14 electors in favor of the proposition submitted and 0 elector against such proposition. No objections to the procedure were filed or presented in this Court. The court finds that Poplar Irrigation District substantially complied with the statutory requirements and that the postponement of the actual date of election from March 1st to March 19th did not affect substantial rights of any of the electors of the district.

The original Petition was supplemented by a supplemental petition of Idaho Irrigation District, which held an election following the filing of the original Petition herein. The Board of Directors of the Idaho Irrigation District regularly called a contract election pursuant to the provisions of Idaho Code Section 43-2201, after passing a resolution on May 17, 1976, on two propositions:

A. to enter into a contract with the United States of America and the American Falls Reservoir District to pay $293,587 of the cost of financing and constructing the American Falls Replacement Dam Program, and

B. to impose and collect assessments on the lands in the district in the amount of $293,587 for such purpose, and to incur indebtedness by obtaining a loan from a money-lending institution to prepay the assessment for such bonds.

Notice of the election as given by posting a notice of election in three public places in each election precinct in said district on or before May 21, 1976, being at least four weeks prior to the date set for the election, and publishing

the notice of election in the Post Register, a newspaper published in the District, on May 24, May 31, June 7 and June 14, 1976, and the Shelley Pioneer on June 10, 1976. The election was held on the 24th day of June, 1976, and on June 28, 1976 the Board of Directors of the District canvassed the result of the election and determined that at such election 90 electors voted in favor of proposition A submitted and 37 electors voted against such proposition A. 86 electors voted in favor of proposition B submitted and 43 electors voted against said proposition B.

XIII.

Pursuant to the authorizations of the Act of December 28, 1973 and the State Act, the American Falls Reservoir District, as Constructing Agency designated in the Act of December 28, 1973, has negotiated and has entered into, or, in the case of the "Michaud Division Spaceholder Contract", proposes to enter into, certain contracts to finance and construct the American Falls Replacement Dam Program. Among these contracts are:

A. The Government Contract dated March 31, 1976, between the American Falls Reservoir District and the Secretary of the Interior of the United States, setting forth the obligations of the American Falls Reservoir District and the Secretary of Interior in connection with the financing and construction of the American Falls Replacement Dam Program. (Exhibit 43 admitted in evidence)

B. The contract dated March 31, 1976, between the American Falls Reservoir District and the Idaho Power Company whereby in consideration for the use of the falling water leaving the Replacement Dam, the Idaho Power Company has agreed to make certain

payments over a forty year period in order to pay a portion of the cost of financing and constructing the American Falls Replacement Dam Program ("Falling Water Contract"). (Exhibit 44 admitted in evidence) The Falling Water Contract has been approved by the Secretary of the Interior.

C. The contract dated March 31, 1976, between the American Falls Reservoir District and the Idaho Power Company delineating their respective obligations for the financing, ownership, construction, operation and maintenance of certain Water Quality Facilities included in the American Falls Replacement Dam Program ("Water Quality Facilities Agreement"). (Exhibit 45 admitted in evidence)

D. The ten contracts dated March 31, 1976, among the United States, the American Falls Reservoir District and the A & B Irrigation District, the American Falls Reservoir District No. 2, the Enterprise Irrigation District, the Hillsdale Irrigation District, the Milner Low Lift Irrigation District, the New Sweden Irrigation District, the Poplar Irrigation District, the Progressive Irrigation District, the Snake River Valley Irrigation District, and the Idaho Irrigation District, being the irrigation districts which have joined in this Petition with the American Falls Reservoir District and all of which have rights in the active storage capacity of the Existing Dam, for, among other things, payment by each of such districts of their proportionate share of the cost of financing and constructing the American Falls Replacement Dam Program not paid by the Idaho Power Company pursuant

to the Falling Water Contract ("Irrigation District Spaceholder Contracts"). (Exhibits 46(a) to 46(j), inclusive, admitted in evidence)

E. The contract dated March 31, 1976, among the United States, the American Falls Reservoir District and the Idaho Power Company, in its capacity as a Wateruser, for, among other things, payment by the Idaho Power Company of its proportionate share of the cost of financing and constructing the American Falls Replacement Dam Program not paid by the Idaho Power Company pursuant to the Falling Water Contract ("Idaho Power Spaceholder Contract"). (Exhibit 47 admitted in evidence)

F. The proposed contract between the American Falls Reservoir District and the United States, on behalf of the Michaud Division of the Fort Hall Indian Reservation, for, among other things, payment by the United States of the Michaud Division's proportionate share of the cost of financing and constructing the American Falls Replacement Dam Program not paid by the Idaho Power Company pursuant to the Falling Water Contract ("Michaud Division Spaceholder Contract"). (Exhibit 48 admitted in evidence)

G. The contract dated March 31, 1976, between the United States and the American Falls Reservoir District, in its capacity as a Wateruser, for, among other things, payment by the American Falls Reservoir District of its proportionate share of the cost of financing and constructing the American Falls Replacement Dam Program not paid by the Idaho Power Company pursuant to the Falling Water

Contract ("American Falls Reservoir District Spaceholder Contract"). (Exhibit 49 admitted in evidence)

H. The contracts dated March 31, 1976, among the United States, the American Falls Reservoir District and each of the following Waterusers, to wit: Aberdeen-Springfield Canal Company, Blackfoot Irrigating Company, Butte & Market Lake Canal Company, Corbet Slough Ditch Company, Enterprize Canal Company, Ltd., Harrison Canal & Irrigation Company, North Side Canal Company, Ltd., Rudy Canal Company, Limited, Trego Ditch Company, Clement Brothers, a partnership, Ray B. Andrus, Dilts Irrigation Company, Martin Canal Company and Utah-Idaho Sugar Company, for, among other things, payment by each such Wateruser of its respective proportionate share of the cost of financing and constructing the American Falls Replacement Dam Program not paid by the Idaho Power Company pursuant to the Falling Water Contract ("Non-Irrigation District Spaceholder Contracts"). (Exhibits 50(a) to 50(n), inclusive, admitted in evidence)

The various spaceholder contracts described in sections D through H above are hereinafter collectively referred to as "Spaceholder Contracts". The Spaceholder Contracts are supplemental and in addition to existing contracts and do not alter or change present proportionate storage rights of present spaceholders in the existing American Falls Reservoir and constitute a reaffirmation of existing contract rights, except as authorized by Public Law 93-206, between the United States and the Spaceholders.

XIV.

The American Falls Replacement Dam Program, as authorized to be financed and constructed in Article 10(a) of the Government Contract, consists of: (i) the Replacement Dam, including the reservoir, to be constructed on the Snake River in southern Idaho adjacent to the City of American Falls, Idaho, to replace the Existing Dam, (ii) a two-lane highway on the crest of the Replacement Dam, (iii) a two-lane highway bridge located immediately downstream from the Replacement Dam, (iv) facilities which are required by the United States as a 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 ("Related Facilities"), (v) facilities to be included pursuant to an agreement between the American Falls Reservoir District and the Idaho Fish and Game Department dated July 2, 1974, to mitigate the anticipated loss of existing recreational and fish and wildlife resources ("Recreation and Fish and Wildlife Mitigation Facilities"), and (vi) facilities 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 ("Water Quality Facilities"). In addition the United States is obligated to acquire certain Recreation and Fish and Wildlife Enhancement Facilities.

XV.

Copies of the September 3, 1975 drafts of the various contracts (Exhibit 112) were available for public inspection in the offices of the districts prior to the elections described in Paragraph IX of the Petition, except

that there is a conflict in the evidence as to whether or not copies of the proposed forms of the contracts (Exhibit 112) were on file in the offices of the American Falls Reservoir District No. 2 prior to the election, as stated in the notice of election. However, the evidence is undisputed, that no elector of American Falls Reservoir District No. 2 went to the offices of American Falls Reservoir District No. 2 prior to the election in an attempt to review the forms of contract and there is no evidence that any rights of any elector of American Falls Reservoir District No. 2 were affected by failure to have the forms of contract on file in the district office, even if such were found to be the fact.

XVI.

The addition of Article 17(g) to the Government Contract and the corresponding Article 20(c)(B)(13) to the Spaceholder Contracts, after the elections in the petitioning districts, was intended as a clarification, since the indemnity obligation was already existent in the forms of contracts prior to the addition of Article 17(g) to the Government Contract and Article 20(c)(B)(13) to the Spaceholder Contracts. The contracts, as executed, contain other clarifying revisions to the drafts of September 3, 1976. None of such revisions affect the substantial rights of any Spaceholder, the owner of any land within any area served by a Spaceholder, or impose any greater obligation upon any Spaceholder or landowner.

XVII.

All persons offering to vote at the special contract and assessment elections described in Paragraph IX of the Petition were required to sign an elector's oath in the form of "Exhibit 55" admitted in evidence herein and no person qualified to vote in any of said elections was refused the

right to vote at said election.

XVIII.

All of the Waterusers have entered into Spaceholder Contracts except the following non-participating Waterusers ("Non-Participating Waterusers"): Burgess Canal & Irrigating Company, Burley Irrigation District, Falls Irrigation District, Lenroot Canal Company, Minidoka Irrigation District, Peoples Canal & Irrigation Company, Reid Canal Company, Woodville Canal Company. Under Section 3.4 of the Falling Water Contract, the Idaho Power Company is bound to pay all payments, including penalties and interest, or any portion thereof, at any time in default and due under any Spaceholder Contract and to make all 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 payments becoming due and payable thereunder. In accordance with the re-allocation of costs required by Section 43-2201(e), Idaho Code, the Idaho Power Company is bound to make all payments not made by any Wateruser, all for the purpose of preventing a default in the payment of the principal and interest becoming due on the bonds of the American Falls Reservoir District.

XIX.

The irrigation districts, the boards of directors of which have joined in the filing of the Petition, and the Supplemental Petition, in compliance with the provisions of Section 43-2201, Idaho Code, examined each tract or legal subdivision of land within each of the respective districts and determined the benefits to all such tracts and subdivisions in each of the respective districts based upon the allocation

of the proportionate share of the total estimated cost of financing and constructing the American Falls Replacement Dam Program by the American Falls Reservoir District that made a determination with respect to the proportionate share of the total estimated cost of financing and constructing the American Falls Replacement Dam Program to be paid by each of the respective districts, the secretary of each of the respective districts published and mailed notice to the owners of the lands within each respective irrigation district pursuant to a resolution of each respective irrigation district for the purpose of making an assessment and list and apportionment within each respective irrigation district. Each said board of directors conducted hearings with respect to the assessment and list and apportionment within each respective irrigation district, conducted hearings and heard all parties interested who appeared at each respective hearing and heard all evidence offered including all maps and surveys which any owners of land or other interested parties produced and thereafter pursuant to Idaho Code Section 43-405, each respective irrigation district determined the benefits which will accrue to each of the tracts or subdivisions of land within each of the respective districts by the financing and constructing of the American Falls Replacement Dam Program and each of the respective irrigation districts adopted a resolution and attached to said resolution as an exhibit, a list of the tracts and subdivisions so benefited with the rate of such apportionment entered thereon, each of such lists being incorporated by reference as though set out in full herein:

Name of Irrigation District	Date of Examination, Apportionment, Assessment & Resolution for Hearing	Date Published Notice of Assessment Hearing	Date Mailed Notice of Assessment Hearing	Date of Assessment Hearing	Date of Resolution & List of Tracts & Subdivisions & Assessments Against Each Such Tract & Subdivision
American Falls Reservoir District	Jan. 19, 1976 (Ex. 56)	Feb. 4, 5, 6, 1976 Times News (Ex. 57)	Jan. 30, (Ex. 58)	Feb. 24, 1976	Feb. 24, 1976 (Ex. 59)
A & B Irrigation District	Feb. 9, 1976 (Ex. 60)	Feb. 17, 1976 Minidoka Co. News (Ex. 61)	Feb. 11, 1976 (Ex. 62)	Mar. 9, 10, 22, 1976	Mar. 22, 1976 (Ex. 63)
American Falls Reservoir District No. 2	Feb. 3, 1976 (Ex. 64)	Feb. 5, 1976 Lincoln Co. Journal (Ex. 65)	Feb. 6 - 9, 1976 (Ex. 66)	Feb. 26, 1976	Feb. 26, 1976 (Ex. 67)
Enterprise Irrigation District	Jan. 26, 1976 (Ex. 68)	May 6, 1976 Rexburg Journal (Ex. 69)	May 6, 1976 (Ex. 70)	May 22, 1976	May 22, 1976 (Ex. 71, as amended by Ex. 71A)
Hillsdale Irrigation District	Jan. 19, 1976 (Ex. 72)	Feb. 12, 1976 North Side News (Ex. 73)	Feb. 3, 1976 (Ex. 74)	Feb. 27, 1976	Feb. 27, 1976 (Ex. 75)
Milner Low Lift Irrigation District	Feb. 3, 1976 (Ex. 76)	Feb. 15, 16, 17, 1976 Times News Feb. 16, 17, 18, 1976 South Idaho Press (Ex. 77)	Feb. 13, 1976 (Ex. 78)	Mar. 2, 1976	Mar. 2, 1976 (Ex. 79)
New Sweden Irrigation District	Jan. 20, 1976 (Ex. 80)	Feb. 8, 15, 22, 1976, Post Register (Ex. 81)	Feb. 4, 1976 (Ex. 82)	Feb. 24, 1976	Feb. 24, 1976 (Ex. 83)
Poplar Irrigation District	Mar. 19, 1976 (Ex. 84)	Apr. 5, 11, 18, Post Register (Ex. 85)	Apr. 2, 1976 (Ex. 86)	Apr. 21, 1976	Apr. 21, 1976 (Ex. 87)

Name of Irrigation District	Date of Examination, Apportionment, Assessment & Resolution for Hearing	Date Published Notice of Assessment Hearing	Date Mailed Notice of Assessment Hearing	Date of Assessment Hearing	Date of Resolution & List of Tracts & Subdivisions & Assessments Against Each Such Tract & Subdivision
Progressive Irrigation District	Feb. 7, 1976 (Ex. 88)	Feb. 24, 25, 26, 1976, Post Register (Ex. 89)	Feb. 17, 1976 (Ex. 90)	Mar. 17, 1976	Mar. 17, 1976 (Ex. 91)
Snake River Valley Irrigation District	Feb. 9, 1976 (Ex. 92)	Feb. 12, 1976 Shelley Pioneer (Ex. 93)	Feb. 13, 1976 (Ex. 94)	Mar. 2, 1976	Mar. 2, 1976 (Ex. 95)
Idaho Irrigation District	June 28, 1976 (Ex. 95a)	July 7, 8, 9, 1976 Post Register (Ex. 95b)	July 6, 1976 (Ex. 95c)	July 23, 1976	July 23, 1976 (Ex. 95d)

The Court further finds that the total obligation of the American Falls Reservoir District No. 2, representing its proportionate share of the total cost of engineering, financing, designing, and constructing the American Falls Replacement Dam Program was determined to be the sum of $5,125,707.00. This was the amount approved by the landowners at the election called for the purpose.

The Board of Directors of the District at the hearing on the determination of benefits held and conducted on the 26th day of February, 1976 determined the assessment of benefits and costs to be laid against the respective classification of lands to be as follows:

New Lands	$80.3018 per irrigable acre
Carey Act (Old Lands)	$44.1659 per irrigable acre
River Right Lands	$8.83 to $80.3018 per irrigable acre

After extending said amounts in the Construction Assessment roll, it was determined that the amount of the assessments laid against the lands lying outside of the city limits of the Cities of Gooding, Shoshone, Richfield and

Dietrich were over assessed by .00675%, which error occurred by not taking into account on the original extension the amount of irrigable acres with different water rights lying within the respective city limits.

All assessments of benefits for irrigable lands lying outside of the city limits of the Cities of Gooding, Shoshone, Richfield and Dietrich should be reduced by .00675%.

The Court therefore finds that the correct assessment is as set out immediately hereinabove rather than as provided in the resolution of American Falls Reservoir District No. 2 dated March 26, 1976. (Exhibit 67 admitted in evidence herein).

XX.

The automatic statutory appeals to this court of objections by landowners which were overruled at the assessment hearings held by the respective irrigation districts herein are without merit.

XXI.

One of the requirements of the Act of December 28, 1973, is that a two-lane highway be constructed on the crest of the Replacement Dam and a two-lane highway bridge be constructed immediately downstream from the Replacement Dam. In order to comply with this requirement, the American Falls Reservoir District has entered into an agreement dated November 27, 1974 with the Idaho Department of Highways. An agreement covering maintenance of the roadway and approaches on the Replacement Dam ("Agreement for Right of Way, Operation and Maintenance for Roadway and Approaches on American Falls Dam") is being negotiated among the United States Bureau of Reclamation, the United States Department of Transportation, the Idaho Transportation Department, and the American Falls Reservoir District.

XXII.

As authorized by the State Act, the American Falls Reservoir District has entered into an agreement dated July 2, 1974 with the Idaho State Fish and Game Commission providing for the payment of the costs relating to the mitigation of anticipated loss of existing recreational and fish and wildlife resources ("Recreation and Fish and Wildlife Mitigation Facilities Agreement").

XXIII.

In order to obtain professional engineering services in the planning, design and construction of the Replacement Dam, American Falls Reservoir District was authorized to and has retained the services of Bechtel, Incorporated, an engineering firm based in San Francisco, California. A Technical Services Agreement dated March 5, 1973, and a Contract for Engineering and Construction Management dated March 19, 1976, have been entered into with Bechtel, Incorporated, (Exhibit 97 and 98, respectively, admitted in evidence herein)

XXIV.

The initial series of bonds of the American Falls Reservoir District to pay part of the costs of financing and construction of the American Falls Replacement Dam Program pursuant to Chapter 22 of Title 43, Idaho Code, as amended, are to be issued under and equally and ratably secured by and entitled to the security of an indenture of trust ("Indenture of Trust") to be executed and delivered by the American Falls Reservoir District to Idaho First National Bank, trustee, and pursuant to which all payments due from the Idaho Power Company to the American Falls Reservoir District under the Falling Water Contract and all other payments due from the Spaceholders to the American Falls Reservoir District

under the Spaceholder Contracts, will be assigned to the Trustee to secure the payment of principal of, premium, if any, and interest on the bonds of the American Falls Reservoir District. The Indenture of Trust will provide that the American Falls Reservoir District may issue bonds in addition to the initial Bonds from time to time under certain terms and conditions contained therein. The Indenture of Trust will further provide a description of the revenues and other funds pledged, the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the American Falls Reservoir District and the Trustee, the rights of the holders of the initial bonds, the issuance of additional bonds and the terms on which the bonds are or may be issued and secured and all provisions affecting the holder thereof by the acceptance of one or more of the bonds. The form of Indenture of Trust attached to the Petition as Exhibit 105, is subject to amendment as provided in Article 9.4 of the Falling Water Contract.

XXV.

At the time of the enactment of Public Law 93-206, the preliminary and incomplete estimates of the cost of the replacement dam project had already exceeded the amount of the offer of the Idaho Power Company for the use of the falling water. The legislative history and the Act itself show that the intent of Congress in using the phrase "defray the cost" in Public Law 93-206, was to not require a monetary return from the Falling Water Contract sufficient to pay the full and total cost of the construction of the replacement dam, but that the Spaceholders were to pay the difference.

XXVI.

The evidence fails to show any violation of Article I, Sections 3, 13 or 14; Article III, Sections 1, 16

or 18; Article VIII, Section 4; Article XII, Section 4; or Article XV, Section 4 of the Constitution of the State of Idaho, or of the due process provisions of the Fifth and Fourteenth Amendments to the Constitution of the United States.

XXVII.

Upon completion of the replacement dam, title to the dam will be taken by the United States, and the dam will be operated as a feature of the Minidoka Project, which is a reclamation project operated by the U.S. Department of the Interior. By the terms of Public Law 93-206, the replacement dam will not be administered as a power dam under the jurisdiction of the Federal Power Commission, since the dam itself is not and need not be licensed by the Federal Power Commission.

XXVIII.

There is no evidence of the taking of any property without compensation in violation of the Constitution of the State of Idaho or of the United States.

XXIX.

There is no evidence of collusion, fraud, conspiracy, oppression or concealment in connection with the American Falls Replacement Dam Program.

XXX.

Respondents at the trial offered no evidence, nor did they allege in their Answers and Objections facts sufficient to support certification of the action as a class action, or derivative action. There was no evidence presented that Respondents could adequately represent the interests of any class or any corporation or association. Respondents offered no proof that they had complied with the requirements of Rule 23(b) or 23(f), Idaho Rules of Civil Procedure.

XXXI.

In the proceedings presented to this court for confirmation in this action, Petitioners acted under the authority of Chapter 22 of Title 43, Idaho Code, and not Sections 43-401(A) and 43-404(A).

XXXII.

The notices of election published and posted by Petitioners were sufficiently definite to reasonably apprise the voters of the general nature, purpose, scope and cost of the proposed project. The evidence fails to show any impropriety in the conduct of the elections, or any basis for setting aside any of the elections, or the holding of new elections.

XXXIII.

At the time of the election on the replacement proposal in the American Falls Reservoir District No. 2, Respondent William Kerner was President of that district, and remained President after the election until the Spaceholder Contract was presented To him for signature. Respondent Kerner refused to sign the Contract as President, and the Board of Directors of the American Falls Reservoir District No. 2 thereupon reorganized the Board on March 12, 1976, and elected a new President, who duly signed the Spaceholder Contract.

XXXIV.

The court finds that there were no errors, irregularities or omissions raised at the hearing of the above Petition, which affected the substantial right of any party having an interest in the subject matters alleged in said Petition, that the allegations of the Petition are true, correct and uncontroverted, except as otherwise stated herein, and that the contentions of Respondents have no merit.

From the foregoing amended findings of fact, the Court makes the following:

CONCLUSIONS OF LAW

I.

This court has jurisdiction over the subject matter of this action pursuant to Chapter 22 of Title 43, Idaho Code, as amended.

II.

All parties whose presence is necessary to the determination of this action pursuant to Chapter 22 of Title 43, Idaho Code, as amended, have been named in the petition. The United States, the Idaho Power Company and the Non-participating Waterusers are not indispensable parties to this proceeding.

III.

Chapter 22 of Title 43, Idaho Code, as amended, is the relevant state statutory authority under which Petitioners acted and this court is petitioned to confirm, and Sections 43-401(A) and 43-404(A), Idaho Code, have no application to these proceedings.

IV.

Respondents are appearing herein as individuals and are not proper or adequate representatives of any class, corporation or association. Respondents have not complied with the requirements of Rule 23, Idaho Rules of Civil Procedure, and this action cannot be maintained as a class or derivative action.

V.

The notices, elections, hearings, powers, apportionments, assessments, acts, contracts and proceedings of Petitioners as set forth in the Petition and the foregoing Findings of Fact were in substantial compliance with the

requirements of state and federal law, including but not limited to, P.L. 93-206 and Chapter 22 of Title 43, Idaho Code, as amended.

VI.

Respondents have no standing to represent the petitioning districts in which Respondents reside, or the Non-participating Waterusers or any spaceholder in the American Falls Reservoir.

VII.

The dam under construction at American Falls is a "replacement dam" within the meaning of P. L. 93-206 and the election notices posted and published by Petitioners.

VIII.

The phrase "defray the cost of construction" as used in P. L. 93-206 does not import the meaning of "full and total costs of construction" of the replacement dam project. The apportionment of total project costs as between the Idaho Power Company and the Waterusers is proper and complies with the requirements of P. L. 93-206.

IX.

The allocation by the American Falls Reservoir District of the portion of the cost of the replacement dam project not paid pursuant to the Falling Water Contract to the waterusers is proper and complies with the requirements of Section 43-2201(E), Idaho Code, and P. L. 93-206.

X.

The Spaceholder Contracts are consistent with the existing spaceholder contracts and do not alter or change the proportionate storage rights of the waterusers in the American Falls Reservoir and constitute a reaffirmation and do reaffirm existing contract rights between the Secretary of the Interior and the present Waterusers, except as otherwise

authorized by P. L. 93-206 and do make provision for erosion control.

XI.

The addition of Article 17(g) to the Government Contract and Article 20(c)(B)(13) to the Spaceholder Contracts was clarifying only as to an already existing indemnity obligation and did not substantially impair the rights or increase the monetary obligation of any Wateruser or any elector entitled to vote at any contract and assessment election and did not substantially affect the rights of any Wateruser or elector entitled to vote at any contract and assessment election.

XII.

The contracts, acts and proceedings described in the Findings of Fact and Chapter 22 of Title 43, Idaho Code, as amended, do not violate Article I, Sections 3, 13 or 14; Article III, Sections 1, 16 or 18; Article VIII, Section 4; Article XII, Section 4; or Article XV, Section 4 of the Constitution of the State of Idaho.

XIII.

P. L. 93-206, Chapter 22 of Title 43, Idaho Code, as amended, and the contracts, acts and proceedings described in the Findings of Fact do not violate the due process provisions of the Fifth or Fourteenth Amendments to the Constitution of the United States.

XIV.

The reorganization of the Board of Directors of the American Falls Reservoir District No. 2 on March 12, 1976, was lawful and proper, and within the authority of the Board, and the Spaceholder Contract of American Falls Reservoir District No. 2 was properly executed by the officers of said District.

XV.

Under contracts relating to the use of water from the existing American Falls Reservoir, the Waterusers and landowners therein have no rights to the use of falling water leaving the American Falls Dam for the generation of electric energy nor any valid claim to any revenues that might be produced from the generation of electric energy.

XVI.

Respondents have no vested rights in the water stored in the American Falls Reservoir or in the use of such water for generation of power.

XVII.

The provisions of the Government Contract, the Falling Water Contract and the Spaceholder Contracts, including particuarly provisions of Article 17 of the Government Contract, satisfy the requirements of Section 43-2201(E), Idaho Code, in connection with the reallocation of the balance of the original cost of the project in the event that any wateruser shall fail to execute a Spaceholder Contract.

XVIII.

Chapter 22 of Title 43, Idaho Code, as amended, constitutes full authority for the American Falls Reservoir District to issue interim notes and bonds to pay the cost of financing and constructing the American Falls Replacement Dam and to execute the contracts in connection therewith and to bring this confirmation proceeding.

XIX.

The actions taken by the Poplar Irrigation District in connection with the calling, holding and conduct of the contract and assessment election in the Poplar Irrigation District substantially complied with the requirements of

Chapter 22 of Title 43, Idaho Code, as amended, and any error, irregularity or omission in the conduct of such election did not affect the substantial rights of any elector or landowner in said district or of any of the parties to this proceeding.

XX.

No rights of any elector or landowner within American Falls Reservoir District No. 2 were impaired or adversely affected, whether or not copies of the September 3, 1975, draft of the forms of contracts were on file in the offices of said District.

XXI.

A spaceholders' proportionate share of the cost of the American Falls Replacement Dam Program may be prepaid pursuant to the provisions of Article 23 of the Spaceholder Contracts until 10 days from and after the giving of notice by the American Falls Reservoir District to the Spaceholder of the expiration of the prepayment period.

XXII.

No vested rights of any wateruser or landowner are taken, or authorized to be taken, pursuant to the American Falls Replacement Dam Program without due process of law.

XXIV

No election was, required to be held or conducted pursuant to the provisions of Section 43-2203, Idaho Code, as amended, for the issuance of bonds by the American Falls Reservoir District to pay the cost of financing and constructing the American Falls Replacement Dam Program, and this provision of law does not violate the due process of law provisions of Article I, Section 13, of the Idaho Constitution.

XXIV.

The notices, elections, apportionments, assessments

and execution of contracts pursuant to Chapter 22 of Title 43, Idaho Code, and Public Law 93-206 have not taken, nor authorized the taking, of any property without just compensation in violation of the Constitution of the United States or the State of Idaho.

XXV.

The resolution of November 4, 1975, was a proper exercise of authority by the Board of Directors of the American Falls Reservoir District and delegation of the fact-finding duty of public interest and necessity to said Board was not an unconstitutional delegation of power.

XXVI.

Electors in each of the petitioning districts voted by over a two-thirds majority in favor of the contracts and assessments. The election notices, proceedings were in compliance with the requirements of applicable law, and no impropriety existed in the conduct of such elections.

XXVII.

All appeals to this court by landowners who made objections which were overruled at the assessment hearings held by the respective petitioning irrigation districts herein, are without merit, and are hereby dismissed.

XXVIII.

There were no errors, irregularities or omissions relating to the matters alleged in the Petition on file herein which affect the substantial rights of any of the parties interested in any of the matters alleged in the Petition.

XXIX.

Petitioners are entitled to a judgment and decree approving and confirming all of the powers, assessments, apportionments, acts, proceedings, contracts, and prospective

contracts with respect to the replacement of the American Falls Dam and Reservoir.

XXX.

The decree shall not be deemed to affect any existing rights of the Non-participating Waterusers named in the Findings of Fact under existing contracts of said Non-participating Waterusers with the United States relating to the use of water stored in the American Falls Reservoir, or any other reservoir in which Burley Irrigation District may have an interest.

XXXI.

The right to issue and sell the bonds of the American Falls Reservoir District in an amount not to exceed $44,750,000 as necessary to pay the cost of financing and constructing the American Falls Reservoir District, said bonds to be payable from payments due from the Idaho Power Company under the Falling Water Contract and all other payments due from the spaceholders under the Spaceholder Contracts, including assessments levied by the petitioners as hereinabove approved, was and is lawful and within the powers of the Board of Directors of American Falls Reservoir District and said bonds, when issued, will be legal, binding and valid obligations of said District, payable in accordance with their terms from the revenues and assessments pledged thereto by the American Falls Reservoir District.

XXXII.

The appeals of objections overruled at assessment hearings should be dismissed with prejudice.

XXXIII.

All of the negotiations, proceedings and steps taken by the petitioners in connection with the acts, contracts, assessments and proceedings of the Petitioners as

contracts with respect to the replacement of the American Falls Dam and Reservoir.

XXX.

The decree shall not be deemed to affect any existing rights of the Non-participating Waterusers named in the Findings of Fact under existing contracts of said Non-participating Waterusers with the United States relating to the use of water stored in the American Falls Reservoir, or any other reservoir in which Burley Irrigation District may have an interest.

XXXI.

The right to issue and sell the bonds of the American Falls Reservoir District in an amount not to exceed $44,750,000 as necessary to pay the cost of financing and constructing the American Falls Reservoir District, said bonds to be payable from payments due from the Idaho Power Company under the Falling Water Contract and all other payments due from the spaceholders under the Spaceholder Contracts, including assessments levied by the petitioners as hereinabove approved, was and is lawful and within the powers of the Board of Directors of American Falls Reservoir District and said bonds, when issued, will be legal, binding and valid obligations of said District, payable in accordance with their terms from the revenues and assessments pledged thereto by the American Falls Reservoir District.

XXXII.

The appeals of objections overruled at assessment hearings should be dismissed with prejudice.

XXXIII.

All of the negotiations, proceedings and steps taken by the petitioners in connection with the acts, contracts, assessments and proceedings of the Petitioners as

set forth in the Petition were properly and lawfully taken pursuant to authorization by the laws of the State of Idaho and of the United States, and that said acts, contracts, assessments and proceedings are valid and binding according to their tenor and terms. Let judgment be entered accordingly.

DATED this 12th day of May, 1977.

District Judge

set forth in the Petition were properly and lawfully taken pursuant to authorization by the laws of the State of Idaho and of the United States, and that said acts, contracts, assessments and proceedings are valid and binding according to their tenor and terms. Let judgment be entered accordingly.

DATED this 12th day of May, 1977.

District Judge

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

'77 MAY 18 PM 4:03

BY GARY WHITWELL
CLERK
DEPUTY CLERK

36-1241

Judgment Book 36 Page 1380

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

* * * * * *

In the Matter of the PETITION OF THE BOARDS OF DIRECTORS OF THE AMERICAN FALLS RESERVOIR DISTRICT, A & B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR DISTRICT No. 2, ENTERPRISE IRRIGATION DISTRICT, HILLSDALE IRRIGATION DISTRICT, MILNER LOW LIFT IRRIGATION DISTRICT, NEW SWEDEN IRRIGATION DISTRICT, POPLAR IRRIGATION DISTRICT, PROGRESSIVE IRRIGATION DISTRICT, AND SNAKE RIVER VALLEY IRRIGATION DISTRICT, IRRIGATION DISTRICTS EXISTING UNDER THE LAWS OF THE STATE OF IDAHO, PETITIONERS, AND IDAHO IRRIGATION DISTRICT, SUPPLEMENTAL PETITIONER	AMENDED JUDGMENT AND DECREE OF CONFIRMATION Civil No. 28378

* * * * * *

The Court having heretofore made and entered Amended Findings of Fact and Conclusions of Law, and being fully advised in the premises, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The right to execute and the execution of the following contracts was and is lawful and within the powers of the petitioners and said contracts are valid, to-wit: The Government Contract dated March 31, 1976, between American Falls Reservoir District and the Secretary of the Interior; the Falling Water Contract dated March 31, 1976, between the

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American Falls Reservoir District and the Idaho Power Company; the Water Quality Facilities Agreement dated March 31, 1976, between the American Falls Reservoir District and the Idaho Power Company; the ten Irrigation District Spaceholder Contracts dated March 31, 1976, among the United States, the American Falls Reservoir District and the A & B Irrigation District, the American Falls Reservoir District No. 2, the Enterprise Irrigation District, the Hillsdale Irrigation District, the Milner Low Lift Irrigation District, the New Sweden Irrigation District, the Poplar Irrigation District, the Progressive Irrigation District, the Snake River Valley Irrigation District, and the Idaho Irrigation District; the Idaho Power Company Spaceholder Contract dated March 31, 1976, among the United States, the American Falls Reservoir District and the Idaho Power Company; the proposed contract between the American Falls Reservoir District and the United States on behalf of the Michaud Division of the Fort Hall Indian Reservation; the American Falls Reservoir District Spaceholder Contract dated March 31, 1976, between the United States and the American Falls Reservoir District; the 14 Non-Irrigation District Spaceholder Contracts dated March 31, 1976, among the United States, the American Falls Reservoir District and Aberdeen-Springfield Canal Company, Blackfoot Irrigating Company, Butte & Market Lake Company, Corbet Slough Ditch Company, Enterprize Canal Company, Ltd., Harrison Canal & Irrigation Company, North Side Canal Company, Ltd., Rudy Canal Company, Limited, Trego Ditch Company, Clement Brothers, a partnership, Ray B. Andrus, Dilts Irrigation Company, Martin Canal Company, and Utah-Idaho Sugar Company; the contract dated November 27, 1974, between the American Falls Reservoir District and the Idaho Department of Highways; the proposed agreement for Right-of-Way, Operation and

Maintenance for Roadway and Approaches on American Falls Dam contemplated to be entered into among the United States Bureau of Reclamation, the United States Department of Transportation, the Idaho Transportation Department and the American Falls Reservoir District; the Recreation and Fish and Wildlife Mitigation Facilities Agreement dated July 2, 1974, between the American Falls Reservoir District and the Idaho State Fish and Game Commission; the Technical Services Agreement dated March 5, 1973, and the Contract for Engineering and Construction Management dated March 19, 1976, between the American Falls Reservoir District and Bechtel, Incorporated; a proposed form of Indenture of Trust proposed to be executed between the American Falls Reservoir District and the Idaho First National Bank, as trustee (Exhibit 105 to the petition).

2. The apportionment of costs of the American Falls Replacement Dam Program as set forth in the proceedings of the American Falls Reservoir District taken on November 4, 1975 (Exhibit 1) and the assessments imposed and to be collected by the Petitioners on the lands in the petitioning districts as set forth in the following exhibits, which are hereby incorporated by reference as though set out in full herein:

In the American Falls Reservoir District on February 24, 1976, pursuant to resolution adopted on February 24, 1976 (Exhibit 59) over the lands set forth in Exhibit 59;

in the A & B Irrigation District on March 9, 1976, pursuant to resolution adopted on March 9, 1976 (Exhibit 63) over the lands set forth in Exhibit 63;

in the American Falls Reservoir District No. 2 on February 26, 1976, pursuant to resolution adopted on February 26, 1976 (Exhibit 67) over the lands set forth in Exhibit 67;

in the Enterprise Irrigation District on May 22, 1976,

pursuant to resolution adopted on May 22, 1976 (Exhibit 71) over the lands set forth in Exhibit 71, as amended by Exhibit 71A; in the Hillsdale Irrigation District on February 27, 1976, pursuant to resolution adopted on February 27, 1976 (Exhibit 75) over the lands set forth in Exhibit 75; in the Milner Low Lift Irrigation District on March 2, 1976, pursuant to resolution adopted on March 2, 1976 (Exhibit 79) over the lands set forth in Exhibit 79; in the New Sweden Irrigation District on February 24, 1976, pursuant to resolution adopted on February 24, 1976 (Exhibit 83) over the lands set forth in Exhibit 83; in the Poplar Irrigation District on April 21, 1976, pursuant to resolution adopted on April 21, 1976 (Exhibit 87) over the lands set forth in Exhibit 87a; in the Progressive Irrigation District on March 17, 1976, pursuant to resolution adopted on March 17, 1976 (Exhibit 91) over the lands set forth in Exhibit 91; in the Snake River Valley Irrigation District on March 2, 1976, pursuant to resolution adopted on March 2, 1976 (Exhibit 95) over the lands set forth in Exhibit 95; in the Idaho Irrigation District on July 23, 1976, pursuant to resolution adopted on July 23, 1976 (Exhibit 95d) over the lands set forth in Exhibit 95d; are hereby ratified, approved and confirmed and the levy and collection of said assessments is hereby lawful and within the powers of the Petitioners.

2A. The Board of Directors of the American Falls Reservoir District No. 2 shall correct the assessments on irrigable lands within the District lying outside of the Cities of Gooding, Shoshone, Richfield and Dietrich, shown in Exhibit 67, by reducing said assessments by 0.00675%, and as so corrected, the assessments made by the Board of Directors

of American Falls Reservoir District No. 2 on February 26, 1976, are hereby ratified, approved and confirmed.

3. All persons interested who have not herein appeared are deemed to have admitted all the material allegations of the Petition, and this decree shall be in full force and effect as to such persons, the parties to this action, and the lands within the petitioning districts.

4. This decree shall not be deemed to affect any existing rights of the Non-participating Waterusers named in the Findings of Fact under existing contracts of said Non-participating Waterusers with the United States relating to the use of water stored in the American Falls Reservoir, or any other reservoir in which Burley Irrigation District may have an interest.

5. The right to issue and sell the bonds of the American Falls Reservoir District in an amount not to exceed $44,750,000 as necessary to pay the cost of financing and constructing the American Falls Reservoir District, said bonds to be payable from payments due from the Idaho Power Company under the Falling Water Contract and all other payments due from the spaceholders under the Spaceholder Contracts, including assessments levied by the Petitioners as hereinabove approved, was and is lawful and within the powers of the Board of Directors of American Falls Reservoir District and said bonds, when issued, will be legal, binding and valid obligations of said District, payable in accordance with their terms from the revenues and assessments pledged thereto by the American Falls Reservoir District.

6. The Answers and Objections of Respondents and the appeals of objections overruled at assessment hearings are hereby dismissed with prejudice.

7. All of the negotiations, proceedings and

steps taken by the Petitioners in connection with the acts, contracts, assessments and proceedings of the Petitioners as set forth in the Petition were properly and lawfully taken pursuant to authorization by the laws of the State of Idaho and of the United States, and that said acts, contracts, assessments and proceedings are valid and binding according to their tenor and terms.

8. The parties hereto shall bear their own costs.

DATED this 22nd day of May, 1977.

District Judge

Exhibit 41

Transcript on Appeal, Kerner v. Johnson, 99 Idaho 433, 583 P.2d 360 (1978)

IN THE SUPREME COURT OF THE STATE OF IDAHO

* * * * * * * * * * * * * *

In the Matter of the PETITION OF THE BOARDS OF DIRECTORS OF THE AMERICAN FALLS RESERVOIR DISTRICT, A & B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR DISTRICT NO. 2, ENTERPRISE IRRIGATION DISTRICT, HILLSDALE IRRIGATION DISTRICT, MILNER LOW LIFT IRRIGATION DISTRICT, NEW SWEDEN IRRIGATION DISTRICT, POPLAR IRRIGATION DISTRICT, PROGRESSIVE IRRIGATION DISTRICT, AND SNAKE RIVER VALLEY IRRIGATION DISTRICT, IRRIGATION DISTRICTS EXISTING UNDER THE LAWS OF THE STATE OF IDAHO, PETITIONERS	)
And	)
IDAHO IRRIGATION DISTRICT, SUPPLEMENTAL PETITIONER.	)

T R A N S C R I P T O N A P P E A L

Fifth Judicial District

Twin Falls County

HON. THERON W. WARD
HON. ALFRED C. HAGAN

District Judges

Appearances:

MESSRS. PARRY, ROBERTSON, DALY & LARSON, Attorneys at Law, P. O. Box 525, Twin Falls, Idaho,

MESSRS. LING & NIELSEN, Attorneys at Law, P. O. Box 396, Rupert, Idaho,

MESSRS. JAMES, HOBDEY & VARIN, Attorneys at Law, P. O. Box 176, Gooding, Idaho,

Attorneys for Petitioners-Respondents.

MESSRS. ANNEST & ANDERSON, Attorneys at Law, P. O. Box 686, Burley, Idaho,

Attorneys for Respondents-Appellants.

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* * * * * * * * * * * * * * * * *

Exhibit 42

Answers and Objections of Idaho Power Company to Plaintiff's First Request for Admissions at 56–56, Kerner v. United States, CV. No. 1-76-204 (D. Idaho July 25, 1978)

John S. Simko
ELAM, BURKE, JEPPESEN, EVANS & BOYD
1010 BANK OF IDAHO BUILDING
P. O. BOX 1559 BOISE, IDAHO 83701
AREA CODE 208 343-5454

Attorneys for Idaho Power Company

U. S. DISTRICT COURT
DISTRICT OF IDAHO
Filed at 4:30 P.M
JUL 25 1978
JERRY L. CLAPP, Clerk
BY Deputy

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

WILLIAM KERNER, CHARLES BARNES, LYNN MEACHAM and FRED STEWART, on behalf of themselves and on behalf of ALL OTHER OWNERS or Holders of Evidence of Title to Lands located and subject to assessment within the Boundaries of AMERICAN FALLS RESERVOIR DISTRICT NO. 2, who are similarly situated;

AND

DEL HIATT, on behalf of himself and on behalf of ALL OTHER OWNERS or Holders of Capital Stock in the NORTH SIDE CANAL COMPANY, and/or who are owners of Title or Holders of Evidence of Title to Lands located and subject to assessments within the Boundaries of the AMERICAN FALLS RESERVOIR DISTRICT who are similarly situated;

Plaintiffs,

v.

UNITED STATES OF AMERICA; and CECIL ANDRUS, SECRETARY OF THE INTERIOR; and KEITH HIGGINSON, COMMISSIONER OF THE BUREAU OF RECLAMATION, UNITED STATES DEPARTMENT OF INTERIOR; and

AMERICAN FALLS RESERVOIR DISTRICT, an existing irrigation district organized under the laws of the State of Idaho; JOHN M. BARBER, MERL E. LEONARD, TOM OLMSTEAD, FRANK W. GRAVES, DALE DEPEW, RUSSELL WOOLLEY and ARMIN H. SCHROEDER, individually and as Members of the Board of Directors of American Falls Reservoir District; and

Case No. 1-76-204

ANSWERS AND OBJECTIONS OF IDAHO POWER COMPANY TO PLAINTIFFS' FIRST REQUEST FOR ADMISSIONS

MAIL 104519

THE IDAHO POWER COMPANY, a Maine corporation; and

A & B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR DISTRICT NO. 2, BURLEY IRRIGATION DISTRICT, ENTERPRISE IRRIGATION DISTRICT, FALLS IRRIGATION DISTRICT, HILLSDALE IRRIGATION DISTRICT, IDAHO IRRIGATION DISTRICT, MILNER LOW LIFT IRRIGATION DISTRICT, MINIDOKA IRRIGATION DISTRICT, NEW SWEDEN IRRIGATION DISTRICT, POPLAR IRRIGATION DISTRICT, PROGRESSIVE IRRIGATION DISTRICT, and SNAKE RIVER VALLEY IRRIGATION DISTRICT, all existing irrigation districts organized under the laws of the State of Idaho; and

ABERDEEN-SPRINGFIELD CANO COMPANY, BLACKFOOT IRRIGATION COMPANY, BURGESS CANAL & IRRIGATION COMPANY, BUTTE & MARKET LAKE CANAL COMPANY, CORBET SLOUGH DITCH COMPANY, DILTS IRRIGATION COMPANY, LTD., ENTERPRIZE CANAL COMPANY, LTD., HARRISON CANAL & IRRIGATION COMPANY, LENROOT CANAL COMPANY, MARTIN CANAL COMPANY, NORTH SIDE CANAL COMPANY, LTD., PEOPLES CANAL & IRRIGATION COMPANY, THE REID CANAL COMPANY, RUDY CANAL COMPANY, LTD., TREGO DITCH COMPANY, TWIN FALLS CANAL COMPANY, and WOODVILLE CANAL COMPANY, all existing water and canal companies organized under the laws of the State of Idaho; and

RAY B. ANDRUS, individually; and

CLEMENT BROTHERS, a partnership, consisting of John Doe Clement and Richard Row Clement; and

MICHAUD DIVISION, FORT HALL INDIAN RESERVATION; and

UTAH-IDAHO SUGAR COMPANY, a Utah corporation organized under the laws of the State of Utah and licensed to do business in Idaho as a foreign corporation; and

BALL CONSTRUCTION COMPANY, a corporation licensed to do business in Idaho as a foreign corporation; and

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JOHN DOES, Nos. 1 through 15,

Defendants,

AND

MINIDOKA IRRIGATION DISTRICT,

Third-Party Plaintiff and Cross-Claimant,

v.

UNITED STATES OF AMERICA; and CECIL ANDRUS, SECRETARY OF THE INTERIOR; and KEITH HIGGINSON, COMMISSIONER OF THE BUREAU OF RECLAMATION, UNITED STATES DEPARTMENT OF INTERIOR; AMERICAN FALLS RESERVOIR DISTRICT; and THE IDAHO POWER COMPANY, a Maine corporation,

Third-Party Defendants and Cross-Claimants.

ANSWERS AND OBJECTIONS OF IDAHO POWER TO PLAINTIFFS' FIRST REQUEST FOR ADMISSIONS

COMES NOW The defendant Idaho Power Company by and through its counsel and hereby makes the following responses, answers and objections to the plaintiffs' First Request for Admissions:

I.

GENERAL OBJECTIONS

A. The defendant Idaho Power Company (hereinafter "Idaho Power") objects to the plaintiffs' First Request for Admissions to the defendant Idaho Power on the grounds that on certain matters set forth in those requests for admissions, which involve matters which have previously been decided in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls (hereinafter "State Court") in the Civil Action No. 28378 entitled: In the Matter of the Petition of the Board of Directors of the American Falls Reservoir District, et al.,

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(hereinafter "Confirmation Action") in which the plaintiffs William Kerner, Charles Barnes and Del Hiatt were respondents thereto, and those plaintiffs, along with all plaintiffs, are bound by the determinations made by that State Court in its Amended Findings of Fact and Conclusions of Law filed on May 18, 1977, (hereinafter "Findings of Facts and Conclusions of Law"). Any and all Findings of Facts and Conclusions of Law made by that State Court are binding upon the plaintiffs and cannot be waived by the parties to this action. To the degree any of the plaintiffs' Requests for Admissions involve matters previously determined by the State Court, the plaintiffs are bound by that determination and are foreclosed from seeking Idaho Power or others of the defendants to admit any matters previously determined.

B. The defendant Idaho Power previously filed an Answer to the Amended Complaint filed by the plaintiffs. The plaintiffs' First Request for Admissions merely restates allegations made in the Amended Complaint which have been answered by the defendant Idaho Power. The plaintiffs' First Request for Admissions should be stricken as a burdensome and harassing attempt to force the defendant Idaho Power and other defendants to again answer or admit various contested matters which are without dispute, matters which cannot be and have not been admitted by the defendants.

C. The plaintiffs, in drafting their First Request for Admissions, have failed to follow Official Form 25 pertinent to the Federal Rules of Civil Procedure. They have failed to comply with the requirements of Rule 36 and 84 of the Federal Rules of Civil Procedure requiring them to set forth a sufficient request for admissions which complies with the

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simplicity, and brevity of statement which the Federal Rules of Civil Procedure contemplate. More specifically, the defendant Idaho Power objects as to all 144 Requests for Admissions, made by the plaintiffs, such Requests for Admissions being subject to the provisions of § 36 of the Federal Rules of Civil Procedure, and that any admissions made by any defendant in this action are admissions for the purpose of this action only, and subject to all pertinent objections to admissibility which may be interposed at trial. Accordingly, in responding to the plaintiffs' First Request for Admissions, the defendant Idaho Power does not waive its right and hereby states that any admissions set forth herein is for the purposes of this action only and subject to all pertinent objections to admissibility which may be interposed at trial. Further, as to the form of the plaintiffs' First Request for Admissions, the defendant Idaho Power specifically states that the request made of the defendants in the plaintiffs' First Request for Admissions is solely "to admit the following facts", and accordingly, the plaintiffs have not requested and thereby have waived, pursuant to the very language set forth in their Request for Admissions, any admission by the defendant Idaho Power of any opinions of fact, statements of fact or application of law to fact. The defendant Idaho Power objects to the plaintiffs' interpreting any matter set forth herein as an admission of statements or opinions of fact or of any application of law to fact, since the plaintiffs have not so requested defendants to so admit, but have only requested the defendants to admit facts.

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II.

ANSWERS AND OBJECTIONS TO PLAINTIFFS' REQUEST FOR ADMISSIONS.

REQUEST FOR ADMISSIONS NO. 1: Admit that the North Side Canal Company is a component member of, and the lands of its stockholders are located within the boundaries of American Falls Reservoir District.

ANSWER TO REQUEST FOR ADMISSIONS NO. 1: The defendant Idaho Power admits parts of the land in the North Side Canal Company are in American Falls Reservoir District (hereinafter "AFRD") and that some of the land in the North Side Canal Company is in Hillsdale Irrigation District, and therefore, all of the North Side Canal Company lands are in either American Falls Reservoir District No. 1 or Hillsdale Irrigation District. The term "component member" has not been defined by the plaintiffs, and since certain of the lands of the North Side Canal Company are not located within the American Falls Reservoir District, if the term "component member" is interpreted to mean a canal company wholly within an irrigation district, then the North Side Canal Company is not a "component member" having lands wholly within that irrigation district. The defendant Idaho Power admits the North Side Canal Company is a canal company which has certain lands within the irrigation district. As to remaining matters set forth in Request for Admissions No. 1, the defendant Idaho Power denies same.

REQUEST FOR ADMISSIONS NO. 2: Admit that the plaintiffs, along with the persons, firms, business organizations and associations represented by them, own lands to which there is appurtenant permanent and vested water rights acquired by purchase and owned by them by virtue of the authority of the

Reclamation Acts of 1902 and Acts amendatory and supplementary thereto and by dedication through application of said waters to a beneficial use upon their respective lands for the purpose of irrigation.

ANSWER TO REQUEST FOR ADMISSIONS NO. 2: The defendant Idaho Power admits that various irrigation districts named in or associated with this litigation own certain "water rights" and have contracts to deliver water to landowners. Other than as specifically admitted, the defendant Idaho Power denies that the individually named plaintiffs, along with persons, firms, businesses organizations and associations which they purportedly represent as alleged in the Amended Complaint, with the exception of irrigation districts or other persons who have entered into appropriate contracts with the United States of America, own land to which there is appurtenant any permanent and vested water rights acquired by purchase and owned by them by virtue of the authority of the Reclamation Act of 1902 and acts amendatory and supplementary thereto, and by the dedication through application of said water to the beneficial use upon their respective lands for the purpose of litigation. Except as specifically admitted, all other matters in this Request for Admissions are denied.

REQUEST FOR ADMISSIONS NO. 3: Admit that the water rights of the plaintiff, William Kerner, were acquired by him and his predecessors in interest under and by virtue of a Decree of Water Rights in the Big Wood River and its tributaries in Blaine and Lincoln Counties, Idaho, entered in that certain action entitled S. C. Frost, et al., Plaintiffs, vs. Alturas Water Company, et al., Defendants, in the then, District Court of the Fourth Judicial District of the

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State of Idaho, in and for the County of Lincoln, by presiding District Judge Alfred Budge, entered on December 13, 1909.

ANSWER TO REQUEST FOR ADMISSIONS NO. 3: The defendant Idaho Power objects to the Request for Admissions No. 3 since it requests an interpretation of purported rights granted pursuant to a decree entered by the State Court of Idaho and the plaintiffs have failed to present to the defendants, including the defendant Idaho Power, with the complete court file and all pleadings and other documents evidencing the rights of the plaintiff Kerner referred to in Exhibits 22 and 23 to the Amended Complaint. The legal conclusions sought by the Request for Admissions No. 3 are improper and inappropriate subject matters of the plaintiffs' First Request For Admissions which, as noted above, only requests the defendant Idaho Power to admit facts. To the best of the defendant Idaho Power's information and belief, having made reasonable inquiry, any rights of the plaintiff, William Kerner, and his predecessors were not acquired in the action entitled S. C. Frost, et al., Plaintiffs, vs. Altural Water Company, et al., Defendants, but were acquired from another source in connection with the Big Wood Canal. The defendant Idaho Power will, however, admit subject to and conditioned upon the satisfactory presentation of the original Exhibits 22 and 23 to the Amended Complaint that defendant Kerner's land purports to be in that area served by the "Big Wood" and "Magic" Reservoirs in the American Falls Reservoir District No. 2, (hereinafter "AFRD No. 2") which water is known to the defendant Idaho Power to be exchanged subject to and being responsible for AFRD No. 2 assessments. Accordingly, provided that the plaintiff

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William Kerner's land is so situated in those lands and served by the "Big Wood" and "Magic" Reservoirs, and provided that the plaintiff Kerner appropriately pays all assessments levied by AFRD No. 2 including the assessments made pursuant to the American Falls Replacement Dam Program, the defendant Idaho Power admits that the plaintiff Kerner would have all benefit to the decrees referred to in Request for Admissions No. 3.

REQUEST FOR ADMISSIONS NO. 4: Admit that the water rights owned by the plaintiff Kerner, were distributed by the Big Wood River Canal Company and were included as part of the waters exchange, covered by the contract between the American Falls Reservoir District No. 2 and the United States Government, dated the 21st day of September, 1927.

ANSWER TO REQUEST FOR ADMISSIONS NO. 4: The defendant Idaho Power admits that the plaintiff Kerner was distributed certificated water by the Big Wood River Canal Company which water was included in an exchange covered by the September 21, 1927, contract between the American Falls Reservoir District No. 2 and the U. S. Government.

REQUEST FOR ADMISSIONS NO. 5: Admit that the storage space for the waters, referred to herein, is in the Reservoir of American Falls Dam located at American Falls, Power and Bingham Counties, Idaho.

ANSWER TO REQUEST FOR ADMISSIONS NO. 5: The defendant Idaho Power admits the matters set forth in this Request.

REQUEST FOR ADMISSIONS NO. 6: Admit that all waters and storage space referred to above were acquired by contract between the respective defendant irrigation districts, companies and persons with the United States of America, acting through the Secretary of Interior, Bureau of Reclamation or his authorized representatives.

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ANSWER TO REQUEST FOR ADMISSIONS NO. 6: The defendant Idaho Power only admits that the relevant irrigation districts, companies or other persons who have specifically entered into contracts with the United States of America acting through the Secretary of the Interior, Bureau of Reclamation, or his/her authorized representative acquire, pursuant to said contracts, storage space in any relevant Reservoir created under the Reclamation Act, and specifically deny any such contract granted any person, even irrigation districts, rights and interests in any waters referred to therein. The defendant Idaho Power further states that in Request for Admissions No. 6, the plaintiffs do not make clear as to what is meant by the term "referred to above." The plaintiffs having not defined or properly phrased this Request for Admissions, the defendant Idaho Power must assume that the storage space "referred to above" in Request for Admissions No. 6 refers to storage space in a reservoir similar in purpose and creation to that of the Reservoir of the American Falls Dam. Except as specifically admitted, the remainder of this Request for Admissions is denied.

REQUEST FOR ADMISSIONS NO. 7: Admit that the representative plaintiffs, and all persons similarly situated, have entrusted to the respective defendant irrigation districts the management of said rights, which said districts hold the water and contractual rights of its members in trust for the benefit of their respective members.

ANSWER TO REQUEST FOR ADMISSIONS NO. 7: The defendant Idaho Power admits that (1) the respective irrigation districts referred to are entrusted with the management and ownership of the relevant rights to the storage space in the relevant reservoir, and (2) these irrigation districts act,

pursuant to appropriate statutory legislation established by the State of Idaho, for the purpose of ownership and management of the storage space to said reservoir and distribution of any water flowing thereby to landowners. Accordingly, any fiduciary duties owed by these irrigation districts to their water users arise pursuant to the laws of the State of Idaho and the contracts relevant thereto. The defendant Idaho Power further objects to this Request for Admissions because it does not request an admission of fact, which specifically stated to be the purpose of these Requests for Admissions by the plaintiffs, but rather requests an admission of a legal conclusion.

REQUEST FOR ADMISSIONS NO. 8: Admit that the representative plaintiffs, and all persons similarly situated, have entrusted to the respective defendant irrigation districts the management of said rights, which said districts hold the water and contractual rights of its members in trust for the benefit of their respective members.

ANSWER TO REQUEST FOR ADMISSIONS NO. 8: The defendant Idaho Power admits, to the extent each of the districts and canal companies in which the lands of the plaintiffs are located have executed spaceholder contracts dated as of March 31, 1976, (hereinafter referred to as "Spaceholder Contract") that those districts and canal companies contracted with American Falls Reservoir District concerning the American Falls Replacement Dam Program as authorized by Public Law 93-206. As to the remaining matters set forth in the Request for Admissions No. 8, the defendant Idaho Power denies the same, and specifically states Public Law 93-206 was not enacted as a "Power Act of the United States of America" but was enacted by the Congress of the United States for the

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purposes set forth in that Public Law, and that, pursuant to the Government Contract between the United States of America and the American Falls Reservoir District for the Construction, Operation and Maintenance of the American Falls Replacement Dam Program, dated as of March 31, 1976, (hereinafter referred to as "Government Contract") that upon substantial completion of the American Falls Replacement Dam, pursuant to Public Law 93-206 as set forth in the Government Contract, title to the Replacement Dam will pass to the United States and it is "to be operated and maintained primarily for the furnishing of water for irrigation purposes as a feature of the Minidoka Project", as set forth in Paragraph No. 4 of the Explanatory Recital contained in the Government Contract.

REQUEST FOR ADMISSIONS NO. 9: Admit that the number of persons represented are so numerous that it would be impractical to join all members as plaintiffs.

ANSWER TO REQUEST FOR ADMISSIONS NO. 9: The defendant Idaho Power admits that there are at least five persons, namely the named plaintiffs, who have brought this action by filing the Amended Complaint. However, defendant Idaho Power was unable to obtain any information, despite reasonable inquiry and effort by the defendant Idaho Power as to how many other persons or entities exist of a like mind with the plaintiffs and would properly be represented by the plaintiffs and to what degree it would be impractical to join all of such persons as plaintiffs and therefore, deny that it would be impractical to effect such a joinder. Defendant Idaho Power further objects to this Request for Admission because it calls for a legal conclusion based upon facts not set forth in the Request for Admission and not known or capable of being known by the Defendant Idaho Power.

REQUEST FOR ADMISSIONS NO. 10: Admit that the legal rights of all are similarly affected.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSION NO. 10:

The defendant Idaho Power denies that the legal rights of "all" are similarly affected. The defendant Idaho Power in its discovery to date has been informed that the plaintiffs have varied legal rights and own various amounts of land, some in excess of 160 acres, others less than 160 acres. Some named plaintiffs voted for the American Falls Replacement Dam Program in the Contracts Election held on January 12, 1976, others voted against the project. Some named plaintiffs have received no water from the American Falls Reservoir. Others have received water from the American Falls Reservoir. Despite reasonable inquiry and effort by the defendant Idaho Power as to the factual basis of this requested admission, the defendant Idaho Power has found no factual support for this Request for Admissions. Further, the defendant Idaho Power objects to this Request for Admissions since it calls for a legal conclusion, and also since the plaintiffs have failed to define who, if anyone else, precisely is included in the term "all".

REQUEST FOR ADMISSIONS NO. 11: Admit that there are questions of fact law and damages common to all members of the class stated in Request for Admissions No. 9.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 11:

The defendant Idaho Power denies the Admission sought by Request for Admissions No. 11 and incorporates by reference its Answers and Objections to Request for Admissions No. 10. Certain defendant irrigation districts, canal companies and other persons have entered into spaceholder contracts as set forth above while other such entities have not executed

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spaceholder contracts, and accordingly, in this fact alone, there exist various questions of fact, law and alleged damages, not common to all or any members of the alleged class. Further, plaintiffs have failed to adequately identify the members of the alleged class. Accordingly, the defendant Idaho Power objects to this Request for Admission, because the plaintiffs have filed to properly set forth in their Request for Admissions appropriate facts necessary to predicate any legal conclusion or opinion, and further object to this Request for Admission because it calls for a legal conclusion.

REQUEST FOR ADMISSIONS NO. 12: Admit that the claims of the individual plaintiffs are typical of the claims of the class, referenced in Request for Admissions No. 9.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 12: The defendant Idaho Power, in response to this Request for Admissions incorporates by reference its Answers and Objections to the Request for Admissions No. 9, 10 and 11 as if specifically set forth herein as an Answer and Objection and denies Request for Admission No. 12. The claims of the individual plaintiffs are not typical of any purported claims of the class. Individual plaintiffs, by their actions, have seriously prejudiced the rights and interests of water users, irrigation districts, canal companies and other persons with regard to the American Falls Replacement Dam Program and have caused serious prejudice, cost and damage to various individuals and entities including the defendant Idaho Power all of which preclude the plaintiffs from being proper class representatives or from being able to bring a derivative action.

REQUEST FOR ADMISSIONS NO. 13: Admit that the interests of the class members (as referenced in Request for Admissions

No. 9), will be fairly and adequately protected by the representative parties, plaintiffs, in this action.

ANSWER TO REQUEST FOR ADMISSIONS NO. 13: The defendant Idaho Power denies that the interests of the class members referred to in Request for Admissions No. 9 will be fairly and adequately protected by the representative parties, the plaintiffs, in this action. In answering this Request for Admission, the defendant Idaho Power incorporates by reference its Answer to Requests for Admissions Nos. 9, 10, 11 and 12, and all objections stated therein.

REQUEST FOR ADMISSIONS NO. 14: Admit that the representative plaintiffs and those similarly situated have standing to sue:

(a) In their individual capacities to protect permanently vested real property rights and incidental contractual rights acquired by them by virtue of their ownership of lands reclaimed under and pursuant to the Reclamation Acts of Congress of 1902 and the Acts amendatory and supplementary thereto.

(b) In their individual capacities to protect permanent rights in real property and incidental contractual rights acquired by them under and by virtue of the Reclammation Acts of 1902 and the Acts amendatory and supplementary thereto from unconstitutional invasion in violation of Article 5 and the 14th Amendment of the United States Constitution.

(c) The amount in controversy exceeds $10,000.00 exclusive of costs.

(d) Plaintiffs, who were at the time referred to herein and now are members of the defendant districts, American Falls Reservoir District, American Falls Reservoir

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District No. 2, and North Side Canal Company, are entitled to maintain this action under Rule 23.1, Federal Rules of Civil Procedure.

ANSWER TO REQUEST FOR ADMISSIONS NO. 14: The defendant Idaho Power denies that the representative plaintiffs and those similarly situated have standing to bring this action. In response to subparagraphs (a) and (b) of this Request, the defendant Idaho Power incorporates by reference its Answers and Objections made to Request for Admissions Nos. 2, 3 and 4 set forth above as if specifically restated herein, and specifically states the named plaintiffs to this action in their individual capacities have no vested real property or contractual rights in the water stored at the American Falls Reservoir or in the storage space in that Reservoir, pursuant to the Reclamation Act of 1902 and the Amendments thereto. The plaintiffs having no such vested rights, there could be no unconstitutional invasion of such rights in violation of the Fifth Amendment, "Article 5" and the Fourteenth Amendment of the United States Constitution. Further, plaintiffs, in their Request for Admissions, have failed to set forth a sufficient factual basis upon which to predicate any violation of such Constitutional Rights, and such a Request for Admission calls for a pure legal conclusion, not of any factual basis. Accordingly, the defendant Idaho Power objects to this Request for Admissions.

As to Subparagraph (c) of the Request for Admissions No. 14, the defendant Idaho Power denies the amount in controversy as to each individual defendant exceeds $10,000 exclusive of costs.

As to Subparagraph (d) of the Request for Admission No. 14, the defendant Idaho Power incorporates by reference

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hereto its Answers to Request for Admissions Nos. 9, 10, 11, 12, and 13 set forth above as if specifically set forth herein, and denies the plaintiffs are entitled to maintain this action under Rule 23.1 of the Federal Rules of Civil Procedure. Except as specifically admitted, all matters set forth in this Requested Admission are denied.

REQUEST FOR ADMISSIONS NO. 15: Admit that this action is not a collusive action brought for the purpose of conferring jurisdiction on the court in this cause.

ANSWER TO REQUEST FOR ADMISSIONS NO. 15: The defendant Idaho Power denies this Request for Admission and affirmatively states that based upon discovery to date that it appears this action may, in fact be a collusive action brought in an attempt to harrass, injure and damage the defendants and others. The State Court in the Confirmation Action appropriately considered any and all objections of the plaintiffs in this action which could properly be brought to the attention of any judicial body. The plaintiffs in this action have alleged matters, rights, titles and interests which have no factual basis and no legal basis, and which have been made solely in an attempt to delay, prejudice and injure the defendant Idaho Power and others in the financing effort for the American Falls Replacement Dam Program.

REQUEST FOR ADMISSION NO. 16: Admit that prior to the commencement of this action, the plaintiffs Kerner and Barnes, as members of the Board of Directors of defendant, American Falls Reservoir District No. 2, sought to prevent the said defendant American Falls Reservoir District No. 2, from entering into the Repayment Contract for the replacement of American Falls Reservoir Dam in its present form, and in so doing plaintiffs, Kerner and Barnes, did the following things and the following results occurred:

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(a) Kerner, who was then Chairman of the Board of Directors of American Falls Reservoir District No. 2, refused to sign the contract upon the ground it was not legal nor in the best interests of the District.

(b) Prior to his so refusing, plaintiff Kerner, called John Rosholt, attorney for defendant, American Falls Reservoir District, and advised him he was not going to execute the contract.

(c) Therefore, Rosholt conferred with Cecil Hobdey, who was then and is now attorney for the American Falls Reservoir District No. 2, about Kerner's refusal to sign the repayment agreement.

(d) 1. When Kerner called his Board to a meeting thereafter to obtain their views of his decision, Hobdey then advised the Board that they remove Kerner as chairman and execute the contract. Said action was followed by the majority of the Board in favor with only Kerner and Barnes opposed.

2. That the execution of the contract took place, although the applicable Idaho law in effect at the time required either a confirmation hearing prior to execution of the contract, or a judicial test of the legality thereof prior to exectution.

(e) Thereafter, Kerner and Barnes, on behalf of themselves and the other plaintiffs, instituted an action in the State Court seeking a declaratory judgment to determine the legality of said action taken by the Board of said District. That the aforementioned action was instituted in the District Court of the Fifth Judicial District of Idaho in and for the County of Lincoln, as Case No. 1534. That the court refused to take jurisdiction in said cause and stated as its reason-

ing, therefor, that the confirmation hearing was the forum for the resolution of the matter. That the judgment of the court upon said decision is presently being appealed to the Idaho Supreme Court and is yet undecided.

(f) The matter was raised by plaintiff in the confirmation hearing. However, all issues raised in this cause are not before the State Court in the confirmation action.

(g) 1. That the court in the Confirmation Action had only a very narrow jurisdiction in said proceeding and could determine only the questions of whether the procedural requirements of the applicable statutes were met.

2. That the State Court did not have the subject matter nor personum jurisdiction over all matters and parties affected by the replacement project no did it determine all of the ultimate questions sought to be determined in this action.

(h) Even though, some issues were dealt with in the State Court decision, which is on appeal to the Idaho Supreme Court, full and complete relief or determination of the issues cannot be had in that court, for the reason that the issues involved federal parties and federal questions not before that court for determination and disposition.

(i) That the plaintiffs further petitioned the Board of the American Falls Reservoir District No. 2, to call a new election and to present to the voters a full disclosure of all facts relative to the project, including, but not limited to, their rights incident to the existing contractual arrangements with the United States, under the Reclamation Acts of 1902 and the Acts amendatory and supplementary thereto, together with a full disclosure of the legal effect

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upon the water rights of Idaho State Statute, Chapter 22, Title 43 and Public Law No. 93-206.

(j) That the majority of said Board, has refused and neglected to heed the demands and petitions of plaintiffs, even though they, the Board of Directors, are aware or should be aware that the proposed project is detrimental to the interests of the defendant Districts' members, in that it takes from the Districts valuable contractual rights and impairs the property rights of its members.

(k) That the actions of the majority of the Board of Directors, is unexplained and is irresponsible and ultra vires and will result in irreparable injury to the District and its members.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 16: Except as specifically set forth herein, the defendant Idaho Power denies the allegations contained in the Request for Admissions No. 16, and further objects to this Request for Admissions in that the plaintiff has failed to set forth any factual basis upon which to predicate the legal conclusions set forth in this Request for Admissions. The defendant Idaho Power further states, based upon the deposition testimony taken to date, that both the plaintiffs Kerner and Barnes, as members of the Board of Directors of AFRD No. 2, voted for the Contract Election held on January 12, 1976, and for the proposition prior to March, 1976, when the contract was executed by AFRD No. 2, and that accordingly, these individual plaintiffs are now estopped from alleging that they took appropriate action to prevent the AFRD No. 2 from entering into the spaceholder contracts. Further, the defendant Idaho Power states that if the allegations contained in the Amended Complaint could be found to be true, plaintiffs

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Kerner and Barnes should be held liable to AFRD No. 2 for the breach of their duties as directors to appropriately act with regard to these matters. As discovery to date has disclosed, they had, prior to the date of the execution of the Spaceholder Contract for AFRD No. 2, consistently voted for the American Falls Replacement Dam Program.

As to Subparagraphs (a), (b), (c) and (d) of Requests for Admissions No. 16, the defendant Idaho Power admits that the plaintiff Kerner, contrary to his duties and responsibilities and the manner in which he had previously voted for the American Falls Replacement Dam Program, failed and refused to sign the Spaceholder Contract, stating only that he believed it not in the best interests of the District, and that Mr. John Rosholt, attorney for the defendant AFRD, received a telephone call either prior to or after Kerner's refusal to execute the contract stating the plaintiff Kerner's concern with regard to the contract, and then John Rosholt conferred with the attorney for AFRD No. 2, Cecil Hobdey, concerning Kerner's refusal to sign the Spaceholder Contract. The defendant Idaho Power also admits that the attorney for AFRD No. 2 advised American Falls Reservoir District No. 2 of two legal options, one of which is set forth in Subparagraph (d) 1 of the Request for Admissions No. 16 in part, namely that AFRD No. 2 had an option to reconstitute its Board and to elect a new chairman if that was the consensus and opinion of the Board, and after such action, the new chairman could take appropriate action with regard to the Spaceholder Contract in accordance with the mandate given to the AFRD No. 2 by the overwhelming number of voters who voted at the Contract Elections held on January 12, 1976. The defendant Idaho Power denies that under applicable Idaho

law the Spaceholder Contract could not be executed prior to the Confirmation Action.

As to Subparagraphs (e), (f), (g) and (h) to the Request for Admissions No. 16, the defendant Idaho Power admits that the plaintiffs Kerner and Barnes brought an action in the District Court of the Fifth Judicial District of Idaho in and for the County of Lincoln as Case No. 1534, and that the Court refused to hear that action and that that decision by that State District Court is presently on appeal before the Idaho Supreme Court. As to the purpose and matters set forth in that action, the defendant Idaho Power admits that the pleadings speak for themselves as to the allegations contained therein. Further, the defendant Idaho Power admits that certain matters were raised by the plaintiffs in the Confirmation Action as set forth above. However, the defendant Idaho Power denies that plaintiffs did not effectively raise in the Confirmation Action all issues raised in this action, and the defendant Idaho Power affirmatively states that the Confirmation Action has properly and adequately disposed of any and all legitimate objections which the plaintiffs could properly have to the American Falls Replacement Dam Program. The defendant Idaho Power states that the jurisdiction of the State Court in the Confirmation Action is adequately set forth in the Findings of Fact and Conclusions of Law and Judgment of that Confirmation Action, and accordingly, the defendant Idaho Power incorporates by reference herein the determinations made by that Court as to all the questions and issues raised by the plaintiffs in this action. The defendant Idaho Power further states that State Courts, as a matter of law, may properly determine certain issues with regard to the interpretation of the

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Federal Constitution and federal laws, and that the State Court in the Confirmation Action did properly make these determinations and properly disposed of these matters as set forth in the Findings of Fact and Conclusions of Law of the State Court in the Confirmation Action and the judgment entered therein. Accordingly, for the reasons set forth herein the defendant Idaho Power denies the allegations and Requests for Admissions concerning this matter.

As to Subparagraphs (i), (j) and (k) to the Request for Admissions No. 16, the defendant Idaho Power admits that certain of the plaintiffs circulated a petition seeking a new election with regard to the Spaceholder Contracts, and that such petition was presented to the Board of the AFRD No. 2, and that such petition speaks for itself as far as its purpose and provisions. The defendant Idaho Power admits the majority of the AFRD No. 2 Board properly and in accordance with the laws of the State of Idaho and the mandate of the voting in the Contract Elections held on January 12, 1976, refused to reconsider the Spaceholder Contract as requested by said petition. Discovery to date has indicated that the plaintiffs' sole "demand" was this petition, if it could be called a "demand", which the defendant Idaho Power denies. The plaintiffs in their Request for Admission No. 16 having failed to set forth any additional "demands" they have made, the defendant Idaho Power can only admit to the presentation of the petition, which document speaks for itself as to whether it is, in fact, a "demand." As to the remaining matters set forth in Subparagraphs (j) and (k) of the Request for Admissions No. 16, the defendant Idaho Power denies them and specifically denies the action of the majority of the Board of Directors of AFRD No. 2 was

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"unexplained and irresponsible and ultra vires and will result in irreparable injury to that District and its members."

REQUEST FOR ADMISSIONS NO. 17: Admit that prior to the commencement of this action, the plaintiff, Del Hiatt, and others, similarly situated, demanded that the Directors of the North Side Canal Company withdraw from the American Falls Dam Replacement Project and to refuse to execute the Replacement Contract and pursue remedies available to the Company under the Reclamation Act of 1902.

ANSWER TO REQUEST FOR ADMISSIONS NO. 17: The defendant Idaho Power admits that the plaintiff Del Hiatt was present at a meeting of the North Side Canal Company on January 15, 1976, and made certain statements at that meeting indicating that he was not in favor of the American Falls Replacement Dam Program. To the best of the knowledge of the defendant Idaho Power, plaintiff Del Hiatt has never properly and in writing presented any demand or request to the North Side Canal Company that the North Side Canal Company refuse to execute the Spaceholder Contract and withdraw from the American Falls Replacement Dam Program and pursue all remedies available to that company that may possibly exist under the Reclamation Act of 1902. As to all other allegations contained in the Request for Admission No. 17, the defendant Idaho Power denies same.

REQUEST FOR ADMISSIONS NO. 18: Admit that the request made by plaintiff Del Hiatt, and others, to the Directors of the North Side Canal Company, as set out in Request for Admissions No. 17, was rejected by the Board of the North Side Canal Company without explanation or justification, that the plaintiffs did the following things and the following results occurred:

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(a) That at the next annual stockholders meeting of said North Side Canal Company, over 500 of its stockholders were present in person and that a motion was made to rescind the Contract for Repayment of the proposed American Falls Replacement Dam Program, and that said motion carried unanimously or without a dissenting vote.

(b) However, Attorney Rosholt, who was also attorney for North Side Canal Company, advised such a vote required a share-by-share stock vote.

(c) Thereafter, the Company conducted an illegal election permitting votes to be cast in blocks greater than provided for in their By-laws and inconsistent with the Reclamation Acts, to the end that approximately 10 people controlled the election.

(d) That the plaintiff Hiatt and others, protested the actions of the Board in conducting said election and particularly the following acts and conduct:

1. The Directors of the Board of the defendant North Side Canal Company, refused to permit the plaintiff to have access to the stockholder list of the Company, to enable the plaintiffs to disseminate information to the stockholders or to solicit their proxies.

2. The Directors of the Company represented, in their pre-election campaigning to the stockholders that the issue to be voted on, was whether the Directors deserved a vote of confidence -- not whether the contract should be rescinded.

3. The Directors refused to furnish other material facts relative to the legal and practical application of the Replacement Program to the Company.

4. The Directors falsely represented to the stockholders, many of whom owned more than 160 acres of land

per person, that adoption of the program would make the project immune from the federal prohibition against ownership in excess of 160 acres per person.

5. The Directors did at no time, conduct a fair election, wherein the stockholders were furnished impartial information concerning the effect of said project upon the stockholders or the Company's existing contractual and existing property rights, under the Reclamation of 1902 and Acts amendatory and supplementary thereto.

6. The protests and objections of plaintiffs were ignored by the Directors despite the detrimental and irreparable harm which will result to the Company and its stockholders, by the action of the Directors.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 18: The defendant Idaho Power admits that the plaintiff Hiatt and others at the meeting of the North Side Canal Company on January 15, 1976, made certain statements to the Board of the North Side Canal Company and that the Board of the North Side Canal Company did not agree with those statements made. The plaintiff has failed to properly allege sufficient facts in the Request for Admissions to determine whether, in fact, such statements are requests or demands and accordingly the defendant Idaho Power denies this Request for Admissions except as specifically admitted herein.

As to Subparagraph (a) of the Request for Admissions No. 18, the defendant Idaho Power admits that there were certain annual stockholders meetings of the North Side Canal Company. The plaintiffs have failed to specify the specific date of those meetings, however, the defendant Idaho Power believes that at the purported stockholders meeting referred to in this Request for Admissions, not all those present

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were stockholders in the North Side Canal Company. At this meeting there was a proposition presented to the persons assembled and those voting were confused as to whether the proposition to be voted on favored or opposed the Spaceholder Contract. The confused voice vote taken did not indicate the true intention of those voting. The defendant Idaho Power answers there was no unanimous vote and no vote "without a dissenting vote" at that meeting of the stockholders of the North Side Canal Company on a motion to rescind the Spaceholder Contract for the proposed American Falls Replacement Dam Project. The defendant Idaho Power further answers that in the earlier election by written ballot held by the North Side Canal Company, those voting approved the Spaceholder Contract for the proposed American Falls Replacement Dam Program.

As to Subparagraph (d) of the Request for Admissions No. 18, the defendant Idaho Power denies the Board of Directors of the North Side Canal Company refused to permit the plaintiff to have access to the stockholder list of that Company to enable the plaintiffs to disseminate information to the stockholders or to solicit their proxies and affirmatively state that such stockholder lists were available to plaintiffs in the offices of the North Side Canal Company. The defendant Idaho Power denies the proposition was mischaracterized by the Board of Directors of the North Side Canal Company as a vote of confidence rather than as the specific proposition presented to the stockholders and further states that the allegations of the plaintiffs in their Request for Admissions No. 18, Subparagraph (d) are inaccurate and without any factual support. With regard to the statements made in Paragraph (d) 3 of the Request for

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Admissions No. 18, the plaintiffs have failed to specify what other material relative to the "legal and practical application of the Replacement Dam Program" the Board of Directors failed to supply to the Company. Plaintiffs have failed to set forth in the sentence contained therein any statement which is capable of being understood by the defendant Idaho Power and such statement has neither logical nor legal significance. Accordingly, the defendant Idaho Power objects to such a request for admissions. The Request appears to contain a contradiction in that the Board of Directors who represent the Company are alleged to have withheld facts from that Company. As to the remaining allegations of Subparagraphs (d) 4, 5 and 6, the defendant Idaho Power states that the 160 acre rule established under the Reclamation Act of 1902 and the amendments thereto is of questionable application to a reclamation project wherein the Replacement Dam was financed privately as in the case of the American Falls Replacement Dam Program as opposed to those instances where the irrigation districts and water users borrowed money from the Federal Government and therefore must comply with all relevant rules, regulations and policies of the Federal Government. Further, the election held by the North Side Canal Company was fair; all information furnished was appropriate. The protests and objections of the plaintiffs were stated to the Board of Directors and to others present. Despite this, overwhelming numbers of shares in the North Side Canal Company were voted against the rescission proposal. The defendant Idaho Power also objects to the plaintiffs' legal conclusions with regard to any possible detrimental and irreparable harm resulting to the North Side Canal Company due to actions of its Board of

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Directors and the Company's entering into the Spaceholder Contract since the plaintiffs in this Request for Admissions failed to set forth any factual basis upon which to predicate a legal opinion or such a legal conclusion. Except as specifically admitted all other matters contained in this Request for Admissions are denied.

REQUEST FOR ADMISSIONS NO. 19:

(a) Admit that the plaintiffs, William Kerner, Charles Barnes, Fred Stewart and Lynn Meacham, are members of the American Falls Reservoir District No. 2.

(b) Admit that each plaintiff owns land subject to assessment within the boundaries of said district, and that said district is the trustee of the water rights owned by the representative plaintiffs and others similarly situated.

(c) Admit that the plaintiffs, William Kerner and Charles Barnes, in addition, were at the time of this transaction minority members of the Board of Directors of said District.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 19: The defendant Idaho Power admits that the plaintiffs William Kerner, Charles Barnes, Fred Stewart, and Lynn Meacham purport to own land in the American Falls Reservoir District No. 2 and that such land is subject to the assessment of that irrigation district, pursuant to the laws of the State of Idaho and the contractual rights of that district including the Spaceholder Contract and contracts entered into with the United States of America pursuant to the Reclamation Act of 1902 and the amendments thereto. Said districts, pursuant to the aforesaid contracts, own the right to certain space in the American Falls Reservoir. The defendant Idaho Power admits the plaintiffs, William Kerner, Charles Barnes

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were during a certain time and in particular during the first quarter of 1976, members of Board of Directors of AFRD No. 2. As to the other matters and legal conclusions set forth in this Request for Admissions, they are objected to because there is no factual predicate for such legal opinion or conclusion set forth in the Request for Admissions and are denied.

REQUEST FOR ADMISSIONS NO. 20:

(a) Admit that the plaintiff, Del Hiatt, is a member of the American Falls Reservoir District and is, also, a stockholder in the defendant, North Side Canal Company.

(b) Admit that as such a stockholder, plaintiff Hiatt, is the owner, by purchase, of 160 shares of water which is appurtenant to and dedicated to his land.

(c) Admit that the land owned by said plaintiff Hiatt is also subject to assessment by the American Falls Reservoir District.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 20: The defendant Idaho Power admits that the plaintiff Del Hiatt owns land located within the American Falls Reservoir District and is also a stockholder in the North Side Canal Company. The defendant Idaho Power admits Del Hiatt has, as of the date of these Request for Admissions, purchased 160 stock shares of water in the North Side Canal Company and that such land owned by the plaintiff Hiatt is subject to the assessment by AFRD. As to all other legal conclusions set forth in this Request for Admissions, plaintiffs have failed to set forth appropriate factual basis upon which to predicate any legal opinion and the defendant Idaho Power accordingly objects to this request and denies same.

REQUEST FOR ADMISSIONS NO. 21: Admit that the plaintiffs fairly and adequately represent the interests of the class of persons similarly situated.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 21: The defendant Idaho Power denies the plaintiffs fairly and adequately represent the interests of class members similarly situated and does hereby incorporate by reference its Answers and Objections to Request for Admissions 9, 10, 11, 12, 13 and 15 as is specifically set forth herein as a further answer, objection and denial of this Request for Admission.

REQUEST FOR ADMISSIONS NO. 22: Admit that the existing American Falls Dam was constructed by the United States, pursuant to authorization granted by an Act of Congress, dated the 4th day of March, 1921, 41 Stat. 1369, and subsequent appropriation statutes, as a Reclamation Dam and as a feature of the Minidoka Irrigation Project, Idaho-Wyoming.

ANSWER TO REQUEST FOR ADMISSIONS NO. 22: The defendant Idaho Power admits that the original dam which existed at American Falls prior to the Replacement Dam was constructed by the United States pursuant to the authorization granted by an Act of Congress dated the fourth day of March, 1921, 41 Stat. 1369, and subsequent appropriation statutes, as a reclamation dam and as a feature of the Minidoka Irrigation Project, Idaho-Wyoming.

REQUEST FOR ADMISSIONS NO. 23:

(a) Admit that the United States government is party to all storage space contracts now existing by which the defendant irrigation districts and companies and the individual defendant spaceholders acquired storage space in the active capacity of the existing American Falls storage facility.

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(b) Admit that all of the contracts in Request for Admissions No. 22, were negotiated and entered into between the United States and various defendant water districts, companies, and individuals pursuant to the Reclamation Act of 1902 of the United States and Acts amendatory and supplementary thereof.

ANSWER TO REQUEST FOR ADMISSIONS NO. 23: The defendant Idaho Power admits Subparagraph (a) of this Request for Admissions. Subparagraph (b) refers to contracts referred to in Request for Admissions 22 and no such contracts are referred to in Request for Admissions No. 22. Accordingly, since plaintiffs have failed to specify what contract, if any, they are referring to in Subparagraph (b) to Request for Admissions No. 22, this Request for Admissions is denied.

REQUEST FOR ADMISSIONS NO. 24: Admit that the United States is a contracting party with the defendant American Falls Reservoir District, for the rehabilitation and reconstruction of American Falls Dam pursuant to the authority of Public Law 92-206 of the 93rd Congress, dated December 28, 1973, 87 Stat. 904.

ANSWER TO REQUEST FOR ADMISSIONS NO. 24: The defendant Idaho Power admits that the United States is a contracting party with the defendant American Falls Reservoir District toreplace the American Falls Dam pursuant to Public Law 93 206 of the 93rd Congress, December 28, 1973, 87 Stat. 904. All other allegations contained in this Request for Admissions are denied.

REQUEST FOR ADMISSIONS NO. 25:

(a) Admit that the American Falls Reservoir District is an existing irrigation district organized under the laws of the State of Idaho and has its principal office in the County of Twin Falls of said State.

(b) Admit that said District owns no property or storage rights in American Falls Reservoir, but is trustee for rights owned by the North Side Canal Company, Ltd., Twin Falls Canal Company, Martin Canal Company, Woodville Canal Company and Aberdeen-Springfield Canal Company.

ANSWER TO REQUEST FOR ADMISSIONS NO. 25: The defendant Idaho Power admits that AFRD is an existing irrigation district organized under the laws of the State of Idaho having its principal office in the County of Twin Falls of the State of Idaho. The defendant Idaho Power denies that AFRD does not own property or storage rights in American Falls Reservoir but admits that the lands included within the American Falls Reservoir District No. 1 include all or a portion of the five canal companies referred to in Subparagraph (b) of Request for Admissions No. 25. Further, the defendant Idaho Power states that the requests set forth in this Request for Admissions is contradicted by the plaintiffs' Request for Admissions No. 87.

REQUEST FOR ADMISSIONS NO. 26: Admit that John M. Barker, Merl E. Leonard, Tom Olmstead, Frank W. Graves, Dale Depew, Russell Woolley and Armin H. Schroeder were at the times referred to herein the duly elected members of the Board of Directors of American Falls Reservoir District; and that the defendant, John M. Barker, was a member of the Senate of the State of Idaho.

ANSWER TO REQUEST FOR ADMISSIONS NO. 26: The defendant Idaho Power admits the factual matters set forth in Request for Admissions No. 26.

REQUEST FOR ADMISSIONS NO. 27: Admit that Tom Olmstead's brother, Ralph, was a member of the House of Representatives of the State of Idaho.

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ANSWER TO REQUEST FOR ADMISSIONS NO. 27: The defendant Idaho Power states that the plaintiffs have failed to specify what relevant period of time they are referring to in this Request for Admissions. Subject to this objection and factual defect, the defendant Idaho Power admits Tom Olmstead's brother, Ralph, was at one time or another a member of the House of Representatives of the State of Idaho.

REQUEST FOR ADMISSIONS NOS. 28, 29, 30, 31, 32, 33 AND 34:

ANSWER TO REQUEST FOR ADMISSIONS NOS. 28, 29, 30, 31, 32, 33 AND 34: The Defendant Idaho Power admits the factual matters set forth in these Requests for Admissions: 28, 29, 30, 31, 32, 33 and 34.

REQUEST FOR ADMISSIONS NO. 35: Admit that Milner Low Lift Irrigation District is an existing irrigation district organized under the laws of the State of Idaho and has its principal office at Murtaugh, Idaho.

ANSWER TO REQUEST FOR ADMISSIONS NO. 35: The defendant Idaho Power admits factual matters set forth in this Request for Admissions No. 35 with the exception that the principal office of Milner Lowlift Irrigation District is at Milner, Idaho and not Murtaugh, Idaho.

REQUEST FOR ADMISSIONS NOS. 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57 AND 58:

ANSWER TO REQUEST FOR ADMISSIONS NOS. 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56 57 AND 58: The defendant Idaho Power admits the factual matters set forth in the Request for Admissions Nos. 36 through and including 58.

REQUEST FOR ADMISSIONS NO. 59: Admit that Clement Brothers, a co-partnership, consisting of John Doe Clement

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and Richard Roe Clement, were contracting parties with the United States for storage space in the existing American Falls Reservoir, and that said partners reside at Lewisville, County of Jefferson, in the State of Idaho.

ANSWER TO REQUEST FOR ADMISSIONS NO. 59: The defendant Idaho Power admits that Clement Brothers, a partnership, pursuant to Contract No. 14-06-100-7446 with the United States of America dated as of September 9, 1972, own approximately 71 acre feet of contract storage rights in the American Falls Reservoir. The plaintiffs in this Request for Admissions improperly characterized the ownership rights and storage space as being in the "existing American Falls Reservoir" pursuant to a contract with the United States Government, when in fact this party has executed a Spaceholder Contract with regard to the American Falls Replacement Dam Program and thereby has the storage rights allowed for the new Replacement Dam. The defendant Idaho Power admits that Clement Brothers is a partnership organized and existing pursuant to the laws of the State of Idaho, however, the defendant Idaho Power lacks information or knowledge after reasonable inquiry and such information is not known or readily obtainable by the defendant Idaho Power as to where the partners of this partnership reside and the defendant Idaho Power further states that such an admission is not relevant and is reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSIONS NO. 60: Admit that Michaud Division, Fort Hall Indian Reservation, was a contracting party for storage space in the existing American Falls Reservoir with the United States.

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ANSWER TO REQUEST FOR ADMISSIONS NO. 60: The defendant Idaho Power admits that Michaud Division, Fort Hall Indian Reservation, pursuant to a Memorandum of Agreement with the United States of America dated as of April 25, 1957, owns approximately 47,700 acre feet of storage space in the American Falls Reservoir and is a participating spaceholder in the American Falls Replacement Dam Program. The defendant Idaho Power further states that it objects to the remainder portions of this Request for Admissions because it assumes a fact which is not accurate, namely, that Michaud Division, Fort Hall Indian Reservation presently owns storage space in the original "existing American Falls Reservoir" which in fact has now been replaced pursuant to the American Falls Replacement Dam Program and now owns that space pursuant to the contract referred to above and the Spaceholder Contract which it intends to execute pursuant to American Falls Replacement Dam Program.

REQUEST FOR ADMISSIONS NO. 61: Admit that Utah-Idaho Sugar Company is an existing corporation under the laws of the State of Utah, licensed to do business in Idaho as a foreign corporation with its office at Idaho Falls, Idaho.

ANSWER TO REQUEST FOR ADMISSIONS NO. 61: The defendant Idaho Power to the best of its knowledge, information and belief admits the matters set forth in Request for Admissions No. 61 subject to any discovery that may be taken in this matter which may indicate facts contrary to the matters set forth in this Request for Admissions.

REQUEST FOR ADMISSIONS NO. 62: Admit that Ball Construction Company was and is an existing corporation under the laws of the State of California, licensed to do business in the State of Idaho as a foreign corporation.

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ANSWER TO REQUEST FOR ADMISSIONS NO. 62: The defendant Idaho Power to the best of its knowledge, information and belief admits the matters set forth in this Request for Admissions subject to any discovery which may be taken in this matter which may indicate facts contrary to the matters set forth in this Request for Admissions.

REQUEST FOR ADMISSIONS NO. 63: Admit that there are other individuals, entities, corporations, organizations or associations, which should be included as parties-defendant in the titled cause.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 63: The defendant Idaho Power denies that there are other individuals, entities, corporations, organizations or associations which should be included as party-defendants in this titled cause and further objects to this Request for Admissions because the plaintiffs have failed to set forth any factual basis upon which any legal opinion may be predicated or any legal conclusion may be made with regard to this matter.

REQUEST FOR ADMISSIONS NO. 64: Admit that Burley Irrigation District is an existing irrigation district organized and existing under and by virtue of the laws of the State of Idaho, with its principal office at Burley, Idaho, and is also named as a defendant herein, although said District has filed an action in the United States District Court for the District of Idaho asserting claims of said District against the defendants, the United States of America and American Falls Reservoir District.

ANSWER TO REQUEST FOR ADMISSIONS NO. 64: The defendant Idaho Power admits that Burley Irrigation District is an existing irrigation district organized and existing by virtue of the laws of the State of Idaho with its principal

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office at Burley, Idaho and that the District is named as a defendant in this action. The defendant Idaho Power further states that the Burley Irrigation District has instituted two legal actions in the United States District Court for the District of Idaho which were dismissed by that United States District Court. In one of these actions both the United States and the American Falls Reservoir District were defendants and that case is on appeal to the U. S. Court of Appeals for the Ninth Circuit. The other action, in which AFRD is the defendant, has been remanded by the Ninth Circuit Court of Appeals to the said District Court. As to any other matters, conclusions or inferences that may be drawn by this Request to Admit, the defendant Idaho Power objects to such conclusions without an appropriate factual basis being established and accordingly denies same.

REQUEST FOR ADMISSIONS NO. 65: Admit that all of the foregoing defendant irrigation districts, canal companies, persons, corporations, individuals, Idaho Power Company and American Falls Reservoir District, hold space in American Falls Reservoir, pursuant to contracts between said organizations and the United States, executed pursuant to the Reclamation Act of 1902 and various Acts supplementary and amendatory thereto.

ANSWER TO REQUEST FOR ADMISSIONS NO. 65: The plaintiffs failed to specify what foregoing irrigation districts, canal companies, persons, corporations and individuals including the Idaho Power Company and the American Falls Reservoir District, they are referring to in this Request for Admissions. If they are referring to those individuals set forth in paragraphs 22 through 57 of the Amended Complaint, the defendant Idaho Power admits these irrigation districts,

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canal companies and persons owned space in the original American Falls Reservoir pursuant to the requirements of contracts between said organizations and individuals and the United States of America executed pursuant to the Reclamation Act of 1902 and the amendments thereto and also pursuant to conditions and requirements of Public Law 93-206, which authorizes the American Falls Replacement Dam Program. Since the plaintiffs have failed to specify precisely what persons are to be included within the terms of this Request for Admissions, except as otherwise admitted in this Answer to the Request for Admisssions all other matters are denied.

REQUEST FOR ADMISSIONS NO. 66: Admit that the American Falls Dam and Reservoir were constructed by the Bureau of Reclamation, Department of Interior, the Act of Congress of the United States appropriating funds therefor as a feature of the Minidoka Irrigation Project, Idaho-Wyoming, dated the 4th day of March, 1921, 41 Stat. 1367, under the Reclamation Acts of the United States.

ANSWER TO REQUEST FOR ADMISSIONS NO. 66: The defendant Idaho Power admits the original American Falls Dam and Reservoir was constructed by "the Bureau of Reclamation, Department of Interior, the Act of Congress of the United States appropriating funds therefor as a feature of the Minidoka Irrigation Project, Idaho-Wyoming dated the 4th day of March 1921, 41 Stat. 1367 under the Reclamation Act of the United States" and pursuant to an Act of Congress dated June 5, 1924, 43 Stat. 417.

REQUEST FOR ADMISSIONS NO. 67: Admit that the construction of the American Falls Reservoir was substantially completed by 1927, and prior thereto and thereafter the United States entered into construction repayment contracts

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with the several defendants, as referred to in Request for Admissions No. 4, and which said contracts were on substantially similar terms.

ANSWER TO REQUEST FOR ADMISSIONS NO. 67: The defendant Idaho Power admits that the construction of the original dam and reservoir at American Falls was substantially completed on or about 1927, and that prior thereto or thereafter the United States entered into the Construction Repayment Contract with certain defendants, and that said Contracts to the degree they involved construction repayment for the American Falls Reservoir are substantially similar in terms, but as to other matters, including time for payment, the amount of payment and extent of rights to space in the American Falls Reservoir, they are not identical. The defendant Idaho Power also states the the Request for Admissions No. 4 only involves the contract between the American Falls Reservoir District No. 2 and the United States Government, and accordingly, the defendant Idaho Power objects to the imprecise and improper reference to "construction repayment contracts" by the plaintiffs in the Request for Admissions No. 67. All other matters referred to in this Request are accordingly denied.

REQUEST FOR ADMISSIONS NO. 68: Admit that on June 15, 1923, the defendant, United States of America, entered into a contract with the American Falls Reservoir District, pursuant to the Reclamation Acts of the United States which, among other matters, concerned the terms of the construction of American Falls Dam and Reservoir, the allocation of storage space, and the terms of maintenance and operation charges of said district.

ANSWER TO REQUEST FOR ADMISSIONS NO. 68: The defendant Idaho Power admits the factual matters set forth in the Request for Admissions No. 68.

REQUEST FOR ADMISSIONS NO. 69: Admit that by said contract referred to in Request for Admissions No. 68, American Falls Reservoir District acquired for the use and benefit of the defendants, Twin Falls Canal Company, Martin Canal Company, Woodville Canal Company, North Side Canal Company and Aberdeen-Springfield Canal Company, 380,000 acre feet of storage space together with an option to purchase 20,000 acre feet in additional storage space.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 69: The defendant Idaho Power admits that AFRD, pursuant to Contract No. 14-06-W-59 dated May 13, 1954 and a supplemental contract dated March 14, 1960 and all predecessor contracts thereto owns approximately 460,107 acre feet of storage space at the American Falls Reservoir, and that the defendant AFRD holds this space for the use of the following: 1) Upper Valley Organizations: Aberdeen-Springfield Canal Company, Martin Canal Company and Woodville Canal Company; and 2) Lower Valley Organizations: North Side Canal Company, Ltd. and Twin Falls Canal Company, and that pursuant to the contract referred to in Request for Admissions No. 68 dated June 15, 1922, the defendant AFRD owns 280,000 acre feet of storage space, together with an Option to Purchase 20,000 acre feet in additional storage space. As to any other matters, conclusions or inferences which may be drawn from the imprecise language contained in this Request for Admissions as to the rights and interests of the American Falls Reservoir District and the manner in which it holds those rights and interests, the defendant Idaho Power

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Company objects to this Request for Admissions. All matters contained in this Request for Admissions are denied except as specifically admitted herein.

REQUEST FOR ADMISSIONS NO. 70: Admit that in paragraph 40 of said contract, see Request No. 68, it is provided, in part:

> The cost of distribution of stored water turned out of American Falls Reservoir or Jackson Lake Reservoir shall include all cost and expense of whatsoever nature or kind in connection with, growing out of, or resulting from the distribution of stored water from that reservoir, including the protection of said stored water between said reservoir and the headgates of the parties entitled to such water, and the prevention of the diversion of said water by parties not entitled thereto.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 70: The defendant Idaho Power, except as hereinafter objected to and denied, admits that portion quoted in the Request for Admissions No. 70 is in substance part of Paragraph 40 of the Contract referred to in the Request for Admissions No. 68. The defendant Idaho Power affirmatively states that the best statement of what the Contract provides requires a full and complete reading of that Contract as it exists. The defendant also objects to all inferences, conclusions or presumptions which the plaintiffs may improperly and inaccurately draw from such an incomplete quotation as admitted above, and accordingly denies any such improper inferences, conclusions or presumptions.

REQUEST FOR ADMISSIONS NO. 71: Admit that in paragraph 39 of said contract, See Request No. 68, it is provided in part:

> The cost of operation and maintenance of the American Falls reservoir shall include all cost and expense of whatsoever nature or kind in connection with,

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> growing out of, or resulting from the operation, maintenance and betterment of the said reservoir, and shall be determined and paid in the following manner:
> . . .

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 71: The defendant Idaho Power, except as hereinafter objected to and denied, admits that the paragraph quoted in this Request for Admissions is in substance part of Paragraph 39 of the Contract referred to in the Request for Admissions No. 68. This contract must be read as a whole and not, as the plaintiffs have set it forth, in selected portions. The defendant Idaho Power objects to any inferences, conclusions or presumptions which the plaintiffs may improperly and inaccurately draw from this incomplete quotation of the Contract, and accordingly, any such conclusions, presumptions or inferences are denied.

REQUEST FOR ADMISSIONS NO. 72: Admit that by the contract dated September 21, 1927, the American Falls Reservoir District No. 2, purchased 400,000 acre feet of storage space in the American Falls Reservoir in consideration of payment of $2,500,000.00 and contracted for the construction of works on new lands for the total additional consideration of $5,000,000.00. Said agreement was executed by the defendant, United States of America, acting through John H. Edwards, an Acting Secretary of Interior, pursuant to the Reclamation Act of June 17, 1902, and Acts amendatory and supplementary thereto.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 72: The defendant Idaho Power has requested from the plaintiffs and their counsel a copy of Exhibit 2 to the Amended Complaint which was not served upon the defendant Idaho Power. Accordingly, the defendant Idaho Power objects to this Request for

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Admissions until such time as the plaintiffs tender to defendant Idaho Power a copy of what they contend is the Contract referred to in this Request for Admissions and referred to in Paragraph 68 of the Amended Complaint, which purportedly is Exhibit 2 to the Amended Complaint. Subject to this objection, Idaho Power further states according to its best information and belief after reasonable inquiry that American Falls Reservoir District No. 2 purchased on or about 1927, four-seventeenths (4/17) of the storage space in the American Falls Reservoir, which is estimated to be approximately 400,000 acre feet, and that in consideration was included a payment of $2,500,000.00 for a total additional consideration of $5,000,000.00, and that that Contract with the United States was signed by John H. Edwards, the Acting Secretary of the Interior, pursuant to the Reclamation Act of 1902 and the amendments thereto. All other matters, conclusions and inferences drawn by the plaintiffs in this Request for Admissions, given the objections set forth herein, are accordingly denied.

REQUEST FOR ADMISSIONS NO. 73: Admit that the agreement of September 21, 1927, (See Request No. 72), was amended and supplemented by an agreement dated the 7th day of December, 1948, and was thereafter supplemented, amended and superseded by agreements made and executed on October 14, 1954, No. 14-06-W-73 and later supplemented by an agreement dated February 2, 1960.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 73: The defendant Idaho Power repeats its objections to this Request for Admissions by incorporating by reference its objections and statements made in its Answer to Request for Admissions No. 72. Subject to this objection, the defendant

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Idaho Power specifically states the AFRD No. 2, pursuant to Contract No. 14-06-W-73 dated as of October 14, 1954 and the Supplemental Contract dated as of February 2, 1960 owns approximately 400,000 acre feet of storage space in the American Falls Reservoir.

REQUEST FOR ADMISSIONS NO. 74: Admit that the agreement dated October 14, 1954, (See Request No. 73), provided in part:

> The District, during the period of operation and maintenance of the reserved works by the United States shall pay to the United States the share of costs of operation and maintenance thereof, including whatever costs may be incurred in the delivery of water therefrom, which is apportionable to the irrigation storage rights therein and which is allocable to the District's rights defined in article 20. In determining the total costs apportionable annually to the irrigation storage rights in these works there shall be included payments required to be made in accordance with the provisions of article 32, but there shall be excluded whatever amounts are required to be paid as American Falls operation and maintenance charges under the contract of June 15, 1923, between the Idaho Power Company and the United States, as it may hereafter be amended.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 74: The defendant Idaho Power subject to the objections set forth herein and in the previous Answer and Objections to Request for Admissions No. 73 admits that the quoted portion of the Request for Admissions No. 74 is in substance, Paragraph 13(a) of the Contract dated as of October 14, 1954 referred to in its Answer to Request for Admissions No. 73. The defendant Idaho Power further states that the Contract must be read in its entirety without reference to isolated phrases, sentences and provisions. The defendant Idaho

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Power objects to any inferences, conclusions or presumptions which the plaintiffs may improperly and inaccurately draw of such incomplete quotation and accordingly denies same.

REQUEST FOR ADMISSIONS NO. 75: Admit that the said amendatory agreement of October 14, 1954, (See Request No. 74) further provided in paragraph 20(b) that:

> The United States will operate and maintain the existing American Falls Dam and Reservoir, and will make available to the District stored water accruing to twenty-three and fifty-three hundredths percent (23.53%) of the active capacity of that reservoir within the limits and on the terms and conditions provided in this contract. This percentage shall, so long as the reservoir has an active capacity of 1,700,000 acre-feet, be treated as the equivalent of 400,000 acre-feet of active capacity is other than above stated.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 75: The defendant Idaho Power subject to the objections set forth herein and in the Answer and Objection to Request for Admissions No. 73 admit that the quoted portion of the Request for Admissions No. 75 is in substance part of Paragraph 20(b) of the Contract dated as of October 14, 1954 referred to in its Answer to Request for Admissions No. 73. This Contract must be read in its entirety without reference to isolated phrases, sentences or provisions. The defendant Idaho Power also objects to any inferences, conclusions or presumptions which the plaintiffs may improperly and inaccurately draw from any reliance on this incomplete quotation.

REQUEST FOR ADMISSIONS NO. 76: Admit that the Amendatory agreement of October, 1954, (See Request No. 74), further provided, among other things:

> The District shall include in the annual operation and maintenance assessment or toll charge levied against the water users and annual amount per irrigable acre for the accumulation and maintenance of a reserve operation and

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maintenance fund. The fund shall be accumulated initially or thereafter replenished to an amount which at any time shall be not less than one-third of the average of the then past five (5) years' operation and maintenance levies by the District. The initial accumulation or replenishment shall be accomplished by including in each year's operation and maintenance levy, beginning with the levies for the year 1958, five (5) cents an acre unless a lesser sum will suffice to establish or replenish the fund, but the District may at any time make deposits in the fund in excess of those resulting from such levies.

The fund shall be available only: (1) to meet those costs of operation and maintenance which are in excess of the normal operation and maintenance costs and only after advance notice inwriting has been given to the Secretary as to a proposed use, and (2) to meet other operation and maintenance costs when the use of the fund therefor is approved in advance by the Secretary.

This fund shall be maintained by the District, apart from other District funds, in a depository meeting the requirement of the law of the State of Idaho as to Deposit of irrigation district funds, or may be invested in United States bonds or in such other securities as are approved by the Secretary.

ANSWER TO REQUEST FOR ADMISSIONS NO. 76: The defendant Idaho Power subject to the objections set forth herein and in the Answer and Objections to Request for Admissions No. 73 admits the quoted portion of the Request for Admissions No. 76 is in substance Paragraphs 19(a), (b) and (c) of the Contract dated as of October 14, 1954 referred to in its Answer to Request for Admissions No. 73. The defendant Idaho Power affirmatively states that the Contract must be read in its entirety without reference to isolated phrases, sentences or provisions. The defendant Idaho Power objects to any inferences, conclusions or presumptions which the plaintiffs may improperly and inaccurately draw from such incomplete quotation.

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REQUEST FOR ADMISSIONS NO. 77: Admit that by the contract dated the 9th day of February, 1962, No. 14-06-100-2368, the defendant, A & B Irrigation District contracted for the purchase of storage space in American Falls and Palisades Reservoir with the United States of America and for the repayment of construction charges in reclaiming 78,000 arid acres of land.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 77: The defendant Idaho Power objects to this Request for Admissions since the plaintiffs have failed to supply the defendant Idaho Power with the Contract referred to in this Request for Admissions which purports to be the Contract referred to in Paragraph 73 of the Amended Complaint and Exhibit 3 thereto despite the demand of the defendant Idaho Power for a copy of said Contract. Subject to this objection, defendant Idaho Power will provide answers and certain objections to Request for Admissions Nos. 77, 78, 79, 80 and 81 which refer to said Contract, Exhibit 3 to the Amended Complaint, which has not been tendered to the defendant Idaho Power. The defendant Idaho Power admits that the A & B Irrigation District entered into Contract No. 14-06-100-2368 dated February 9, 1962 for approximately 47,593 acre feet of storage space in the American Falls Reservoir and that this Contract was entered into with the United States of America for the repayment of the construction charges as it relates to approximately 78,000 acres of land in that district and that Contract also involved storage space in the Palisades Reservoir which the defendant Idaho Power objects to as not being relevant or reasonably calculated to lead to the discovery of admissible evidence.

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REQUEST FOR ADMISSIONS NO. 78: Admit that by the terms of said agreement, (See Request No. 77), the District obligated the lands within the District to pay $207,879.70 for American Falls storage rights, $703,700.00 for Palisades storage and $12,342,000.00 for the construction of other irrigation works of the district.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 78: The defendant Idaho Power based upon information and belief and subject to whatever discovery this action may reveal contrary to the matters set forth in this Request for Admissions and subject to the objections set forth in its Answer to Request for Admissions No. 77 which is incorporated by reference herein, admits that pursuant to the Contract referred to in Answer to Request for Admissions No. 77, A & B Irrigation District was obligated to pay $207,879.70 for American Falls storage rights and approximately $703,700.00 for Palisades storage rights and $12,342,000.00 for the construction of other irrigation works of the District and that the sums of $207,879.70 referred to above and $703,700.00 referred to above is part of the $12,342,000.00.

REQUEST FOR ADMISSIONS NO. 79: Admit that by the terms of said agreement (See Request No. 77), it is provided in Paragraph 17(b);

> The United States will operate and maintain the existing American Falls Dam and Reservoir, and will make available to the District stored water accruing to two and seven thousand nine hundred ninety-six ten thousandths percent (2.7996%) of the active capacity of that reservoir within the limits and on the terms and conditions provided in this contract. This percentage shall, so long as the reservoir has an active capacity of 1.700,000 acre-feet, be treated as the equivalent of 47,593 acre-feet of active capacity. The latter figure may, however, be adjusted from time to time by agreement between

the Secretary and the Advisory Committee whenever there are determinations that the active capacity is other than above stated.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 79: The defendant Idaho Power subject to the objections set forth in Answer and Objections to Request for Admissions No. 77 and subject to objections hereinafter set forth admits that the quoted portions set forth in this Request for Admissions is in substance Paragraph 17(b) of the Contract referred to in the Answer to Request for Admissions No. 77 above. The Contract must be read in its entirety without reference to isolated sentences, phrases and provisions. The Defendant Idaho Power objects to any inferences, conclusions or presumptions which the plaintiffs may improperly and inaccurately draw from such incomplete quotation. All other matters set forth in this Request for Admissions are denied.

REQUEST FOR ADMISSIONS NO. 80: Admit that by the terms of said agreement (See Request No. 79), it is provided in Paragraph 15(a):

> The District, during the period of operation and maintenance of the reserved works by the United States, shall pay to the United States the share of costs of operation and maintenance thereof, including whatever costs may be incurred in the delivery of water therefrom, which is apportionable to the irrigation storage rights therein and which is allocable to the District's rights defined in article 17. In determining the total costs apportionable annually to the irrigation storage rights in these works there shall be included payments required to be made in accordance with the provisions of article 24, but there shall be excluded whatever amounts are required to be paid as American Falls operation and maintenance charges under the contract of June 15, 1923, between the Idaho Power Company and the United States, as it may hereafter be amended.

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ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 80: The defendant Idaho Power subject to the objections set forth in its Answer and Objections to Request for Admissions No. 77 and subject to the objections hereinafter set forth admits the quoted portion set forth in this Request is in substance Paragraph 15(a) of the Contract referred to in the Answer to Request for Admissions No. 77 above. The Contract must be read in its entirety, not in isolated sentences, phrases and provisions. The defendant Idaho Power objects to any inferences, conclusions or presumptions which the plaintiffs may improperly and inaccurately draw from such incomplete quotation. All other matters set forth in this Request for Admissions are denied.

REQUEST FOR ADMISSIONS NO. 81: Admit that by the terms of said agreement, (see Request No. 80), the District was required to maintain a reserve fund for replacements and for extraordinary operation and maintenance, as follows:

> Beginning with the calendar year 1963, the District shall make levies and assessments necessary to accumulate and maintain a reserve fund to be available for the purpose of replacements and for extraordinary maintenance of the project works. The reserve fund shall be accumulated and maintained in an amount of at least two hundred thousand dollars ($200,000.00) annually, unless a lesser amount will accumulate or replenish the fund.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 81: The defendant Idaho Power, subject to the objections set forth in its Answer and Objections to Request for Admissions No. 77 and subject to the objections hereinafter set forth, admits the quoted portion set forth in the Request for Admissions No. 81 is in substance the Paragraph 14(a) of the Contract referred to in its Answer to Request for Admission No. 77. The Contract must be read in its entirety and not

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in isolated phrases, sentences and provisions. The defendant Idaho Power objects to the inferences, conclusions or presumptions which the plaintiffs may improperly and inaccurately draw from such incomplete quotations of the Contract and accordingly denies any and all other matters set forth in this Request for Admissions.

REQUEST FOR ADMISSIONS NO. 82: Original First Requests for Admissions to Defendant received from plaintiffs failed to include Request for Admissions No. 82.

REQUEST FOR ADMISSIONS NO. 83: Admit that on the 12th day of December, 1952, as Contract No. 14-06-1-28, the defendant, United States of America, acting through the then, Undersecretary of the Interior on behalf of the Bureau of Reclamation, entered into a contract with the defendant, North Side Canal Company, concerning acquisition of storage by the defendant, North Side Canal Company, in American Falls and Palisades Reservoirs. The defendant company purchased 108,380 acre feet of storage in American Falls Reservoir and has paid to the United States, therefor, the sum of $478,388.95.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 83: The defendant Idaho Power objects to this Request for Admissions due to the plaintiffs' failure to supply the defendant with a copy of the Contract referred to in this Request for Admissions and referred to in Paragraph 77 of the Amended Complaint, Exhibit 4 thereto. Subject to this objection, the defendant Idaho Power admits that the North Side Canal Company, Ltd. executed Contract No. 14-006-W-28 dated December 12, 1952, and the Supplemental Contract dated February 29, 1960, with the United States of America acting through the then Under Secretary of the Interior to furnish storage

space in 1952 of approximately 124,380 acre feet in return for payment to the United States of $545,895.47 and North Side Canal Company, Ltd. pursuant to the Contract dated December 12, 1952 and February 29, 1960 and its executed Spaceholder Contract for the American Falls Replacement Dam Program currently has rights to approximately 118,380 acre feet of storage in American Falls Reservoir.

REQUEST FOR ADMISSIONS NO. 84: Admit that by the terms of said agreement, (see Request No. 83), the United States agreed, as follows:

> The United States will operate and maintain the existing American Falls Dam Reservoir, and beginning with the first irrigation season following the termination, as announced by the Secretary, of the lease of reserved capacity to the American Falls Reservoir District under the lease dated April 23, 1947, as amended (174r-532), will make available to the Company stored water accruing to seven and ninety-four hundredths per cent (7.94%) of the active capacity of that reservoir within the limits and on the terms and conditions provided in this contract. This percentage shall, so long as the reservoir has an active capacity of 1,700,000 acre-feet, be treated as the equivalent of 134,980 acre-feet of active capacity. The latter figure may, however be adjusted from time to time by agreement between the Secretary and the Advisory Committee whenever there are determinations that the active capacity is other than above stated.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 84: The defendant Idaho Power, subject to the objections set forth in its Answer to Request for Admissions No. 83 which are incorporated herein and subject to the objections hereinafter stated, admits that the quoted portion of this Request is in substance Paragraph 6(a) of the Contract

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referred in its Request for Admissions No. 83, dated December 12, 1952. The defendant Idaho Power affirmatively states that the Contract must be read in its entirety and not solely isolated phrases, sentences and provisions. The defendant Idaho Power objects to any conclusion, inference or presumption which the plaintiffs may improperly or inaccurately draw from such incomplete quotation.

REQUEST FOR ADMISSIONS NO. 85: Admit that by the terms of said agreement (see Request No. 84), the defendant, North Side Canal Company, agreed, as follows:

> The Company, during the period of operation and maintenance of American Falls Dam and Reservoir and related works (herein called storage works) by the United States, shall pay to the United States the share of costs of operation and maintenance of the storage works, including whatever costs may be incurred in the delivery of water therefrom, which is apportionable to the Company's rights defined in article 6. In determining the total costs apportionable annually to the irrigation storage rights in these works there shall be included payments required to be made in accordance with the provisions of articles 9 and 24, but there shall be excluded whatever amounts are required to be paid as American Falls operation and maintenance charges under the contract of June 15, 1923, between the Idaho Power Company and the United States, as it may hereafter be amended.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 85: The defendant Idaho Power, subject to the objections set forth in its Answer to Request for Admissions No. 83 and subject to the objections hereinafter set forth, admits that the quoted portion set forth in this Request for Admissions is in substance Paragraph 8(a) of the 1952 Contract referred to in its Answer to Request for Admissions No. 83. The defendant Idaho Power further states that this Contract must be read in its entirety and not in isolated phrases, sentences

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and provisions. The defendant Idaho Power objects to any inferences, conclusions and presumptions that the plaintiffs may improperly and inaccurately draw from such incomplete quotations.

REQUEST FOR ADMISSIONS NO. 86: Admit that the plaintiffs, and their respective districts and companies, the American Falls Reservoir District, the American Falls Reservoir District No. 2, the A and B Irrigation District, and the North Side Canal Company have paid the operation and maintenance charges as the same were assessed and have paid the construction charges in the manner and as required by the terms of the foregoing agreements as the same have been supplemented or amended.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 86: The defendant Idaho Power, subject to the objections set forth above, admits the factual matters set forth in this Request for Admissions.

REQUEST FOR ADMISSIONS NO. 87: Admit that the defendant irrigation districts, water and canal companies, persons and private corporations have, pursuant to contract similar to those referred to above, contracted with the defendant, United States of America, and have paid or are paying therefor, pursuant to the authority of the Reclamation Act of 1902 and Acts amendatory and supplementary thereof, and have acquired, along with the Districts referred to in Paragraphs 63 and 77, the following percentage of the space in the active storage capacity of the American Falls Reservoir:

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Name of Wateruser	Percentage of Total Active Storage Capacity
A & B Irrigation District	2.7996%
Aberdeen-Springfield Canal Company	1.9160%
American Falls Reservoir District	27.0688%
American Falls Reservoir District No. 2	23.5294%
Blackfoot Irrigating Company	.7508%
Burgess Canal & Irrigating Company	.5568%
Burley Irrigation District	9.2907%
Butte & Market Lake Canal Company	.2745%
Clemet Brothers, a partnership	.0042%
Corbet Slough Ditch Company	.1998%
Dilts Irrigation Company, Ltd.	.0521%
Enterprise Canal Company, Ltd.	.5249%
Enterprise Irrigation District	.5993%
Falls Irrigation District	1.3706%
Harrison Canal & Irrigation Company	.7074%
Hillside Irrigation District	2.4203%
Ray B. Andrus	.0112%
Idaho Irrigation District	1.3477%
Idaho Power Company	2.6471%
Lenroot Canal Company	.2275%
Martin Canal Company	.0341%
Michaud Division, Fort Hall Indian Reservation	2.8059%
Milner Low Lift Irrigation District	2.6875%
Minidoka Irrigation District	4.9155%
New Sweden Irrigation District	1.5136%
North Side Canal Company, Ltd.	6.9635%
Peoples Canal & Irrigation Company	1.2597%
Poplar Irrigation District	.0396%
Progressive Irrigation District	.7344%
Reid Canal Company	.1499%
Rudy Canal Company, Ltd.	.1558%
Snake River Valley Irrigation District	1.5510%
Trego Ditch Company	.0773%
Utah-Idaho Sugar Company	.7917%
Woodville Canal Company	.0200%
	100.0000%

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 87:

The defendant Idaho Power, subject to the objections set forth above, admits the percentage of space and the active storage capacity of the American Falls Reservoir as is set forth in this Request for Admissions with the exception that the percentage of total active storage capacity for the Burgess Canal & Irrigating Company should read ".5586%" rather than ".5568%". The defendant Idaho Power further states that a more accurate and complete statement as to the respective percentage of total active water storage capacity

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in the American Falls Reservoir is contained in Section VI of Finding of Facts and Conclusions of Law entered on May 18, 1977, by State Court in the Confirmation Action.

REQUEST FOR ADMISSIONS NO. 88: Admit that the construction of the American Falls Reservoir was substantially completed during the year 1927.

ANSWER TO REQUEST FOR ADMISSIONS NO. 88: The defendant Idaho Power admits the construction of the original dam and reservoir at American Falls was substantially completed on or about 1927.

REQUEST FOR ADMISSIONS NO. 89: Admit that it was officially recognized by the Bureau of Reclamation as early as 1929 that the aggregate compound used in the concrete was chemically reacting in a manner causing unusual and inordinate expansion and, therefore, cracking of the concrete structure of the dam.

ANSWER TO REQUEST FOR ADMISSIONS NO. 89: The defendant Idaho Power, after making a reasonable inquiry does not have any knowledge of the truth of the allegation that the Bureau of Reclamation "officially recognized" that the aggregate used was chemically reacting or causing an unusual and inordinate expansion and cracking of the concrete structure of the dam. Employees of Idaho Power knew at the time referred to that the concrete structure of the dam was expanding, but did not know the cause of such expansion, nor that this expansion was "unusual and inordinate expansion" or was causing "cracking of the concrete structure of the dam."

REQUEST FOR ADMISSIONS NO. 90: Admit that in spite of the knowledge by the defendant, United States of America, of the structural deterioration of the American Falls Dam, the

said defendant continued to demand and continued to receive the payments from the defendant districts, water and canal companies, persons and private corporations together with the operation and maintenance charges.

ANSWER TO REQUEST FOR ADMISSIONS NO. 90: The defendant Idaho Power incorporates by reference its Answer to Request for Admissions No. 89 and further states that it has no knowledge or information despite reasonable inquiry as to the knowledge of the defendant United States of America at the various times referred to in in this Request other than as set forth above and in its Answer to Request for Admissions No. 92.

Defendant Idaho Power admits that defendant districts, water and canal companies, persons and private corporations have, pursuant to their obligations under the Contract referred to in its Answers to Request for Admissions Nos. 68, 69, 70 and 71, paid assessments or obtained a moratorium on such payments and that these assessments include construction costs and operation and maintenance charges. The defendant Idaho Power reserves the right to amend its Answers to this Request for Admissions subject to what discovery in this action may disclose which may be contrary to the matters set forth in this Request for Admissions. Except as specifically admitted herein the remaining matters contained in this Request for Admissions are denied.

REQUEST FOR ADMISSIONS NO. 91: Admit that at the time of the execution of the contracts, above referred to in Request No. 65 through Request No. 85, it was within or should have been within, the knowledge of the defendant, United States of America, that said Dam was structurally unsafe and would require extensive rehabilitation or total replacement.

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ANSWER TO REQUEST FOR ADMISSIONS NO. 91: The defendant Idaho Power, subject to the objections contained in its Answers to Request for Admissions Nos. 65 through 85 and 89 and 90, states that it is without sufficient information after a reasonable inquiry has been made to have sufficient information to state what the knowledge of the United States was at the time that the contracts referred to in Request for Admissions No. 65 through 85 were executed by the United States of America. Since the plaintiffs have not defined the terms "structurally unsafe" defendant Idaho Power cannot admit or deny that the defendant United States of America should have known the dam required "extensive rehabilitation or total replacement" at the time of the execution of the contracts referred to in Requests Nos. 74 through 85. As to the contracts referred to in Requests Nos. 68 through 73, as they were signed June 15, 1923, prior to the completion of the dam and September 21, 1927, at or near the time of completion, the portions of the Request for Admissions about the knowledge of the United States in regard to the condition of the dam are denied. This Answer is made under a reservation of the right of the defendant Idaho Power to amend its Answer to this Request for Admissions subject to what discovery in this action may disclose which may be contrary to matters set forth in this Answer.

REQUEST FOR ADMISSIONS NO. 92: Admit that at no time were the plaintiffs nor the defendant irrigation districts, water and canal companies, persons and private corporations who had contracted for storage space in American Falls Reservoir furnished with full and adequate information concerning the extent and the degree of deteriorating of the

said Dam until approximately 1964 when the Bureau of Reclamation ordered its first storage restriction upon the storage capacity of the dam.

ANSWER TO REQUEST FOR ADMISSIONS NO. 92: See Answer to Request for Admissions No. 93.

REQUEST FOR ADMISSIONS NO. 93: Admit that after the Bureau of Reclamation ordered its first storage restriction upon the storage capacity of the dam, during the year 1966, the Bureau of Reclamation of the Department of Interior of the defendant, United States of America, published a report concerning the threat to interruption of irrigation use of the reservoir by the condition of the dam, emphasizing the need for replacement or rehabilitation.

ANSWER TO REQUEST FOR ADMISSIONS NOS. 92 AND 93: The defendant Idaho Power incorporates by reference its Answer to Request for Admissions No. 89 set forth above as if specifically restated and admit that the Bureau of Reclamation ordered its first storage restriction upon the storage capacity of the dam during the year 1964. This restriction limited the filling of the top eight feet of storage capacity only so long as ice was on the Reservoir. Prior to this time, the defendant Idaho Power did not have full and adequate information concerning "the extent and degree of deteriorating of the said Dam" if such deterioration had, in fact, occurred. The defendant Idaho Power admits the Bureau of Reclamation of the Department of the Interior of the defendant United States of America published a Report emphasizing the need for a replacement or rehabilitation of the dam in 1966. As to the remainder of the conclusions, inferences and statements in these Requests for Admissions, the defendant Idaho Power admits the report indicated a possible

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interruption of irrigation uses of the Reservoir due to the condition of the dam; however, at this time legal conclusions and inferences which the plaintiffs have set forth in this Admission in the use of the term "threat" is not a matter within the knowledge of the plaintiffs and is objected to by the plaintiffs as a mere legal conclusion without any factual predicate. Except as specifically admitted, the matters set forth in this Request for Admissions are denied.

REQUEST FOR ADMISSIONN NO. 94: Admit that in 1972, the officials of the Bureau of Reclamation concluded the condition of the dam had reached unusual or emergency conditions and imposed an additional restriction on the storage capacity of the reservoir limiting the use thereof to approximately two-thirds of its active storage capacity, thereby completely interrupting the use of one-third of its active storage capacity and threatening further interruption of irrigation water or power service.

ANSWER TO REQUEST FOR ADMISSIONS NO. 94: The defendant Idaho Power, subject to the objections set forth above, admits that in 1972 the Bureau of Reclamation concluded the condition of the dam had reached unusual emergency conditions and imposed additional restrictions on the storage capacity of the Reservoir limiting the use thereof to approximately 2/3 of its active storage capacity interupting the use of 1/3 of its active storage capacity, if such active storage capacity was required to be used for reclamation purposes, and thereby raising the possibility of interruption of irrigation water. As to the remainder of the statements contained in this Request for Admissions the defendant Idaho Power denies the same, specifically denying any reference to the restrictions imposed by the Bureau of Reclamation on the

active storage capacity "threatening further interruption of power service."

REQUEST FOR ADMISSIONS NO. 95: Admit that on or about December 18, 1972, said Bureau of Reclamation published a report entitled, "AMERICAN FALLS DAM REPLACEMENT, SPECIAL REPORT (1972)", at page one, it states:

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

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 95: The defendant Idaho Power, subject to the objections set forth above that the Report referred to in this Request to Admit, Exhibit 5 to the Amended Complaint, has not been supplied to the defendant Idaho Power by plaintiffs as requested; however, the defendant Idaho Power admits the quoted portion of this Request, one sentence contained in the Report of the Bureau of Reclamation entitled "AMERICAN FALLS REPLACEMENT DAM, SPECIAL REPORT (1972)". This Report, however, must be read in its entirety and not in isolated phrases, sentences and provisions. The defendant Idaho Power objects to any inferences, conclusions or presumptions which the plaintiffs may improperly and inaccurately draw from such incomplete quotation.

REQUEST FOR ADMISSIONS NO. 96: Admit that at page 11 of the foregoing report, (see Request No. 95) it is stated:

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 continued.

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(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 the 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 replacement dam.

ANSWER TO REQUEST FOR ADMISSIONS NO. 96: The defendant Idaho Power, subject to the objections set forth above in the Answer and Objections to Request for Admissions No. 95, admits that the quoted portion set forth in this Request are in substance two of fourteen paragraphs of a conclusion which begins on page 11 of the Report referred to in its Answer to Request for Admissions No. 95, except this Request for Admissions contains the following typographical errors:

(1) The last word of subsection (1) of the quoted material should read the word "continues" rather than "continued";

(2) The fourth line of the second paragraph (2) should read as follows: "use of storage during construction, yet it would" rather than "use of the storage during construction yet it would"; and

(3) The last line of the quoted material should read as follows: "would benefit substantially from the replacement plan."

The report and its conclusion should be read in their entirety and not in isolated phrases, sentences and provisions. Defendant Idaho Power objects to any inferences, conclusions or presumptions which the plaintiffs may improperly draw from such incomplete quotations.

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REQUEST FOR ADMISSIONS NO. 97: Admit that in spite of the conclusions of the Bureau of Reclamation regarding the unusual or emergency conditions of the said dam, the Commissioner of Reclamation failed, neglected or refused to invoke and exercise his legal and contractual obligations under the authority granted him by the provisions of 43 U.S.C. §§ 502 and 503.

ANSWER TO REQUEST FOR ADMISSIONS NO. 97: The defendant Idaho Power denies the matters set forth in this Request for Admissions. The Commissioner of Reclamation could not seek to have the replacement dam constructed from the emergency fund due to the fact that that emergency fund had in it an insufficient amount of money to-wit: $1,000,000.00, and based upon the Report set forth in its Answer to the Request for Admission No. 95 would be less than 1/29 of what the Replacement Dam was expected to cost. Title 43 U.S. Code §§ 502 and 503 did not grant the Commissioner of Reclamation legislative powers to appropriate money for the American Falls Replacement Dam Project. The Commissioner of Reclamation could not, therefore, have failed, neglected or refused to exercise legal and contractual obligations under the authority of 43 U.S.C. §§ 502 and 503 because he had no power to so act and had no funds which would pay for the completed costs of the American Falls Replacement Dam Program.

REQUEST FOR ADMISSIONS NO. 98: Admit that following the publication of the Report of the Bureau of Reclamation, (see Request No. 97), there was sponsored in the House and Senate of the United States on behalf of the Department of Interior a Bill seeking to obtain authorization of the Department of Interior to replace the American Falls Dam

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under the Reclamation Act of the United States and requesting appropriations of the sum of $29,000,000.00 for the cost of construction. That said House Resolution No. 6781 is identical to Senate Bill No. 1528, 93rd Congress, First Session.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 98: The defendant Idaho Power objects to this Request for Admission because it is predicated upon the reading of Exhibit 6 to the Amended Complaint which is referred to in Paragraph 91 of the Amended Complaint which has not been supplied despite the request made by the defendant Idaho Power and other defendants for such exhibits to the Amended Complaint to be tendered to them. Subject to the objections set forth above, the defendant Idaho Power admits that after the Report, referred to in its Answer to Request for Admissions No. 97, there was sponsored in the House and Senate of the United States on behalf of the Department of Interior, a bill seeking to obtain authorization for the Department of Interior to replace the American Falls Dam pursuant to the Reclamation Act of 1902 and the amendments thereto and requesting $29,000,000.00 for the cost of construction. These bills were H.R. No. 6781 and S.B. No. 1528 of the 93rd Congress. At or about the same time an alternative bill authorizing private financing of the American Falls Replacement Dam Project was also introduced in both the House and Senate; H.R. No. 6782 and S. No. 1529. This bill was, after due consideration, enacted while the bill authorizing the Department of Interior to replace the American Falls Dam was never passed by the Congress.

REQUEST FOR ADMISSIONS NO. 99: Admit that between the years 1966 (and for many years prior thereto, the exact date

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being unknown to plaintiffs) and 1972, the defendant, American Falls Reservoir District and defendant, Idaho Power Company, unlawfully combined or conspired together with intent to monopolize or attempt to monopolize the full hydro-electric power generating capacity available at American Falls Dam and Reservoir, or to unreasonably restrain trade by preventing the Bureau of Reclamation from constructing a competitive facility at said Dam.

ANSWER TO REQUEST FOR ADMISSIONS NO. 99: The defendant Idaho Power denies all of the matters set forth in this Request for Admissions. There is no factual basis for the requested admissions that Idaho Power and AFRD conspired together with an intent to monopolize or to attempt to monopolize the full hydroelectric power generating capacity available in the American Falls Reservoir or to unreasonably restrain by preventing the Bureau of Reclamation from constructing a competitive facility at said dam.

REQUEST FOR ADMISSIONS NO. 100: Admit that prior to the construction of the existing American Falls Dam the defendant, Idaho Power Company, had acquired and was the owner of certain water rights, power production facilities, and other property located at the existing dam site.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 100: The defendant Idaho Power, subject to the objections set forth above, admits that prior to the construction of the original Dam and Reservoir at American Falls the defendant Idaho Power "had acquired and was owner of certain water rights, power production facilities and other property" located below the original American Falls Dam site.

REQUEST FOR ADMISSIONS NO. 101: Admit that pursuant to a contract dated the 15th day of June, 1923, between the

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defendant, United States, and the defendant, Idaho Power Company, the United States purchased from the defendant, Idaho Power Company, certain land upon which the existing dam is located, two power plants, referred to as the Island Park Plant, the land upon which said plants are located, certain water rights of the defendant company, and hydro-electric production rights.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 101: The defendant Idaho Power objects to this Request for Admissions since the plaintiffs have failed to tender to the defendant Idaho Power a copy of Exhibit 7 to the plaintiffs' Amended Complaint referred to in Paragraphs 94 and 95 of the Amended Complaint and which is referred to in this Request for Admissions. Subject to this objection, defendant Idaho Power admits that defendant United States of America purchased from the defendant Idaho Power Company certain rights, title and interest which are specifically set forth in the contract dated June 15, 1923. While that contract itself provides the best evidence of its terms, defendant Idaho Power answers that this contract provides for two power plants on the west side of the river, in addition to the Island Park Plant.

REQUEST FOR ADMISSIONS NO. 102: Admit that Idaho Power Company received in consideration of said contract dated the 15th day of June, 1923, among other things, $1,000,000.00 dollars.

ANSWER TO REQUEST FOR ADMISSIONS NO. 102: The defendant Idaho Power, subject to the objections set forth in its Answer to Request for Admissions No. 101, admits that it received in consideration for the contract referred to in its Answer to Request for Admissions No. 101, among other things, approximately $1,000,000.00.

REQUEST FOR ADMISSIONS NO. 103: Admit that out of the $1,000,000.00 referred to in Request No. 102, the sum of approximately $700,000.00 was reimbursed to the government by plaintiffs or their predecessors in interest through their respective irrigation districts and defendant irrigation districts, water and canal companies, persons and private corporations including Idaho Power Company and American Falls Reservoir District as a part of the construction charge.

ANSWER TO REQUEST FOR ADMISSIONS NO. 103: The defendant Idaho Power incorporates by reference herein its objections set forth in its Answer to Request for Admissions No. 101 as if specifically restated herein. The defendant Idaho Power denies that the individually named plaintiffs or their predecessors in interest, through their respective irrigation districts and defendant irrigation districts, water and canal companies, reimbursed the government $700,000 of the $1,000,000 paid to the defendant Idaho Power Company as referred to in Request for Admissions No. 102. The defendant Idaho Power specifically states certain defendant irrigation districts, water and canal companies, as well as persons and private corporations, including Idaho Power Company and the defendant AFRD, made appropriate construction payments in accordance with their respective contracts. The exact accounting and use of this money by the United States of America is unknown to the defendant Idaho Power. It is possible that some of the project costs paid for by these defendants were used to reimburse the United States of America for the payment made to the Idaho Power Company, however, after reasonable inquiry the defendant Idaho Power does not have any further specific knowledge as to these

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matters. Defendant Idaho Power reserves the right to amend its Answer to this Request for Admissions after the production by the plaintiffs of Exhibit 7 to the Amended Complaint and after the discovery which will be taken in this matter.

REQUEST FOR ADMISSIONS NO. 104: Admit that under the Reclamation Acts of 1902 and Acts amendatory and supplementary thereto the plaintiffs through their respective districts and water and canal companies were by law and contract, entitled to certain rights, credits and economic advantages from the multipurpose use for hydro electric production from water released from a reclamation facility, some of which said rights are set forth in 43 U.S.C. 485 H and 43 U.S.C. 501, and particularly the right to have the revenues from power production covered into the reclamation fund of the Commissioner of Reclamation to use the Reclamation Fund monies for unusual and emergency conditions, as provided in 43 U.S.C. § 502 and § 503.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 104: The defendant Idaho Power objects to this Request for Admissions since the plaintiffs are merely five individual water users who do not have any contractual rights with the United States of America to space in the American Falls Reservoir pursuant to the Reclamation Act of 1902 and therefore, the plaintiffs have not sufficiently set forth any factual basis upon which to predicate any legal conclusion or legal opinion which is requested by this Request for Admissions. Subject to this objection, defendant Idaho Power denies that pursuant to the Reclamation Act of 1902 and the amendments thereto and Public Law 93-206, "the plaintiffs through their respective districts, water and canal companies were by law and contract entitled to certain rights, credits and economic

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advantages from the multipurpose use for hydroelectric production from power released from a reclamation facility" other than as was provided for in Public Law 93-206 for the American Falls Replacement Dam Program. The defendant Idaho Power further denies that the individual plaintiffs have "the right to have the revenues from power production placed into the reclamation fund as provided in 43 U.S.C. §392(a)" and "the authorization of the Commissioner of Reclamation to use the reclamation fund monies for unusual emergency conditions", namely, construction of a replacement dam at American Falls as provided in 43 U.S.C. §502 and § 503. Further defendant Idaho Power denies that 43 U.S.C. 485H and 43 U.S.C. 501 entitle the plaintiffs to "certain rights, credits and economic advantages from the multipurpose use for hydroelectric production from water released from the reclamation facility." The defendant Idaho Power objects to the legal conclusions set forth in this Request for Admissions because the plaintiffs have not set forth sufficient factual basis on which to premise such legal opinions or conclusions. Except as specifically admitted, the matters contained in this Request for Admissions are denied.

REQUEST FOR ADMISSIONS NO. 105: Admit that the hydroelectric power produced by the Bureau of Reclamation is marketed in interstate commerce through the Bonneville Power Administration, a federally chartered corporation, to municipalities, rural electrification cooperatives, irrigation districts, and others throughout Southern Idaho--the marketing area of Bonneville Power Administration.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 105: The defendant Idaho Power subject to the objections set forth above admits the hydroelectric power produced by the

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Bureau of Reclamation through Bonneville Power Administration, "a federally chartered corporation" is marketed outside of the Bonneville Power Administration area which is the "Columbia Basin" to certain electric and power users which may include "municipalities, rural electrification cooperatives, irrigation of districts and others throughout Southern Idaho" and this marketing of electric power may involve sale of electric power to parties outside of the State of Idaho, according to the best information and belief of the defendant Idaho Power. The defendant Idaho Power reserves the right to amend its Answer to this Request for Admissions subject to the discovery which may be taken in this action.

REQUEST FOR ADMISSIONS NO. 106: Admit that the Bonneville Power Administration and Bureau of Reclamation are substantially the only competitors of Idaho Power Company within that portion of the marketing area from Idaho Falls west to the Idaho-Oregon border.

ANSWER TO REQUEST FOR ADMISSIONS NO. 106: The defendant Idaho Power denies that Bonneville Power Administration and the Bureau of Reclamation are substantially the only competitors of the Idaho Power Company within that portion of the market area from Idaho Falls west to the Idaho-Oregon border and affirmatively states that Utah Power and Light, Unity Power, Salmon River Electric and Raft River Rural Electric Co-Op are some of the other competitors of the Idaho Power Company. Further, defendant Idaho Power Company affirmatively states that the Bureau of Reclamation does not market power, but rather, generates electricity which in this area is marketed by the Bonneville Power Administration. The defendant Idaho Power reserves the right to amend its Answer to this Request for Admissions subject to discovery which may be taken in this matter.

REQUEST FOR ADMISSIONS NO. 107: Admit that any power which may be produced from American Falls Dam by the Bureau of Reclamation would generally be classified as "Peaking Power".

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 107: The defendant Idaho Power does not know what the plaintiffs mean when they use the term "peaking power" since in the depositions of the various plaintiffs, the individual plaintiffs have used various definitions of this term and there is no definition contained in this Request for Admissions. Accordingly, the defendant Idaho Power objects to this Request for Admissions until such term is defined by plaintiffs. Further, the defendant Idaho Power does not know of any power which has been or will be produced from the American Falls Dam by the Bureau of Reclamation and therefore, this Request for Admissions made by the plaintiffs is predicated upon a fact which does not exist and cannot then be admitted regardless of how the plaintiffs may define the term "peaking power" and is accordingly objected to. Subject to these objections, the defendant Idaho Power denies that the power produced by anyone at the American Falls Reservoir would generally be classified as "peaking power".

REQUEST FOR ADMISSIONS NO. 108: Admit that in addition to and in conjunction with the market referred to in Request for Admissions No. 106 above, a substantial part of the market for such power is irrigation pumping during the summer irrigation season and is needed primarily for that purpose throughout the area of Southern Idaho and the marketing area of the Bonneville Power Administration.

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ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 108: The defendant Idaho Power, subject to the objections set forth above, admits that part of the market for hydroelectric power is needed during the summer for use in pumping irrigation water and this need exists in Southern Idaho and part of the marketing area for the Bonneville Power Administration. The defendant Idaho Power does not know how the plaintiffs define the term "substantial part" and the defendant Idaho Power denies that irrigation pumping is a "substantial part" of the total market for electrical energy in the area referred to. The defendant Idaho Power reserves the right to amend the Answer to this Request for Admissions subject to the discovery which will be taken in this action.

REQUEST FOR ADMISSIONS NO. 109: Admit that the defendant Idaho Power Company, engages in the business of producing and marketing electric power in interstate commerce.

ANSWER TO REQUEST FOR ADMISSIONS NO. 109: The defendant Idaho Power Company engages in the business of producing and marketing electric power in interstate commerce subject to federal, state and local governmental controls.

REQUEST FOR ADMISSIONS NO. 110: Admit that the Idaho Power Company is attempting to monopolize the market for irrigation pumping power.

ANSWER TO REQUEST FOR ADMISSIONS NO. 110: The defendant Idaho Power denies that it is attempting to "illegally or contrary to the laws of the State of Idaho and the United States of America" monopolize the market for irrigation pumping power. Defendant Idaho Power states that it is under a duty to supply electrical power to its customers within its franchise area, subject to the governmental regulations mentioned in its Answer to Request for Admissions No. 109.

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REQUEST FOR ADMISSIONS NO. 111: Admit that under the increasing load requirements of the Bonneville Power Administration, the Bonneville Power Administration will be without sufficient marketable power to meet demands of its customers by the early 1980's, unless new and supplemental sources of power are developed.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 111: The defendant Idaho Power objects to this Request for Admissions since it is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection, the defendant Idaho Power states that it is without specific knowledge after reasonable inquiry and the information requested is not known or readily obtainable by the defendant Idaho Power and accordingly, the defendant Idaho Power cannot readily admit or deny this Request for Admissions. The admissions sought are based upon speculation as to events and sources of supply of electrical energy and energy demands about which the plaintiff is unable to answer.

REQUEST FOR ADMISSIONS NO 112: Admit that the representative plaintiffs and their respective districts and companies in which plaintiffs' lands are located, need and are entitled to the benefits of the production of power by the Bureau of Reclamation at American Falls for irrigation pumping purposes.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 112: The defendant Idaho Power subject to the objections set forth above admits that the plaintiffs and their respective districts and companies in which plaintiffs' lands are located need power for irrigation pumping purposes. Except as specifically admitted, all other matters requested to be admitted are denied.

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REQUEST FOR ADMISSIONS NO. 113: Admit that by the terms of the contract of June 15, 1923, between Idaho Power and the United States of America, Idaho Power Company reserved a priority right to produce a maximum of 27,500 kilowatts of power at American Falls.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 113: The defendant Idaho Power denies that the contract referred to in this Request for Admissions limits Idaho Power's generating capacity to 27,500 kilowatts at American Falls Reservoir. The defendant Idaho Power affirmatively states that the contract referred to is the best evidence of its contents and the rights of Idaho Power under that contract to produce electric power at American Falls Reservoir.

REQUEST FOR ADMISSIONS NO. 114: Admit that by the terms of the contract of June 15, 1923, between Idaho Power Company and the United States of America, the United States had the right to produce variable amounts of power during the irrigating season up to 30,000 kilowatts.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 114: The defendant Idaho Power objects to this Request for Admissions on the ground that the contract should speak for itself regarding the allocation of power production rights. Subject to this objection, Idaho Power admits that the United States have a contractual right to generate 30,000 kilowatts of power at the American Falls Dam from June 1 through August 15 of each year as well as various other amounts of power prior and subsequent to those dates.

REQUEST FOR ADMISSIONS NO. 115: Admit that by the terms of a scheme or plan of the combination of American Falls Reservoir District and Idaho Power Company, Idaho Power Company will acquire one hundred per cent (100%) of the power production capacity of American Falls Dam.

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ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 115: The defendant Idaho Power subject to the objections set forth above admits that pursuant to the Falling Water Contract dated as of March 31, 1976 by and between the American Falls Reservoir District and the Idaho Power Company (hereinafter referred to as "Falling Water Contract") as authorized by Public Law 93-206, it will acquire 100% of power production capacity of the American Falls Dam to the extent that the terms of the Falling Water Contract generation of power by Idaho Power may be accomplished. The defendant Idaho Power specifically denies the remaining statements made in this Request for Admissions and in particular denies that there is any "scheme or plan of combination" between the American Falls Reservoir District and the Idaho Power Company.

REQUEST FOR ADMISSIONS NO. 116: Admit that in the absence of the Bureau of Reclamation, Idaho Power Company will be able to acquire most of the peak irrigation pumping market.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 116: The defendant Idaho Power objects to this Request for Admissions because it apparently requests the defendant to speculate as to what the result might be based upon the facts which involve the Bureau of Reclamation acting contrary or not acting contrary to the requirements of Public Law 93-206. Further, the defendant Idaho Power objects to this Request for Admissions because it requests the defendant Idaho Power to speculate what effect the absence of the Bureau of Reclamation will have with regard to "peak irrigation pumping market." This Request for Admissions does not define what market area is referred to, nor is the term "peak irrigation

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pumping market" defined. Due to the lack of specificity of the Request for Admissions, the defendant Idaho Power is unable to formulate a response. Idaho Power answers further that its acquisition of "pumping markets" is inherently related to the regulations imposed on it by various governmental regulatory units and the extent of Idaho Power's area of franchised operations.

REQUEST FOR ADMISSIONS NO. 117: Admit that the efforts of the Bureau of Reclamation to obtain appropriations between 1929 and 1934 for the installation of a power unit at American Falls were prevented by political oppositiion of defendant Idaho Power Company.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 117: The defendant Idaho Power denies the allegations contained in the Request for Admissions.

REQUEST FOR ADMISSIONS NO. 118: Admit that during the year 1934, the United States entered into a contract with the Idaho Power Company which provided in part, among other things, that the United States withhold construction of a power plant at American Falls, which contract remained in effect until Minidoka-Palisades authority was obtained in early 1950.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 118: Defendant Idaho Power admits that during the year 1934 the United States entered into a contract with the Idaho Power Company which provided in part that the United States, after careful study and consideration, agreed with the Idaho Power Company that as a part of a coordinated effort to conserve water for summer irrigation purposes, that the Idaho Power Company was permitted to use for power during the period of the agreement any water in addition to its own released from

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American Falls Reservoir. Defendant Idaho Power admits that under the pre-existing contract, 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 and American Falls and after careful study and consideration, it was determined that conservation of Snake River water for summer irrigation projects in substantially greater amounts than could be accomplished by the construction of the government unit at American Falls were affected by coordinated use of the existing power plant facilities of the Company and the existing power plant facilities of the United States. Except as specifically admitted above, all other matters set forth in this Request for Admissions are denied.

REQUEST FOR ADMISSIONS NO. 119: Admit that the installation of the American Falls Power Plant was re-authorized by the Act of Congress authorizing the construction of Palisades Reservoir.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 119: The defendant Idaho Power admits that as an incidental feature of the congressional legislation authorizing the construction of Palisades Reservoir that the American Falls Power Plant was re-authorized.

REQUEST FOR ADMISSIONS NO. 120: Admit that in the furtherance of and in attempting to effectuate said combination or conspiracy, the defendants' American Falls Reservoir and Idaho Power Company, and their co-conspirators or members of the combination, did those things contemplated by them to be done, among which were the following:

(a) To divert the support of the defendant irrigation districts and water and canal companies, persons and private

corporations from the plan for replacement of American Falls Dam from that of the Department of Interior to the scheme of defendants the American Falls Reservoir District and Idaho Power Company.

(b) For the purpose of diverting the support of the defendant irrigation districts, water and canal companies, persons and private corporations who held water in American Falls Reservoir District from supporting the plan of the Bureau of Reclamation or of the Department of Interior for the replacement of American Falls Dam, which plan required that the irrigators pay or reimburse the government for the construction of the replacement dam an amount in the approximate sum of $18,000,000.00, the defendant Idaho Power Company through American Falls Reservoir District, defendant, offered to replace or reconstruct the American Falls Dam for the total sum of Twenty and one-half million dollars, of which said sum, the farmers were to pay approximately one million dollars.

(c) That in consideration of the construction of said dam, Idaho Power Company was to receive the right to use the falling water released from said reservoir for irrigation purposes.

(d) In reliance on the foregoing offer of Idaho Power Company and support of most of the defendant irrigation districts, water and canal companies, persons and private corporations owning storage space in American Falls Reservoir was obtained.

(e) The American Falls Reservoir District through its counsel, the firm of which also represented in various capacities the Idaho Power Company, prepared enabling legislation for the presentation to Congress.

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(f) That American Falls Reservoir District promoted the enabling legislation in the Congress.

(g) That the defendants American Falls Reservoir District, Idaho Power Company, their agents, officers and employees, led the plaintiffs and persons similarly situated to believe that the entire cost of the construction of American Falls Replacement Dam would be paid by Idaho Power Company except for the sum of one million dollars.

(h) (1) That without the knowledge or consent of plaintiffs, the legislation presented to the Congress, was presented not as a Reclamation Act, but as a Power Act.

(2) That the title to the reconstructed Dam, upon completion, if defendants are not enjoined, will be restored to the government as a government dam under the Power Acts, and

(3) The completed Dam, will be under the administrative jurisdiction of the Federal Power Commission.

(i) American Falls Reservoir District and Idaho Power Company, acting through their legal representation, prepared the forms of contracts which were submitted to the various districts for approval.

(j) Upon the presentation of said forms of contract opposition began to grow, at which time, to-wit, in the legislative session, 1974, the said defendant, Senator Barker, president of American Falls Reservoir District and Ralph Olmstead, a member of the House of Representatives of the State of Idaho, caused to be enacted § 43, Chapter 22, Idaho Code, which said legislation materially and substantially altered the method and procedures for obtaining approval of bond issues theretofore allowed in the State of

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Idaho, altered the method by which confirmation of proceedings were to be held and, in legal effect, unlawfully delegated authority to American Falls Reservoir District the power to make assessments upon lands and to impose liens upon lands located within boundaries of the various defendant districts and participating persons and companies.

(k) That the defendant, American Falls Reservoir District, caused to have held various public meetings at which material facts were deceptively withheld from the plaintiffs and persons similarly situated respecting the plan, among which said facts were:

(1) That the condition of the American Falls Dam had made no significant change within the last fifteen years according to the findings of an engineer.

(2) That the contract presented to the plaintiffs and persons similarly situated was an open-end contract and that the amount which the defendant districts may become obligated to pay was undetermined.

(3) That the contract which was presented to the plaintiffs and persons similarly situated was only a form of contract which the defendant, American Falls Reservoir District, deemed could be unilaterally changed without the consent of the irrigators or of the spaceholders.

(4) That which said form of contract, referenced above, has been materially changed since the election had been held for the approval of the same.

(5) That there was a material departure from the terms of the existing contracts between the Secretary and the spaceholders for repayment of costs in the existing American Falls Dam.

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(6) That the dam would return to the government as a government dam under the Power Act and not as a reclamation dam.

(7) That the default provisions of the proposed contract were inconsistent with and in violation of the rights of the parties under their existing contracts under the Reclamation Acts.

(8) That the spaceholders were subjected to inordinate penalties inconsistent with the terms of existing contracts.

(9) Idaho Power Company has received substantial and discriminatory benefits under the Falls Water Contract as compared with the spaceholders.

(10) That the contract was incorrectly and inaccurately represented to spaceholders that there was absolutely no way they could be deprived of their water under the existing contract.

(11) That the spaceholders were incorrectly and inaccurately assured Idaho Power Company could get no more water in the reservoir, when in truth and in fact there is no limit to the amount Idaho Power Company can acquire.

(12) That the spaceholders were incorrectly and inaccurately advised that the replacement dam would be a new dam, when in truth and in fact the design for construction offered by Idaho Power Company and American Falls Reservoir District is merely the rehabilitation of the existing structure.

(13) That a substantial reason for the removal of any part of the structure relates directly and only to the necessity for the reinstallation of pen stocks for power production.

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(14) No clear division of costs has been apportioned to Idaho Power for that portion of the construction attributable to the pen stocks.

(15) That the plaintiffs were advised by Mr. Rodney Vissia, Regional Director of the Bureau of Reclamation of the Department of Interior of the defendant United States of America, that in the event 88% of the irrigators holding space in American Falls Reservoir District did not approve the project, the project would not be instituted by the Department of Interior.

(16) When 88% did not approve the plan, the defendant Idaho Power Company asserted its political muscle to assert pressure upon the Secretary and others to proceed despite the failure of the plan to attain 88% approval.

(17) American Falls Reservoir District and its representatives failed to advise the defendant districts that in the event any district became a non-participating district by refusing to participate in the plan of construction, that the participating districts may be liable for any interruption of the water rights during the period of construction or for damages which may accrue therefrom.

(18) Idaho Power Company and its representatives failed to advise the defendant districts that in the event any district became a non-participating district by refusing to participate in the plan of construction that the participating districts may be liable for any interruption of the water rights during the period of construction or for damages which may accrue therefrom.

(19) The counsel for the American Falls Reservoir District prepared the form of nearly all documents and resolutions and directed the procedures followed by the defendant districts in furtherance of said plan.

(20) American Falls Reservoir District and Idaho Power Company held several public meetings designated to convince and persuade the public of the merits of the plan.

(21) American Falls Reservoir District and Idaho Power Company conducted a publicity campaign during the elections to gain the support of the voters and approval of the irrigators to said contracts.

(22) Opponents of the plan were denied equal space and time in the major news media.

(23) American Falls Reservoir District prepared the call for bids, and employed a firm of engineers.

(24) Without first obtaining confirmation of the Court of competent jurisdiction and final authority to sell the bonds, American Falls Reservoir District and Idaho Power Company have undertaken to contract for the construction and to commence construction of the Dam without having complied fully with the law.

(25) And, (see (24) above), in complete disregard of the objections of plaintiffs and dissenting districts and persons of the invasion of their rights and the objections of non-participating irrigation districts, to-wit: Minidoka Irrigation District, Burley Irrigation District, Falls Irrigation District and others in the upper Snake River basin.

ANSWER AND OBJECTION TO REQUEST FOR ADMISSIONS NO. 120: The defendant Idaho Power except as specifically admitted herein and subject to the objections set forth above and herein, denies the matters set forth in this Request for Admissions. Defendant Idaho Power affirmatively states that the AFRD and the Idaho Power Company have not conspired or combined to do any of the things alleged to be illegal and

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contrary to the law in this Request for Admissions. The AFRD along with others supported the Idaho Power Company's joint venture proposal with reference to the matters set forth in Subparagraphs (a), (b), (c) and (d) of this Request for Admissions but the defendant Idaho Power specificially denies that such support is part of "any scheme" or was intended to divert "support of the defendant irrigation districts and water and canal companies" for the plan for replacement of the American Falls Dam from that of the Department of the Interior. Support by the AFRD of the Idaho Power Company proposal was not due to any plan, scheme or illegal activity but was due in fact to the determination by the defendant AFRD that the proposal of the Idaho Power Company was the best available alternative to the problems facing it as a spaceholder in the American Falls Reservoir and was a feasible and practical way to resolve the probable water shortage due to the restrictions placed on the American Falls Reservoir. The defendant Idaho Power also affirmatively states that there was contained in the proposal of the defendant Idaho Power Company an offer to pay approximately $19,000,000 for the value of the falling water for the American Falls Dam and as part of that proposal the space-holders would pay the remaining amount necessary to properly and appropriately construct the American Falls Replacement Dam. In exchange for the payment of the $19,000,000 the Idaho Power Company, according to its proposal, was to receive the rights to use the falling water released from that dam. The defendant AFRD along with others supported this proposal from the Idaho Power Company.

With regard to Subparagraph (c) of this Request for Admissions, the defendant Idaho Power states that the law

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firm of Parry, Robertson, Daly & Larson, counsel for the American Falls Reservoir District, along with others participated with counsel for American Falls Reservoir District No. 2, Minidoka Irrigation District, Burley Irrigation District, A & B Irrigation District, and the United States in preparing, enabling legislation for presentation to Congress, including both the private replacement bill, as well as the bill designed to require the Bureau of Reclamation to replace the dam. This law firm has also represented at various time, other parties to this litigation in matters unrelated to the American Falls Dam Replacement Program.

With regard to Subparagraph (i) of the Request for Admissions, the defendant Idaho Power states that it, along with others including representatives of the Idaho Power Company and the United States of America, various other irrigation districts and canal companies including the members of the committee of eight, negotiated various forms of contract which were then submitted to the individual Board of Directors of the various irrigation districts, canal companies and other entities for approval. Since representation in the negotiation process involved persons and representatives of entities beyond those of AFRD and the Idaho Power Company and the plaintiffs purportedly have knowledge of this fact, the defendant Idaho Power objects to this Request for Admissions which fails to conform to what discovery to date and all parties including the plaintiffs have knowledge.

With regard to Subparagraphs (f), (g), (j) and (h), defendant Idaho Power states that the defendant AFRD, along with others including virtually all of the irrigation districts sought passage of the enabling legislation Public Law

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93-206 by the United States Congress on behalf of all Space-holders; however, the defendant Idaho Power never joined with any other person including the defendant AFRD to lead any person to believe the entire cost of construction of the American Falls Dam except for $1,000,000 would be paid for by the Idaho Power Company. The defendant Idaho Power denies as has been set forth above that the American Falls Dam and Reservoir is other than a reclamation dam and that since it is a government dam pursuant to the Reclamation Act and since there is falling water which can be used for and will be used for the generation of hydroelectric energy, there is pursuant to other federal regulations, including those of the Federal Energy Regulatory Commission, the requirement that such a generating facility be licensed. However, the mere fact that the hydroelectric generating facility has a license from the Federal Energy Regulatory Commission does not alter the basic nature of the American Falls Reservoir District for construction, operation and maintenance of the American Falls Replacement Dam Program dated as of March 31, 1976 ("Government Contract") which specifically states that upon substantial completion of the American Falls Replacement Dam Program, title to the Replacement Dam shall be transferred 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."

Also the defendant Idaho Power objects to the statements contained in Subparagraph (j) of this Request because they do not accurately reflect the legislative history which is a matter of public record and the laws of the State of Idaho, all of which are available to the plaintiffs to properly and

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adquately state. The defendant Idaho Power states with regard to Subparagraph (j) of this Request for Admission that prior to the execution of the Government Contract referred to above there was enacted by the legislature of the State of Idaho, Chapter 22, Title 43 of the Idaho Code which was as has been determined by the Supreme Court of the State of Idaho to be constitutional, a legally sufficient statute dealing with the manner of financing certain replacement dams. This legislation was in fact sponsored by Senator Barker and other members of the legislature for the State of Idaho and was overwhelmingly approved by that legislature as the mandate of the will of the people of the State of Idaho. It was only after appropriate legislation, namely, Chapter 22, Title 43 of the Idaho Code was passed that contract elections were held on January 12, 1976 and thereafter the Board of Directors of various irrigation districts who are defendants to this action, approved the contract and executed same in accordance with the appropriate state statutes. Chapter 22, Title 43 was passed by the legislature of the State of Idaho and its constitutionality affirmed by the Supreme Court of the State of Idaho and that statute does not "unlawfully delegate authority to the American Falls Reservoir District the power to make assessments upon land and to impose liens upon lands located within the boundaries of various defendant districts and participating persons and companies."

With regard to the matters set forth in Subparagraph (k) of this Request for Admissions No. 1 through 25, the defendant Idaho Power denies the matters therein sought to be admitted. The defendant Idaho Power states that at various public meetings held which involve AFRD there were not material facts "deceptively withheld from the plaintiffs

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and persons similarly situated" respecting the American Falls Replacement Dam Program. The defendant Idaho Power affirmatively states that an official of the Department of Interior had at one time indicated that it would be desirable, but not necessarily an absolute requirement, that 88% of the spaceholders were to agree to hold elections to approve the American Falls Replacement Dam Program. As noted above with regard to Subparagraph (e) and (i) of this Request for Admissions, statements made in Subparagraph (k) concerning the drafting and negotiation of contract should be modified by the answers and objections made to these previous subparagraphs. The defendant Idaho Power, subject to the objections set forth above, admits that American Falls Reservoir District held several public meetings as did other districts including A & B Irrigation District, Burley Irrigation District, Minidoka Irrigation District, American Falls Reservoir District No. 2. These meetings were designed to inform the public concerning the American Falls Replacement Dam Program. AFRD, with the approval of the Committee of Eight, did call for bids and employ a firm of engineers and also did contract for the construction and did commence the construction of the American Falls Replacement Dam, all of which was pursuant to the appropriate enabling legislation of Public Law 93-206 and Chapter 22, Title 43 of the Idaho Code. Defendant Idaho Power further answers that the Request for Admissions 120 (k)(1) through (25) were issues raised by respondents in the confirmation action and the plaintiffs are precluded by the decision in that action from raising these matters in the instant action.

REQUEST FOR ADMISSIONS NO. 121: Admit that it was not until the time of the election for the approval of the

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proposed assignment contracts that the plaintiffs and others, first became aware of the full extent of the deceptive practices and techniques practiced upon the irrigators by the defendant American Falls Reservoir District, its boards of directors, named herein as defendants and the defendant Idaho Power Company.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 121: The defendant Idaho Power denies that it was involved in any "deceptive practices or techniques practiced upon the irrigators" by the American Falls Reservoir District, its Board of Directors and the defendant Idaho Power Company. The defendant Idaho Power further states that the plaintiffs have failed to define or detail what specific deceptive practices and techniques they allege were practiced upon the irrigators and accordingly, since this Request for Admissions in itself is unclear and incomplete, the defendant Idaho Power objects to the form of this Request for Admissions. Further, the plaintiffs in this Request for Admissions seeks an admission of the defendant Idaho Power and others as to the mental state of the plaintiffs as to when they became aware of the alleged "deceptive practices and techniques." Based upon the discovery which has taken place to date, the defendant Idaho Power believes that there is no factual basis for the allegations contained in this Request for Admissions. Since the requested admissions seek to have Idaho Power admit the mental state of the plaintiffs, the defendant Idaho Power objects to this Request for Admissions as improper.

REQUEST FOR ADMISSIONS NO. 122: Admit that the plaintiffs in the titled action have at all times since learning of the scheme and deception of the defendants referred to in Request No. 120, objected thereto.

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ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 122: The defendant Idaho Power admits plaintiffs in this action have made statements and purported objections to the American Falls Replacement Dam Program. However, the plaintiffs are part of a small group who refuse to pay their fair share of the costs of the American Falls Replacement Dam Program and seek to have their share of the costs born by the other landowners and irrigation districts and canal companies in Southern Idaho who are served by the American Falls Reservoir. The plaintiffs have caused the defendant Idaho Power and others to bear a significant increase in the cost of the American Falls Replacement Dam Program due to this harrassing and vexatious lawsuit. As to the remaining matters set forth in this Request for Admissions, they are denied.

REQUEST FOR ADMISSIONS NO. 123: Admit that the plaintiffs in the titled action do now object and oppose said scheme in the confirmation preceedings now pending in the District Court of the Fifth Judicial District of the State of Idaho in the County of Twin Falls.

ANSWER TO REQUEST FOR ADMISSIONS NO. 123: . The defendant Idaho Power admits that those plaintiffs, as referred to in the general objection Section IA above, have filed objections to the confirmation action and have had their objections overruled by State Court in its Findings of Facts and Conclusions of Law. The defendant Idaho Power further states that it affirmatively denies that there is involved in the American Falls Replacement Dam Program any illegal "scheme" as intimated by this Request for Admissions and further denies all remaining parts to this Request for Admissions with the exception of any matters set forth in its Answer to Request for Admissions No. 122 which is incorporated herein.

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REQUEST FOR ADMISSIONS NO. 124: Admit that the deceptive practices and techniques continued after the election.

ANSWER TO REQUEST FOR ADMISSIONS NO. 124: The defendant Idaho Power denies the matters set forth in this Request for Admissions.

REQUEST FOR ADMISSIONS NO. 125: Admit that in an effort to prevent plaintiffs and others similarly situated from pursuing their objections to court, Director and Senator John Barker, caused to be sponsored in the Idaho State Senate a bill designed and intended to preclude any action to be brought by plaintiffs in a court of law without first posting a bond.

ANSWER TO REQUEST FOR ADMISSIONS NO. 125: The defendant Idaho Power admits that Senator Barker has sponsored in the Idaho Senate various bills which have had as their purpose to prevent vexatious, collusive, improper and malicious litigation from being filed in the state court. Upon enactment, such a bill, as set forth above, could very well "preclude any actions to be brought by plaintiffs in a court of law." However, the defendant Idaho Power denies that any legislation ever proposed by Senator Barker was, in fact, "designed and intended to preclude any action to be brought by plaintiffs." Except as specifically admitted, defendant Idaho Power denies the remaining allegations set forth in this Request for Admissions.

REQUEST FOR ADMISSIONS NO. 126: (a) Admit that the defendants in the titled case failed to obtain appraisals of the value of the falling water.

(b) Admit that they failed to offer the falling water contract to the highest bidder.

(c) Admit that said defendants had other offers or inquiries superior to those of defendant Idaho Power Company, which were rejected or disregarded.

ANSWER AND OBJECTION TO REQUEST FOR ADMISSIONS NO. 126: The defendant Idaho Power objects to this Request for Admissions because it is premised upon the factual predicate that apraisals must be had and bids must be offered for the falling water which, pursuant to Public Law 93-206, is not required and also is predicated upon facts which are not true and which have not been sustained despite the efforts of certain of the plaintiffs to prove these facts in the Confirmation Action; subject to this objection, however, the defendant Idaho Power states that the American Falls Reservoir District, along with others complied with the requirements of Public Law 93-206 and obtained an offer from Idaho Power Company which they believe to be the highest and best price available from any party. The Idaho Power Company's proposal was determined by various parties involved to be a reasonable, proper and appropriate payment for the value of the falling water and the highest best offer obtained. The defendant Idaho Power denies that any defendant had any written inquiries or offers or substantial verbal inquiries or offers for the value of the Falling Water in excess of what was submitted by the Idaho Power Company, or that such offers or inquiries were ever rejected. The defendant Idaho Power states affirmatively that the only appraisals obtained were those determinations made by the parties including AFRD, Idaho Power Company and the United States of America as set forth above. As to all other remaining matters and allegations contained in this Request for Admissions, they are denied.

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REQUEST FOR ADMISSIONS NO. 127: Admit that there are other acts and conduct of the defendants American Falls Reservoir District and Idaho Power Company, and the individual defendants, which aided in the accomplishment or the attempt to accomplish the objective of said combination or conspiracy which are not now known to plaintiffs.

ANSWER TO REQUEST FOR ADMISSIONS NO. 127: The defendant Idaho Power denies all matters set forth in this Request for Admissions.

REQUEST FOR ADMISSIONS NO. 128: Admit that unless the defendants Idaho Power Company and American Falls Reservoir District and defendant members of the Board of Directors of American Falls Reservoir District are permanently enjoined and restrained, plaintiffs and all persons in the class representated [sic] by plaintiff will be permanently deprived of the rights and benefits to the use of hydro-electric power from the American Falls Dam under their contracts and the Reclamation Acts.

ANSWER TO REQUEST FOR ADMISSIONS NO. 128: The defendant Idaho Power denies the matters set forth in this Request for Admissions. Defendant Idaho Power affirmatively alleges that under the contracts and the Reclamation Act, the falling water is owned by the United States of America and pursuant to Public Law 93-206 that falling water can only be used in accordance with the terms of the American Falls Replacement Dam Program, therefore the plaintiffs have no rights and benefits to the use of the hydroelectric power generated at the American Falls Dam.

REQUEST FOR ADMISSIONS NO. 129: Admit that any competition to defendant Idaho Power Company from the hydro-electric production at American Falls will be totally excluded.

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ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 129: The defendant Idaho Power Company objects to this Request for Admissions since it calls for a legal conclusion without having predicated sufficient facts upon which to support that legal conclusion. Subject to the above stated objection, the defendant Idaho Power states that pursuant to and as limited by Public Law 93-206 and the relevant Falling Water Contract referred to above, it has the right to generate hydroelectric power from the falling water released by the American Falls Dam. During the period of time in which the Falling Water Contract pursuant to Public Law 93-206 grants it the right to the falling water or hydroelectric power generation. If plaintiffs' requested admission is intended to mean that competition to supply electric power in the American Falls area will be excluded, this conclusion cannot be drawn from the facts predicated above and is hereby denied. As to the remaining matters set forth in this Request for Admissions, they are denied.

REQUEST FOR ADMISSIONS NO. 130: Admit that Public Law 93-206, enacted on December 28, 1973, (87 Stat. 940) provided in partt [sic], as follows:

> Section 2.(a) Replacement of the existing dam as authority in section 1 hereof shall in no way alter or change the present proportionate storage rights of the present spaceholders in American Falls Reservoir and shall constitute a reaffirmation of existing contract rights between the secretary and the spaceholders except as otherwise provided by this act.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 130: The defendant Idaho Power admits that the quoted portion set forth in this Request for Admissions is in substance part of Section 2 Public Law 93-206 with the exception that the first word in second line of that quoted portion should read

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"authorized" rather than "authority" and the fourth line of the quoted portion in this Request for Admissions should read "of the present Spaceholders in the American Falls Reservoir." The defendant Idaho Power states that the Public Law 93-206 must be read in its entirety and not by isolated phrases, sentences and provisions. The defendant Idaho Power objects to any inferences, conclusions or presumptions which the plaintiffs may improperly draw from such incomplete quotation and accordingly objects to such matters.

REQUEST FOR ADMISSIONS NO. 131: Admit that the exception clause of said enactment (see Request No. 130), and the application made by defendants American Falls Reservoir District and Idaho Power Company, modifies and impairs the existing contracts and that some of those impairments are:

(a) It deprives plaintiffs and those represented by them, the defendant irrigation districts, water and canal companies, persons and private corporations of the hydroelectric power rights and benefits which they are, and for many years have been entitled under their existing contracts.

(b) It removes control of the rights in the new dam from the Bureau of Reclamation and places it under the jurisdiction of the Federal Power Commission.

(c) It fails to require reimbursement for the power facilities and rights at American Falls purchased by the government and for which the districts reimbursed the United States through the construction charges.

(d) The act impairs the contractual and legal right of plaintiffs and their respective district to demand and receive the benefits of the Reclamation Acts which form a part of their contractual rights.

(e) The impairment of the plaintiffs' rights includes but are not limited to the right to demand and receive the replacement of the Dam under the provisions of 43 U.S.C. § 502.

(f) The rights of the parties to the benefits of 43 U.S.C. 485H are impaired.

(g) The water rights which have become vested are removed from control of the owners and are placed under the control of American Falls Reservoir District and defendant, Idaho Power Company.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 131: The defendant Idaho Power incorporates by reference as part of its answer and objections to this Request for Admissions its answer and objections to Request for Admissions Nos. 126, 127, 128 and 129 as if specifically set forth herein and subject to the above-cited objections and denies the matters set forth in this Request for Admissions. The defendant Idaho Power affirmatively states the provisions set forth in the relevant contracts namely, the Government Contract, the Spaceholder Contract and the Falling Water Contract are proper and appropriate provisions which protect the rights and interests of the relevant spaceholders in the American Falls Reservoir and do not in any way impair the rights and interests of those spaceholders but enhance their rights and interests by allowing American Falls Reservoir to be used to its full capacity. Further, the defendant Idaho Power objects to the matters set forth in this Request for Admissions as improper since the State Court in the Confirmation Action in its Findings of Facts and Conclusions of Law have decided this matter and accordingly, the plaintiffs are foreclosed from raising any of these matters in this

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action. Except as admitted herein, all other matters set forth in this Request for Admissions are denied.

REQUEST FOR ADMISSIONS NO. 132: (a) Admit that Section 4 of the Public Law 93-206 provides, in part:

> The constructing agency may contract with an appropriate non-federal entity for the use of the falling water leaving the dam for power generation which contract shall provide for the monetary return to the construction agency to defray the costs of construction of the replacement dam.

(b) Admit, that despite the directive of the Act of Congress as aforesaid, Idaho Power Company, fixed its purported contribution to the project, which sum, was accepted by defendant American Falls Reservoir District without any appraisal of the value of the said falling water, and without submitting the same to public bidding.

(c) Admit that the value of the falling water is greatly in excess of the amount proposed to be paid by the Idaho Power Company.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 132: The defendant Idaho Power and its answer and objection to this Request for Admissions incorporate by reference its answer and objection to Request for Admissions Nos. 126, 127, 128, 129 and 131 as is specifically set forth herein as its answer and objections to this Request for Admissions. The defendant Idaho Power denies the matters set forth in this Request for Admissions with the exception of those matters specifically admitted in this answer. The defendant Idaho Power admits that in substance, the quoted portions set forth in Subparagraph (a) of this Request for Admissions is part of Public Law 93-206 with the exception that the fifth line in the quoted portion set forth in Subparagraph (a)

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of this Request for Admissions should read "to the constructing agency to defray the costs of" the defendant Idaho Power affirmatively states that Public Law 93-206 is to be read in its entirety and not solely isolated phrases, sentences and provisions. The defendant Idaho Power objects to any legal conclusion or presumption which the plaintiffs may improperly draw from such incomplete quotation. Any other matters not specifically admitted are denied.

REQUEST FOR ADMISSIONS NO. 133: Admit that by the terms of the contracts, which the defendant American Falls Reservoir District has entered and now seeks to confirm, the District has not complied with the terms of Section 4, of Public Law 93-206, in that the agreement does not contemplate a return of money sufficient to defray the cost of construction of the replacement dam.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 133: The defendant Idaho Power in its answer and objection to this Request for Admissions incorporates by reference its answer and objections to Request for Admissions Nos. 126, 127, 128, 129, 131 and 132 as is specifically set forth herein as its answer and objection. In addition, the defendant Idaho Power subject to the above-cited objections denies the matters set forth in this Request for Admissions and specifically states that the AFRD has taken all appropriate action in accordance with Public Law 93-206 and has not in any way failed to comply with Public Law 93-206. All remaining matters contained in this Request for Admissions are denied.

REQUEST FOR ADMISSIONS NO. 134: (a) Admit that at the times referred to in the Amended Complaint, Senator John Barker was an individual stockholder in Idaho Power Company.

(b) Admit that the attorneys for American Falls Reservoir District, were actively representing Idaho Power Company in such matters as:

(i) Its annually pending rate cases;

(ii) The effort to obtain authorization for the coal fired electric plant;

(iii) The establishment of a Profit & Pension Fund;

(iv) The promotion of this proposed replacement project, and particularly the interest of Idaho Power Company in the electrical projection facility; and

(v) That said attorneys are actively representing the Idaho Power Company at the time of this litigation.

(c) Admit that the facts stated in (b) above were not disclosed to plaintiffs or those similarly situated until after the election upon the proposed contracts.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 134: The defendant Idaho Power incorporates by reference answer and objections to Request for Admissions No. 120 as if specifically set forth herein as answer and objection to this Request for Admissions. Except as specifically admitted herein, defendant Idaho Power denies all matters set forth in this Request for Admissions. The defendant Idaho Power admits that at the hearing by the State Court in the Confirmation Action, Senator John Baker testified that he was a stockholder in Idaho Power, but only approximately 100 shares which he obtained in 1948, and one share received by inheritance. The defendant Idaho Power admits that the law firm of Parry, Robertson, Daly & Larson has represented the AFRD and has represented various other entities involved in water and hydroelectrical problems including the Idaho Power Company as set forth before in its Answer and Objections to

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Request for Admissions No. 120. Defendant Idaho Power admits that the law firm which represents AFRD has in the past represented the defendant Idaho Power Company in its annual pending rate cases, efforts to obtain authorization for certain electrical generating plants, the establishment of a profit and pension fund and in various other matters. The defendant Idaho Power affirmatively states that with regard to the American Falls Replacement Dam Program, this law firm solely represented the defendant AFRD and did not represent or act for the Idaho Power Company. Idaho Power was, in regard to this matter, represented by other counsel. The defendant Idaho Power further states that AFRD was aware of previous representation of the defendant Idaho Power Company by this law firm and it specifically agreed and requested that the law firm of Parry, Robertson, Daly & Larson represent it with regard to the American Falls Replacement Dam Program. AFRD determined that retaining the firm of Parry, Robertson, Daly & Larson as counsel for the American Falls Dam Replacement Program was in the best interests of AFRD and accordingly, said law firm was requested to represent it in this matter. The defendant Idaho Power states that the law firm of Parry, Robertson, Daly & Larson has acted properly and appropriately with regard to the American Falls Replacement Dam Program and has made all appropriate disclosures to the AFRD, and that the AFRD has approved, with knowledge of the above-stated matters, the actions taken by the law firm of Parry, Robertson, Daly & Larson as their attorneys.

REQUEST FOR ADMISSIONS NO. 135: (a) Admit that Public Law 93-206 modified the obligation of the defendant United States, under the terms of the existing storage contracts,

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by eliminating the obligation of the United States to replace the dam under the terms of the Reclamation Acts.

(b) Admit that the effect of said enactment modified the obligation of the plaintiffs and their respective districts by substantially increasing the same and by requiring a different obligation than that provided for in the existing storage space agreements.

ANSWER TO REQUEST FOR ADMISSIONS NO. 135: The defendant Idaho Power admits that Public Law 93-206 allows the spaceholders in the American Falls Reservoir District to proceed with the financing of the construction of a replacement dam. The defendant Idaho Power denies that Public Law 93-206 substantially alters or amends any obligation of the United States to replace the American Falls Dam under the terms of the Reclamation Act of 1902 and the amendments thereto. The defendant Idaho Power affirmatively states that any action taken by the United States of America concerning the American Falls Replacement Dam must be taken pursuant to the Reclamation Act of 1902 and appropriate legislation must be passed by the Congress of the United States and a sufficient appropriation must be passed before any replacement action can be taken. Public Law 93-206 allowed for immediate action to be taken by the spaceholders through AFRD to insure the replacement of the American Falls Dam and thereby securing for all spaceholders complete capacity and storage in the American Falls Reservoir which had been restricted and which possibly could be restricted further in the future. The defendant Idaho Power admits the cost of the American Falls Replacement Dam Program must be borne in accordance with appropriate contracts including the Government Contracts, the spaceholder Contracts and the Falling Water Contract and all spaceholders

must pay their fair share of the replacement cost. All other matters referred to in this Request for Admissions are hereby denied.

REQUEST FOR ADMISSIONS NO. 136: Admit that in furtherance of the scheme, the defendant Senator John Barker, instituted an action against the Secretary of American Falls Reservoir District. Which said suit resulted in a determination by the Idaho Supreme Court, that the American Falls Reservoir District was not a municiple [sic] corporation within the innumeration of Article 8, § 3, of the Idaho Constitution and therefore not a political subdivision of the State.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 136: The defendant Idaho Power admits John Barker instituted an action against the Secretary of the American Falls Reservoir District. The defendant Idaho Power objects to any legal conclusions which are contained in this Request for Admissions concerning the ruling by the Idaho Supreme Court in Barker v. Wagner, 93 Idaho 214, 526 P.2d 174, Reh. den. (1974). Such legal conclusions invade the province of the Court to make a determination as to the precise legal holding of the Idaho Supreme Court case. The defendant Idaho Power specifically denies the institution of this litigation was part of any illegal "scheme." The other matters referred to in this Request for Admissions are objected to as irrelevant and not reasonably calculated to lead to admissible evidence, and are also denied as not adequately reflecting the purposes for which the lawsuit referred to above was instituted.

REQUEST FOR ADMISSIONS NO. 137: Admit that said individual defendant John Barker, acting for and on behalf of the American Falls Reservoir District, urged the passage of

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H.R. 9968 in the Congress of the United States, upon the basis that the American Falls Reservoir District was a political subdivision of the State of Idaho.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 137: The defendant Idaho Power objects to this Request because it states various facts which are contrary to both the legislative history of H.R. 9968 and matters known to the plaintiffs to be true. Subject to this objection, defendant Idaho Power denies the matters set forth in this Request for Admissions with the exception of those specifically admitted herein. The defendant Idaho Power admits that various persons urged the passage of H.R. 9968, including the American Falls Reservoir District and, in fact, the vast majority of people in Southern Idaho, including Mr. John Barker, favored passage of H.R. 9968. The defendant Idaho Power admits the legislative history for H.R. 9968 sets forth that certain bonds issued by the AFRD as part of the American Falls Replacement Dam Program would be tax exempt based upon the defendant AFRD's status as a quasi-municipal body and thereby a "political subdivision" of the State of Idaho. The defendant Idaho Power states that the legislative history and legislative intent for this legislation speaks for itself. As to any other matters set forth in this Request for Admissions, they are hereby denied.

REQUEST FOR ADMISSIONS NO. 138: (a) Admit that the enactment of H.R. 9968, by the 94th Congress of the United States, amended § 103 of the Internal Revenue Code of 1954.

(b) Admit that one of the conditions imposed by the Congress upon passage of the bill, said H.R. 9968 authorizing the sale of Tax Free Bonds for such a project is that:

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> The water so released is available on reasonable demand to members of the General Public.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 138:

The defendant Idaho Power admits that H.R. 9968 passed by the 94th Congress of the United States amends Section 103 of the Internal Revenue Code, and the defendant Idaho Power affirmatively states that 26 U.S.C. § 103(d) provides as follows:

> Certain irrigation dams.--A dam for the furnishing of water for irrigation purposes which has a substantial use in connection with the generation of electric energy by water shall be treated as meeting the requirements of subsections (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 the members of the general public.

The defendant Idaho Power admits that the portion of the above-cited section quoted in this Request for Admissions is in substance part of 26 U.S.C. § 103(d)(2). The defendant Idaho Power states that all of § 103(d) must be read as a whole and in conjunction with the entire provisions of § 103. The defendant Idaho Power objects to any inferences, conclusions or presumptions which the plaintiffs may improperly and inaccurately draw from such incompleed quotations. The defendant Idaho Power further states that in the Committee Report concerning 26 U.S.C. § 103(d), the Committee specifically found that the American Falls Replacement Dam Program and the contracts entered into by the appropriate Spaceholders meet the tests set forth in § 103(d) and that the members of the general public refer to and include the spaceholders who

receive water from the American Falls Reservoir for irrigation purposes. As to any of the other matters set forth in their Request for Admissions, they are hereby denied.

REQUEST FOR ADMISSIONS NO. 139: Admit that H.R. 9968, as enacted and applied to this project and the rights of the plaintiffs, violates the 5th Amendment of the United States Constitution.

ANSWER TO REQUEST FOR ADMISSIONS NO. 139: The defendant Idaho Power denies that H.R. 9968 as enacted and applied to the American Falls Replacement Dam Program violates any rights of the plaintiffs pursuant to the Fifth Amendment of the United States Constitution.

REQUEST FOR ADMISSIONS NO. 140: Admit that to facilitate the plan of American Falls Reservoir District and defendant Idaho Power Company, the defendant John Barker sponsored and obtained the passage of Chapter 4, Title 43, § 43-401(a) and § 43-404(a) and Chapter 22, Title 43 through the Legislature of the State of Idaho.

ANSWER TO REQUEST FOR ADMISSIONS NO. 140: The defendant Idaho Power admits that § 43-401(a) and § 43-404(a); and Chapter 22, Title 43 of the Idaho Code were all enacted by the Legislature of the State of Idaho and were purportedly sponsored by the defendant John Barker. The defendant Idaho Power denies that § 43-401(a) and § 43-404(a) are presently part of the enabling legislation for the American Falls Replacement Dam Program and affirmatively states that the enabling legislation for the American Falls Replacement Dam Program is contained in Chapter 22, Title 43 of the Idaho Code and Public Law 93-206. The defendant Idaho Power further specifically denies there was any "illegal plan or scheme" of the AFRD and the defendant Idaho Power Company in

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this regard. Except as specifically admitted, this Request for Admissions is denied.

REQUEST FOR ADMISSIONS NO. 141: (a) Admit that said enactments (see Request No. 140), further impair the obligation of existing contracts and unlawfully purports to delegate legislative authority to the Board of Directors of the defendant, American Falls Reservoir District, to determine what is in the public interest.

(b) That said enactments empowers said Board to deal with the properties and water rights of plaintiffs at American Falls unlawfully.

ANSWER AND OBJECTIONS TO REQUEST FOR ADMISSIONS NO. 141: The defendant Idaho Power incorporates by reference herein its answer set forth above to Request for Admissions No. 140 as is specifically set forth herein as an answer to this Request for Admissions. The defendant Idaho Power denies that the appropriate enabling legislation, namely, Public Law 93-206 and Chapter 22, Title 43 of the Idaho Code "impair the obligations of existing contracts" or "unlawfully purports to delegate legislative authority through the Board of Directors of the defendant AFRD to determine what is in the public interest." Accordingly, Subparagraph (a) of this Request for Admissions is denied. Further, the defendant Idaho Power denies that the enabling legislation referred to above "empowers the Defendant AFRD to deal with the properties and water rights of the Plaintiffs", if any exist, at American Falls "unlawfully." The defendant Idaho Power objects to this Request for Admissions on the ground that the plaintiffs are foreclosed by the prior ruling of the State Court in the Confirmation Action and cannot raise as issues in this action matters set forth in the plaintiffs' Request for Admissions.

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REQUEST FOR ADMISSIONS NO. 142: Admit that by the form of contracts prepared pursuant to Public Law 93-206 and the procedures followed by American Falls Reservoir District under Chapter 22, Title 43, Idaho Code, American Falls Reservoir District has exercised, or is attempting to exercise a virtual proprietary control over the rights of the spaceholders in American Falls Reservoir under the existing storage contracts and purports to have vitiated all prior existing storage rights.

ANSWER TO REQUEST FOR ADMISSIONS NO. 142: The defendant Idaho Power incorporates by reference its Answer and Objection to Request for Admissions Nos. 140 and 141 set forth above as if specifically set forth herein as part of its answer and objection to this Request for Admissions. The defendant Idaho Power denies that pursuant to the enabling legislation referred to above the AFRD "has exercised or is attempting to exercise a virtual proprietary control over the rights for spaceholders in the American Falls Reservoir under the existing storage contract and purports to have vitiated all prior existing storage rights." The defendant Idaho Power further states that pursuant to the enabling legislation, AFRD has taken all appropriate actions in order to accomplish the purposes of the American Falls Replacement Dam Program to the benefit of all spaceholders and has enhanced the rights and interest of all spaceholders to full use and enjoyment of the storage space in American Falls Reservoir which storage space had been reduced and was subject to further reduction due to the condition of the original dam. The defendant Idaho Power further states that the plaintiffs are barred from raising the issues set forth

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in this Request for Admissions since this matter has previously been decided by the State Court in the Confirmation Action and accordingly, the defendant Idaho Power objects to this Request for Admissions.

REQUEST FOR ADMISSIONS NO. 143: (a) Admit that in spite of the objections and protests of plaintiffs and in spite of the fact that the defendant Idaho Power Company and defendant American Falls Reservoir District have not complied with the requirements of the law entitling them to proceed with said plan and scheme of construction, the defendants American Falls Reservoir District and Idaho Power Company, John M. Barker, Merl E. Leonard, Tom Olmstead, Frank W. Graves, Dale Depew, Russell Woolley and Armin H. Schroder have proceeded to call for bids and have let contracts of construction to Ball Construction Company of California, have commenced construction and are incurring obligations relative to said construction.

(b) Admit that unless enjoined and restrained from proceeding the said construction, said defendants will proceed with said construction in possible violation and to the discrimination of the rights of the plaintiffs and all persons similarly situated.

ANSWER TO REQUEST FOR ADMISSIONS NO. 143: The defendant Idaho Power except as hereinafter specifically admitted, denies all matters set forth in this Request for Admissions. AFRD, pursuant to the enabling legislation Chappter 22, Title 43 of the Idaho Code and Public Law 93-206, has proceeded properly and appropriately to enter into contracts for construction of the Amercian Falls Replacement Dam including contracts with Ball Construction Company and others. The American Falls Replacement Dam is substantially

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completed. All remaining matters set forth above are hereby denied including the fact that any construction of the American Falls Replacement Dam would cause or has caused any "violation" or "discrimination of the rights of the plaintiffs or other persons similarly situated."

REQUEST FOR ADMISSIONS NO. 144: Admit that the plaintiffs have no adequate, speedy remedy at law.

ANSWER TO REQUEST FOR ADMISSIONS NO. 144: The defendant Idaho Power denies this Request for Admissions. The plaintiffs' Complaint in this litigation is the fact that the vast majority of spaceholders and vast majority of landowners in said irrigation districts, water and canal companies purportedly represented by the plaintiffs support the American Falls Replacement Dam Program. Any objection these individual plaintiffs have is an objection of a few landowners to having to pay their fair share of the costs of the needed and necessary replacement of the American Falls Dam for the benefit of all landowners and all spaceholders to the American Falls Reservoir. The matters which have been placed in issue in this lawsuit by the plaintiffs are all matters which have been properly decided by the State Court in the Confirmation Action and are barred from being raised in this action by the doctrine of res judicata and collateral estoppel. The Findings of Facts and Conclusions of Law of the State Court in the Confirmation Action clearly indicate that the plaintiffs have been given every opportunity to present their purported objections to the American Falls Replacement Dam Program, objections, which in reality are no more than an objection to paying their fair share of the necessary and proper costs of the Replacement Dam. Accordingly, the plaintiffs have had their day in Court, there has

been an adequate speedy and appropriate remedy and the State Court has decided that there is no merit to the claims already raised by the plaintiffs in this action. Accordingly, except for the matters expressly admitted above, this Request for Admissions is denied.

DATED this 25th day of July, 1978.

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BY _____
John S. Simko, Of the Firm
Attorneys for Idaho Power Company
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P.O. Box 1559
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CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing ANSWERS AND OBJECTIONS OF IDAHO POWER COMPANY TO PLAINTIFFS' FIRST REQUEST FOR ADMISSIONS to each of the following attorneys by depositing a copy of same, postage prepaid, in the U. S. Mail on this 25th day of July, 1978.

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Exhibit 43

Reply Brief of the Non-Federal Defendants, Kerner v. United States, CV. No. 1-76-204 (D. Idaho Apr. 6, 1979)

U. S. DISTRICT COURT
DISTRICT OF IDAHO
Filed at 4:30 P.M.
APR 6 1979
JERRY L. CLAPP, Clerk
BY Deputy

PARRY, ROBERTSON, DALY & LARSON
CHAPMAN AND CUTLER
JAMES, HOBDEY & VARIN
ELAM, BURKE, JEPPESEN, EVANS & BOYD
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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

WILLIAM KERNER, et al. Plaintiffs, vs. UNITED STATES OF AMERICA, et al., Defendants.	Civil No. 1-76-204 REPLY BRIEF OF THE NON-FEDERAL DEFENDANTS

The non-federal defendants submit this memorandum in opposition to the brief of the plantiffs dated March 7, 1979. The remaining issue as stipulated, is:

> Article 29 of the form spaceholder contracts executed by the spaceholders and Article 17(g) of the Government Contract are beyond the power of the

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United States to the extent that they provide for remedies on default different in kind than those provided in the contract dated September 21, 1927, and all amendments or additions thereto, between the United States and AMERICAN FALLS RESERVOIR DISTRICT No. 2 (Exhibits 101 and 102) and similar provisions in other Palisades contracts.

In addition to this stipulated issue, defendants reserve the right to challenge the standing of the plaintiffs, the existence of a justiciable case or controversy and the plaintiffs' ability to bring this suit as a derivative or class action.

The state court confirmation decree bars the plaintiffs from litigating the stipulated issue and even were the issue to be decided by this court, there is no merit in the plaintiffs' position. The plaintiffs lack standing to bring this lawsuit and have failed to meet the requirements for maintaining this action as either a class or derivative action.

I.

PLAINTIFFS' CLAIMS ARE FORECLOSED BY THE CONFIRMATION DECREE OF THE STATE COURT.

The three remaining plaintiffs have stipulated that their sole remaining contentions relate to the power of the United States to enter into Article 29 of the Spaceholder Contracts and Article 17(g) of the Government Contract. Defendants contend that consideration of questions relating to those contractual provisions is foreclosed by the decree of the state court in the confirmation action.

A. The Purpose and Nature of Confirmation Actions.

1. The Confirmation Action

Certain participating Spaceholder Districts filed a petition in the District Court in the Fifth Judicial District of the State of Idaho in and for the County of Twin Falls on May 12, 1976 in an action captioned In the Matter of the

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Petition of the Board of Directors of American Falls Reservoir District, et al. vs. Don Wixom, et al., Case No. 28378 (hereinafter referred to as "Confirmation Action"). The Confirmation Action was instituted in accordance with § 43-2204 of the Idaho Code, as amended. The Trial Court entered its Amended Judgment Order and its Amended Findings of Facts and Conclusions of Law on May 18, 1977. (Defendants' Exhibits 204 and 203 respectively.) The same plaintiffs who filed the original Complaint in this action appeared in the Confirmation Action to contest the validity of the authorizing resolutions and legislation, both state and federal, and the validity of the contracts and bonds. The decision of that court was adverse to those original plaintiffs; they appealed the decision to the Idaho Supreme Court. The Idaho Supreme Court, in a unanimous opinion, affirmed the Trial Court, ____ Idaho ____, 583 P.2d 360 (1978). The plaintiffs' petition for rehearing by the Idaho Supreme Court was denied September 29, 1978.

2. The Nature of Confirmation Proceedings

A confirmation action is a special court proceeding in which a municipal corporation or, in the case of the American Falls Confirmation Action, Irrigation Districts, seek a court's approval of contracts and proceedings related to the issuance and sale of bonds. The Trial Court and the Idaho Supreme Court, had a well defined task in the American Falls Confirmation Action in considering the issue relating to the issuance and sale of bonds for replacement of the American Falls Dam. Section 43-2204 of the Idaho Code, defines that task as including:

> [A] judicial examination and and determination of any power conferred hereby (Section 42-2001 Idaho Code, et seq.) or by any amendment hereto or of any assessment levied or of

> any apportionment of costs or of any act, proceeding or contract of the district or districts, whether or not said contracts shall have been executed, including proposed contracts for the reconstruction, rehabilitation, replacement and improvement of any such dam and other related structures and works and appurtenances, falling water contracts pursuant to Section 43-2201(D)(3), Idaho Code.

(Emphasis added.)

Confirmation proceedings have been required in Idaho prior to sale of irrigation district bonds since the time legislation authorizing irrigation districts was initially enacted. Until private financing was proposed as a vehicle for the replacement of the American Falls Dam, individual districts ordinarily sold bonds to secure monies to make improvements or construct facilities for the benefit of each individual district. Since 35 different entities (14 of which were irrigation districts) were to be involved in the proposed American Falls Replacement Dam program, the Idaho Legislature, at the urging of American Falls Reservoirs spaceholders, added Idaho Code, § 43-2204 in 1974 and amended that statute in 1975. Pursuant to that code section, a district such as American Falls Reservoir District, may contract with other districts which will pay proportionate shares of the cost of a joint project, and it may file a confirmation petition, in which the other contracting irrigation districts can all join. This consolidated procedure eliminates the necessity of 14 irrigation districts having to file 14 separate confirmation proceedings in 14 different district court actions.

An examination of confirmation acts involving irrigation districts discloses the nature of the proceedings authorized by Idaho Code § 43-2204.

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Prior to the use of confirmation actions, investors were unwilling to purchase irrigation district bonds at their par value, while their validity remained the subject of question and dispute. In order to resolve this problem and to allow irrigation districts to effectively and efficiently enter into valid and binding obligations, states such as Idaho have enacted confirmation acts similar to § 43-2204. Such legislative acts enable the irrigation district to dispose of their bonds on advantageous terms and insure security of the investors.

It is well settled, then, that the purpose of a confirmation action is to determine the regularity of the proceedings of:

(1) The Board of Directors of an Irrigation District in passing the relevant resolution; and

(2) Ratification of the proposition by the appropriate percentage of the electors in order that the bonds when issued will be valid and binding obligations of the District.

See, Tregea v. Modesto Irrigation District, 88 Cal. 334, 26 P. 237 (1893); dismissed, 164 U.S. 179, 41 L.Ed. 395, 17 S.Ct.Rep. 53 (1896); Tulare Irrigation District v. Shepard, 185 U.S. 1, 46 L.Ed. 773, 22 S.Ct.Rep. 531 (1902); Crall v. Irrigation District, 87 Cal. 140, 26 P. 797 (1890); Nampa and Meridian Irrigation District v. Brose, 11 Idaho 474, 83 P. 499 (1905); Progressive Irrigation District v. Anderson, 19 Idaho 504, 114 P. 16 (1911); Kinney, Irrigation and Water Rights, Vol. 3, p. 2560, et seq.

In the case of Nampa and Meridian Irrigation District v. Brose, supra, the Idaho Supreme Court, recognizing the necessity for certainty of obligation as the underlying

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purpose for which the Idaho confirmation action statute was enacted, detailed the duties and power of a district court when presented with a confirmation petition.

> The Legislature knew that fact, and wisely provided that this proceeding could be brought before the issue and sale of the bonds, and their validity adjudicated. Under the provisions of section 19 of said act, the court is empowered, and is given jurisdiction upon the hearing of this proceeding, to examine and determine the legality and validity of, and approve and confirm, each and all of proceedings for the organization of the district, and all other proceedings which may affect the legality or validity of such bonds and order for the sale and the sale hereof, and in inquiring into the regularity, legality, or correctness of such proceedings the court is directed to disregard any error, irregularity, or omission which does not affect the substantial rights of the parties to such proceedings; and it is further provided therein that the court shall find and determine whether the notice for the filing of the said petition has been duly given and published for the time and in the manner in said act prescribed.

Id at 503. (Emphasis added.) It is inherent in the very purpose for which confirmation actions were created, that is to prevent contracts and bond obligations from later invalidation, that the trial court must have jurisdiction to hear and decide all matters required for a determination of the regularity and propriety of contracts, bonds and proceedings.

The State Court in the Confirmation Action had as its source of jurisdiction over "proceedings" involving the replacement of the American Falls Dam, § 43-2201 et seq of the Idaho Code, as amended. The trial court's duty and responsibility was to determine from its examination of the relevant documents and its consideration of the evidence presented whether the districts have complied with the requirements of § 2201 et seq of the Idaho Code.

The State Court in the Confirmation Action was empowered and charged to determine from an examination of the acts and contracts, the exhibits and evidence presented by the parties, whether the districts followed the appropriate procedure in order to effect valid and legally binding obligations, thus insuring the validity of the subsequent bond issue.

B. The Effect of a Confirmation Decree.

Under Idaho law a confirmation decree entered by a court of competent jurisdiction is conclusive not only upon all landowners within the District, whether or not they appear at the confirmation proceedings, but it also binds the world at large. See, Tulare Irrigation District v. Shepard, supra; Nampa and Meridian Irrigation District v. Brose, supra; United States v. Imperial Irrigation District, 559 F.2d 509 at 524-26 (9th Cir. 1977); Kinney, Irrigation and Water Rights, Vol. 3, § 1421.

The Ninth Circuit in United States v. Imperial Irrigation District, supra, recently reaffirmed the long-standing rule that confirmation decrees bind the world at large. As that Appellate Court stated:

> Under California law, a confirmation proceeding involving an irrigation district contract with the United States is considered as in rem proceeding. It is brought against all persons claiming an interest in the formation of the irrigation district, the operation of the contract, and the lands affected by the contract. A final judgment in a confirmation proceeding "will foreclose further inquiry into the matters to which the judgmetn properly relates. Within its pertinent issues it will be binding on the world at large." Ivanhoe Irrigation District v. All Parties & Persons, 47 Cal.2d 597, 606, 306 P.2d 824, 829 (1957), reversed on other grounds usb. nom., Ivanhoe Irrigation District v. McCracken, 357 U.S. 275, 78 S.Ct 1174, 2 L.Ed.2d 1313 (1958). Phrased another way, "[w]ithin its legitimate issues it will be binding on

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> the world at large." Santa Barbara County Water Agency v. All Persons & Parties, 47 Cal.2d 699, 703, 306 P.2d 875, 878 (1957), reversed on other grounds sub nom., Ivanhoe Irrigation District v. McCreacken, supra.
>
> It therefore becomes necessary to determine what the "pertinent" or "legitimate" issues are in a confirmation proceeding, because the California courts will recognize the confirmation proceeding judgment as res judicata only as to those issues to which the judgment "properly relates."

It is beyond dispute that the Findings of Facts and Conclusions of Law and Judgments in the instant confirmation actions are res judicata as to those issues to which the judgment relates. See, United States v. Imperial Irrigation District, supra. The Judgment in the Confirmation Action as entered by the Trial Court and as affirmed by the Supreme Court of Idaho, bars the Plaintiffs in this action from raising again issues of the validity of the contracts. This court, as noted by the Ninth Circuit in the United States v. Imperial Irrigation District, supra, cannot sit as a court of review over the State Trial Court and the Idaho Supreme Court with regard to the judgment entered in the Confirmation Action. That judgment is by law of the State of Idaho and the United States is binding on the world at large.

C. The Confirmation Action Disposed of the Issue the Plaintiffs Seek To Litigate.

Plaintiffs are three landowners within irrigation districts which are participating in the reconstruction of the American Falls Dam, and have signed contracts for repayment of their respective shares of the cost, following elections within those districts. The provisions challenged by plaintiffs were included in the contracts considered by the state court, and the contracts were confirmed by the state court in all particulars. Paragraph V of the Amended Conclusions of Law provides:

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> The notices, elections, hearings, powers, apportionments, assessments, acts, contracts and proceedings of Petitioners as set forth in the Petition and the foregoing Findings of Fact were in substantial compliance with the requirements of state and federal law, including but not limited to P.L. 93-206 and Chapter 22 of Title 43, Idaho Code, as amended." (Ex. 203, p. 31)

(Emphasis added.)

Paragraph 7 of the Amended Judgment and Decree of Confirmation states:

> 7. All of the negotiations, proceedings and steps taken by the Petitioners in connection with the acts, contracts, assessments and proceedings of the Petitioners as set forth in the Petition were properly and lawfully taken pursuant to authorization by the laws of the State of Idaho and of the United States, and that said acts, contracts, assessments and proceedings are valid and binding according to their tenor and terms." (Ex. 204, pp. 5-6)

(Emphasis added.)

The election proceedings were held valid. The contracts were confirmed as binding obligations of the various participating districts. As landowners within participating districts, the plaintiffs have no ability to challenge a valid contract of the district in this action. They had their day in court in the confirmation action, and that court decreed the contracts valid. That decision of the state court bars the plaintiffs from litigating the issue in any other forum, including this one.

II.

ARTICLE 29 OF THE GOVERNMENT CONTRACTS IS A VALID PROVISION.

As stated above, the confirmation decision bars the plaintiffs from bringing this action. Even should this court decide the issue on its merits, the plaintiffs' contentions would have to be rejected.

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Plaintiffs' position on Article 29 seems to be entirely based on the consistency language of P.L. 93-206. The relevant portion of Section 3 of that Act provides:

> 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 said contracts shall be consistent with the terms of existing contracts between the Secretary and the spaceholders for repayment of the costs of the existing American Falls Dam.

The stipulated issue reserved by plaintiffs relates to the power of the United States to contract. Plaintiffs cite no federal statute which restricts the power of the United States to contract with an irrigation district in the manner now embodied in Section 29. The stated portion of P.L. 93-206 would prevent the United States from insisting on re-negotiating the amount of storage space and delivery conditions under existing contracts, but it cannot fairly be read as prohibiting the United States and spaceholders from agreeing to contract terms they find mutually agreeable.

It is obvious that the drafters of the Spaceholder Contract had the provisions of P.L. 93-206 in mind when the contract was written. Article 19(a) of the form spaceholder contract provides, in pertinent part:

> 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

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> 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.

This contractual statement of the effect of the Spaceholder Contract was in the contract when voted on and when confirmed by the state court.

P.L. 93-206 was premised on the use of non-federal funds for construction of the dam, as is disclosed by a reading of the bill itself. The legislative history also supports this conclusion. A report from Assistant Secretary of Interior Jack O. Horton is included in the report of a hearing held before a Congressional Committee in 1973. (Serial No. 93-33) At page 7 of that report, Mr. Horton explained the financing as follows:

> 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.

If read as plaintiffs urge, the consistency provision would eliminate the possibility of the private or non-federal financing contemplated by the passage of P.L. 93-206. The use of bonds to fund the construction of the replacement dam

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requires that payments be made on a fixed schedule, with interest to the holder of the bond or a designated agent. The contracts for repayment of the costs of the original dam require payment of no interest over their terms, require payment to the federal government, and contemplate construction by the federal government. None of those factors are present in the reconstruction of American Falls Dam, and the very existence of P.L. 93-206 negates the possibility that any intent existed that those factors could have been operative as to the reconstruction. Therefore, the consistency provision of Section 3 of P.L. 93-206 cannot have the meaning ascribed to it by plaintiffs, or the enactment of P.L. 93-206 would have to be considered a nullity.

III.

THE ADDITION OF ARTICLE 17(g) OF THE GOVERNMENT CONTRACT WAS A CLARIFYING AMENDMENT ONLY.

Plaintiffs argue that since Article 17(g) of the Government Contract was added to that contract after the elections in the various waterusers districts and canal companies, it is invalid. In order not to unduly extend the discussion of this issue, defendants refer the Court to the fact that the effect of the addition of Article 17(g) was also extensively litigated in the confirmation action. Finding XVI, page 20 of the Amended Findings of Fact and Conclusions of Law entered in the State Court confirmation action (Ex. 203 herein) provides:

> The addition of Article 17(g) to the Government Contract and the corresponding Article 20(c)(B)(13) to the Spaceholder Contracts, after the elections in the petitioning districts, was intended as a clarification, since the indemnity obligation was already existent in the forms of contracts prior to the addition of Article 17(g) to the Government Contract and Article 20(c)(B)(13) to the Spaceholder Contracts. The contracts,

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> as executed, contain other clarifying revisions to the drafts of September 3, 1976. None of such revisions affect the substantial rights of any Spaceholder, the owner of any land within any area served by a Spaceholder, or impose any greater obligation upon any Spaceholder or landowner.

The conclusion of law on that same subject is found at page 32 as Finding XI:

> The Addition of Article 17(g) to the Government Contract and Article 20(c)(B)(13) to the Spaceholder Contracts was clarifying only as to an already existing indemnity obligation and did not substantially impair the rights or increase the monetary obligation of any Wateruser or any elector entitled to vote at any contract and assessment election and did not substantially affect the rights of any Wateruser or elector entitled to vote at any contract and assessment election.

(Emphasis added.)

On appeal, this specific issue was discussed by the Idaho Supreme Court in its opinion affirming the District Court decision in its entirety. After discussing the motivation and concerns which led to the inclusion of Article 17(g), the Court said:

> The trial court ruled that these additions were only "clarifying revisions" and did not "affect the substantial rights of any spaceholder, the owner of any land within the area served by a spaceholder, or impose any greater obligation upon any spaceholder or landowner." The districts contend that these additions were made because Burpee's memorandum may have left the impression that the AFRD itself would be obligated to indemnify the United States when in fact the terms of the contracts approved in the elections provided that these indemnity payments were to be included as part of the total project costs and were not special obligations of the AFRD. The districts argue that these additions were merely procedural, clarifying the manner in which such reimbursements, if any, to the United States would be made, and did not impose any obligation on the spaceholders or landowners which was not already present under the prior drafts.

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> We agree. It is apparent that the obligation to indemnify the United States for any claims for damages resulting from construction of the replacement dam existed under the drafts of the contracts approved in the elections. The subsequent additions did not alter that indemnity obligation but only specified the procedure for making those reimbursements. (Kerner v. Johnson, ____ Idaho ____, 583 P.2d 360 at 386, 1978)

As previously discussed, the state court action in confirming the contracts proceedings and proposed bonds should be conclusive on this issue, as well as the other issue raised by plaintiffs. However, even if a confirmation action did not have the status which it has as an in rem action, the findings of the state court on that identical issue should be persuasive when the plaintiffs attempt to re-litigate the same issue again.

IV.

THE PLAINTIFFS LACK THE POWER TO LITIGATE THE ISSUE CONTAINED IN THE STIPULATION.

The Amended Complaint in Kerner v. The United States of America, et al, was brought by ". . . plaintiffs for themselves, individually, and on behalf of all . . ." persons and entities owning land within irrigation districts which hold storage space in the American Falls reservoir.

The Amended Complaint named five plaintiffs. They were: William Kerner, Charles Barnes, Lynn Mecham, Fred Stewart and Del Hiatt. After Kerner and Barnes were allowed to withdraw, the three remaining plaintiffs stipulated with the defendants as to the sole issue remaining for determination. Presumably, this issue was originally contained in Paragraph 9(f) of the Amended Complaint in which the plaintiffs alleged that they sought, pursuant to the Federal Declaratory Judgment Act

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> [A] declaration that the proposed contract sought to be executed between American Falls Reservoir District and the space-holders, American Falls Reservoir District and Idaho Power Company, and American Falls Reservoir District and the United States Government are illegal and void . . .

While agreeing to the stipulated issue, the defendants reserved the right to contest whether:

> [P]laintiffs are proper persons or have standing to assert such issue nor that a case or controversy exists between Plaintiffs and defendants nor that this is a proper derivative or class action.

The three remaining plaintiffs have never addressed themselves to these questions, and in fact have no standing either as a as a class or as individuals to challenge the Government Contract. They in no way are qualified to bring this lawsuit either as a class action or derivative action pursuant to Rules 23 and 23.1 of the Federal Rules of Civil Procedure.

A. Neither Lynn Mecham, Red Stewart Nor Del Hiatt Have Any Standing as Individuals to Challenge The Validity of Article 29 and Article 17(g) of the Government Contract.

While, as Justice Douglas has noted, "generalizations about standing to sue are largely worthless as such," Association of Data Processing Service Org., Inc., v. Camp, 397 U.S. 150, 151 90 S.Ct. 827, 829 (1970), the standing doctrine is one employed by courts to prevent litigation of issues by parties who are not properly situated to be entitled to a judicial determination. Wright, Miller, Federal Practice and Procedure: Jurisdiction § 3531. The concept of standing is one integrally related to notions of the basic limits on the jurisdictional power of the courts contained in Article III of the United States Constitution.

The Supreme Court began its opinion in the Data Processing case, by noting that Article III restricts judicial power to

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"cases" and "controversies". Quoting from Flast v. Cohen, 392 U.S. 83, 101, 88 S.Ct. 1942 (1953), the Court stated:

> In terms of Article III Limitations on Federal Court Jurisdiction, the question of standing is related only to whether the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution.

Association of Data Processing Service Org., Inc., v. Camp 397 U.S. 150, 151, 90 S.Ct. 827, 829 (1970) (emphasis added).

In fleshing out the meaning of the Article III requirements, the Court stated there are two basic questions in the issue of standing which each must be answered affirmatively in order to confer standing on a prospective litigant. The first requirement is that the plaintiff must allege that the challenged action has caused him "injury in fact, economic or otherwise," Association of Data Processing Service, Org., Inc., v. Camp 397 U.S. 150, 151, 90 S.Ct. 827, 829 (1970) (emphasis added). Second, standing involves a requirement that the plaintiff's alleged injuries fall within the zone of interests to be protected by the statute challenged. Association of Data Processing Service Org., Inc., v. Camp, 397 U.S. 156, 151 90 S.Ct. 831 (1970).

The plaintiffs have alleged no injury in fact, and they have no standing to litigate the stipulated issue. The plaintiffs' brief sets forth their conjurations of potential situations in which irrigation districts may for reasons undisclosed by the plaintiffs, run amuck and act contrary to their duty to properly make payments required by the contracts. Plaintiffs also hypothetically allege that they may somehow be prevented from obtaining loans as a result of the Government Contract's Articles 29 and 17(g). The plaintiffs entire argument is, however, couched in terms of speculative

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injury which may someday happen. There is no allegation of any present or past direct injury to them. The absence of any alleged injury in fact to the plaintiffs is an issue which goes to the fundamental power of this court to entertain the plaintiffs complaint; without injury in fact there is no "case" or "controversy" as to the plaintiffs and Article III bars this court from entertaining the instant action.

Not only have the plaintiffs failed to meet Article III's requirement of "injury in fact, economic or otherwise", they also have failed to satisfy the other basic requirement of standing; that a plaintiff must be a party properly situated to be entitled to a judicial determination of the legal issue before the court.

The plaintiffs complaint reveals them to be no more than three individuals, whose rights, if any, arise solely through and from irrigation districts. These districts are spaceholders in the American Falls Reservoir District, and they, not the plaintiffs are parties to the Government contract in issue. Idaho law provides that persons in the position of the plaintiffs are waterusers who acquire no rights as appropriators in the water furnished to them by the districts. It is the business of the district, not individual waterusers, to protect the appropriations and to defend its rights any litigation that may arise. Nampa and Meridian Irrigation District v. Barclay, 56 Idaho 13, 47 P.2d 916 (1935).

Since it is the irrigation districts, not individual water users, which are the contracting parties and these districts alone have sole power to act to protect their rights, the three individual plaintiffs are not parties

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within the zone of interests protected. They are not parties who, in the Flast v. Cohen formulation, supra, are capable of having this dispute "adjudicated in a form historically viewed as capable of judicial resolution."

That power resides solely in the irrigation districts.

V.

THE PLAINTIFFS ARE NOT ENTITLED TO MAINTAIN THIS ACTION AS A CLASS ACTION.

Federal Rule of Civil Procedure 23(c)(1) requires:

> As soon as practical after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained.

As of this date there has been no determination by this court as to the propriety of these three plaintiffs maintaining this case as a class action. These three men are not, however, entitled to maintain their claims as a class action.

Rule 23(a) provides that one or more members of a class may sue as representative parties on behalf of all, only if all the following prerequisites are met:

1. The class is so numerous that joinder of all members is impracticable.
2. There are questions of law or fact common to the class.
3. The claims or defenses of the representative parties are typical of the claims or defenses of the class.
4. The representative parties will fairly and adequately protect the interests of the class.

A review of the history of this action and the factual background from which it arises clearly illustrates the plaintiffs have failed to meet all the prerequisites of Rule 23. Their most egregious failure involves the fourth requirement of Rule 23(a). Rule 23(a)(4) requires that

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representative parties seeking to sue on behalf of a purported class must "fairly and adequately protect the interests of the class." Even if it were to be assumed that a class did, in fact, exist for Rule 23 purposes, the current plaintiffs in no wise would or could fairly or adequately protect the interests of such a class.

A judicial decision in a class action operates to bind all members of a class. This binding effect of class action decrees naturally raises substantial due process questions directly relevant to Rule 23(a)(4). If absent members are to be conclusively bound by the result of an action prosecuted or defended by a party purporting to represent their interests, basic notions of fairness and justice demand that the representation they receive be adequate. Wright & Miller Federal Practice and Procedure; Civil 1765. Hansberry v. Lee, 311 U.S. 32, 61 S.Ct. 115 (1940).

The due process requirements of adequate representation in class actions, was considered by the Second Circuit Court of Appeals in Eisen v. Carlyle and Jacquelin, 391 F.2d 555, 562 (2d Cir. 1968), that court concluded as follows:

> What are the ingredients that enable one to be termed "an adequate representative of the class?" To be sure, on an essential concomitant of adequate representation is that the party's attorney be qualified, experienced and generally able to conduct the proposed litigation. Additionally, it is necessary to eliminate so far as possible the likelihood that the litigants are involved in a collusive suit or that plaintiff has interests antagonistic to those of the remainder of the class.

The five original plaintiffs filed a 54 page Amended Complaint alleging anti-trust violations, conspiracy, political collusion, fraud, and sought injunctions, declaratory relief, writs of mandamus, and damages in the multi-millions of dollars. The plaintiffs, who have always claimed to be

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representatives of their purported class failed to do more than the most cursory discovery during the entire pendency of this litigation. The original trial date in this action was vacated for the purpose of allowing the plaintiff to conduct further discovery, yet they conducted no further discovery at all. The very fact that two of the original plaintiffs willingly withdrew from the case and stipulated they did not represent any class in this lawsuit is strong evidence not only of the inability of the plaintiffs to adequately prosecute this lawsuit, but also is impressive evidence that these three plaintiffs have interests antagonistic to the remainder of the class they purport to represent; the waterusers who so overwhelmingly endorsed the contracts which they seek to overturn.

As the decision in Eisen case noted, it is essential that the party's attorney be qualified, experienced and generally able to conduct litigation. The plaintiffs currently have no attorney, much less one qualified and experienced to conduct this lawsuit. If the plaintiffs have interests in common with those of the remainder of the very large class they purport to represent, one must naturally wonder at their inability to obtain or retain adequate counsel.

The due process considerations underlying Rule 23(a)(4)'s requirements have not been met by the plaintiffs and no class action may be maintained by them as they do not and cannot adequately represent the interests of the purported class.

VI.

THE PLAINTIFFS ARE NOT ENTITLED TO MAINTAIN A DERIVATIVE ACTION.

Rule 23.1 provides for the maintenance of a derivative action brought by a shareholder to enforce a right of a corporation, the corporation having failed to enforce a right

which may be properly asserted by it. In such a case, however, Rule 23.1 provides the plaintiff must allege

> [W]ith particularity the effort, if any made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association . . . (emphasis added)

A plaintiff alleging a derivative action must then allege, "with particularity" his efforts "to obtain the action he desires." In the Amended Complaint only plaintiff Hiatt, of the three remaining plaintiffs, alleged any efforts by himself as a shareholder to obtain enforcement of a right which could properly be asserted by a corporation. Plaintiff Hiatt purportedly attempted to have the Northside Canal Company withdraw from the American Falls Reservoir Replacement Dam Project and not execute the spaceholders contract. Hiatt was not alleged, however, to have requested that the Board of the Northside Canal Company litigate the issue now before the court. Thus, even were the allegations of the Amended Complaint still before the court, the burden imposed of Rule 23.1 would not have been met.

The stipulation between the parties provides that the allegations of the Amended Complaint filed by the plaintiffs would be dismissed with prejudice, with the specific exception of the issue presented by the plaintiffs. Not only then have the plaintiffs failed to comply with Rule 23.1's requirement that they allege efforts to obtain from a corporation the results desired in this law suit but they have abandoned their claim to a derivative action by entering

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into the stipulation dismissing the Amended Complaint's allegations, no further allegations of efforts to obtain relief having been made by them.

Even if the Plaintiffs had met Rule 23.1's pleading requirements, they would be barred from maintaining a derivative action by due process considerations since they could not adequately "represent the interests of the shareholders or members similarly situated."

While different from Rule 23's concern that the plaintiffs in a class action not be at cross purposes with other members of their class, Rule 23.1's requirement of fair and adequate representation by parties seeking to maintain a derivative action still requires inquiry into the adequacy of the plaintiffs representation of such a group. Shulman v. Ritzenberg, 47 F.R.D. 202, 211 (D.C.D.C. 1969).

These three plaintiffs cannot be said to adequately represent the interests even of their fellow dissidents. The very fact that there was a split among the original plaintiffs is strong indication of the inadequacy of their representation. Their failure to prosecute the case in a full and vigorous manner also reflects on their inability to adequately represent any minority stockholder group. These three plaintiffs who have stipulated away all but one issue of a 54 page verified complaint condensing their entire case to a one paragraph issue, who currently appear without council and who have filed a pro se brief can hardly be said to adequately represent even minority shareholder interests for the purposes of a derivative action in any way consonant with the notions of due process and fairness which underlie Rule 23.1's requirements.

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CONCLUSION

In its opinion disposing of the problems conjured up by the dissident landowners, the Idaho Supreme Court said:

> But the landowners have no right to receive that water always at the same price or on exactly the same conditions. The board of directors of each district may determine that the fulfillment of their statutory duty to protect their district's water rights and to assure that sufficient irrigation water will be available to all the lands within their district, I.C. §§ 43-304, -2203, requires them to make various capital improvements to the water system. Such improvements require increased assessments and may even dictate the delivery of water on perhaps slightly different terms. However, when as here more than two-thirds of the landowners of the irrigation district have voted to approve the execution of contracts to repay their proportionate amount of major new capital improvements in order to assure that adequate supplies of water will be available, we cannot say that the action of the board of directors divests those landowners who voted against the contracts of valuable property rights.
>
> It appears that the heart of the appellants' grievance is an apparently genuine belief that the execution of the spaceholder contracts was a wrong decision and that the interests of the districts and the landowners would have been better served by the pursuit of a federal financing plan. However, that is a policy decision entrusted to the boards of directors of the districts and subject to the approval of the voting landowners. That decision has been made and was approved by the voters. In that political process the appellants' position was simply rejected. (583 P.2d 360 at 374-375)

Plaintiffs' claims are foreclosed by the in rem decree of the state court. Even if considered on the merits, plaintiffs' contentions are without foundation in law or fact. Plaintiffs have no power to litigate the issue presented, nor to represent any other persons or class of persons in this litigation and their contentions must be denied.

DATED this 6 day of April, 1979.

PARRY, ROBERTSON, DALY & LARSON

CHAPMAN AND CUTLER

JAMES, HOBDEY & VARIN

LING & NIELSEN

HANSEN & BOYLE

RIGBY, THATCHER & ANDRUS

SHARP, ANDERSON & BUSH

HOPKINS & FRENCH

LEE, RIRIE & GROVER

ELAM, BURKE, JEPPESEN, EVANS & BOYD

By _____
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CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing instrument to each of the following attorneys by depositing a copy of same, postage prepaid, in the U. S. Mail on this 6 day of April, 1979.

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Exhibit 44

Bond Counsel Opinion at 15 (Chapman and Cutler Dec. 1, 1980)

NEW ISSUE

In the opinion of bond counsel: interest on the Bonds will not be includable in gross income for Federal income tax purposes under the statutes, regulations, court decisions and rulings existing on the date of delivery of the Bonds, except under certain conditions as explained under "Tax Exemption" herein; and interest on the Bonds is exempt from income taxes imposed by the Idaho Income Tax Act.

$22,095,000

American Falls Reservoir District
Idaho
American Falls Replacement Dam Bonds

Dated December 1, 1980

Due May 1, as shown below

The Bonds are payable solely from and secured by an assignment and pledge of payments derived pursuant to contracts between the District and Idaho Power Company. The Bonds will not constitute general obligations of the District, nor a charge against the general credit or taxing power thereof or of the State of Idaho. The Trustee has received an unconditional guaranty of the principal of, premium, if any, and interest on, the Bonds from

Idaho Power Company

The Bonds will be issuable as coupon Bonds in the denomination of $5,000 each, which may be registered as to principal only, and as registered Bonds without coupons in the denomination of $5,000 or any integral multiple thereof. Principal of the Bonds and semiannual (May 1 and November 1) interest on the coupon Bonds is payable at the principal corporate trust office of The Idaho First National Bank, Boise, Idaho, Trustee, or at the principal corporate trust office of Bankers Trust Company, New York, New York, at the option of the holder. Semiannual interest on registered Bonds without coupons is payable by check or draft mailed to the registered owner.

The Bonds will be subject to optional redemption and sinking fund redemption prior to maturity as more fully described herein.

$780,000 Serial Bonds

Amount	Maturity	Interest Rate	Yield or Price	Amount	Maturity	Interest Rate	Yield or Price
$55,000	1982	7.50%	100%	$ 80,000	1987	8.60%	100%
60,000	1983	7.75	100	85,000	1988	8.75	100
60,000	1984	8.00	100	95,000	1989	8.90	100
65,000	1985	8.20	100	100,000	1990	9.00	100
70,000	1986	8.40	100	110,000	1991	9.15	100

$ 2,000,000 10.25% Term Bonds due May 1, 2001—Price 100%
$ 1,050,000 10.25% Term Bonds due May 1, 2004—Price 99%
$ 5,925,000 10⅝% Term Bonds due May 1, 2013—Price 99%
$12,340,000 11.00% Term Bonds due May 1, 2021—Price 100%

The Bonds are offered when, as and if issued, subject to the approval by Messrs. Chapman and Cutler, Chicago, Illinois, and certain other conditions. It is expected that delivery of the Bonds will be made on or about December 18, 1980, in New York, New York.

Kidder, Peabody & Co.
Incorporated

Dated November 14, 1980

OFFICE OF THE
FISCAL
SECRETARY
NOV 21

No dealer, broker, salesman or other person has been authorized to give any information or to make any representations other than those contained in this Official Statement, and if given or made, such other information or representation must not be relied upon as having been authorized by the American Falls Reservoir District, Idaho Power Company or the Underwriter. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any such offer or solicitation or any sale of the Bonds by any person, in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. The information set forth herein has been obtained from the American Falls Reservoir District, Idaho Power Company and other sources which are believed to be reliable, but it is not guaranteed as to accuracy or completeness by, and is not to be construed as a representation by, the Underwriter. The information herein is subject to change without notice and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change since the date hereof in the affairs of the American Falls Reservoir District or Idaho Power Company.

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IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE BONDS OFFERED HEREBY AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

OFFICIAL STATEMENT

$22,095,000

American Falls Reservoir District
Idaho

American Falls Replacement Dam Bonds

INTRODUCTION

The purpose of this Official Statement is to set forth information concerning the issuance by the American Falls Reservoir District, State of Idaho, an instrumentality of the State of Idaho (the "District"), of its American Falls Replacement Dam Bonds, in the aggregate principal amount of $22,095,000 (the "Bonds") for the purpose of paying a portion of the cost of reconstructing, rehabilitating, replacing and improving the American Falls Dam (the "Replacement Dam") and other related structures and works, together with all necessary appurtenances related thereto, on the Snake River in southern Idaho adjacent to the City of American Falls, Idaho (the "American Falls Replacement Dam Program"), and for the purpose of paying expenses preliminary and incidental thereto (see "The American Falls Replacement Dam Program").

The District acquired the right to construct the Replacement Dam by contract dated as of March 31, 1976 (the "Government Contract"), between the District and the United States of America, acting through the Regional Director, Pacific Northwest Region, Bureau of Reclamation (now Water and Power Resources Service), upon authorization of the Secretary of the Interior pursuant to authority contained in the Act of Congress approved December 28, 1973 (the "Act of December 28, 1973") (see "The Government Contract").

The Bonds will be issued under an Indenture of Trust (the "Indenture") dated as of December 1, 1980, between the District and The Idaho First National Bank, organized and existing under the laws of the United States of America, with its principal office located in Boise, Idaho (the "Trustee").

The Bonds will be secured solely by a pledge of the payments to be made by Idaho Power Company, a Maine corporation ("Idaho Power Company"), pursuant to a contract dated as of March 31, 1976, between the District and Idaho Power Company (the "Falling Water Contract") and a contract dated as of March 31, 1976, among the United States of America, the District and Idaho Power Company (the "Idaho Power Company Spaceholder Contract"), collectively hereinafter referred to as the "Idaho Power Company Contracts". Pursuant to the Idaho Power Company Contracts, Idaho Power Company is obligated to make certain Falling Water Payments (the "Falling Water Payments") and certain Spaceholder Bond Payments (the "Idaho Power Company Spaceholder Bond Payments") to the District in a combined amount which is sufficient to amortize the Bonds as to principal, premium, if any, and interest, together with related expenses of the Trustee and any Paying Agent. (The Falling Water Payments and the Idaho Power Company Spaceholder Bond Payments are collectively hereinafter referred to as the "Idaho Power Company Payments".) In addition, pursuant to a Guaranty Agreement dated as of December 1, 1980 (the "Guaranty"), between Idaho Power Company and the Trustee, Idaho Power Company will unconditionally guarantee the payment of the principal of, premium, if any, and interest on the Bonds. The Trustee and the holders of the Bonds will have no security interest in the Replacement Dam. The Idaho Power Company Payments are pledged and assigned directly to the Trustee on behalf of the bondholders (the "Bondholders") (see "The Falling Water Contract" and "The Spaceholder Contracts").

Brief descriptions of the District, the American Falls Replacement Dam Program, the Bonds, the Guaranty, the Government Contract, the Falling Water Contract, the Indenture and certain contracts (the "Spaceholder Contracts") among the United States, the District and various waterusers (including Idaho Power Company) entitled to the use of water stored in the reservoir behind the Replacement Dam are included in this Official Statement. All references herein to the Government Contract, the Falling Water Contract, the Guaranty, the Spaceholder Contracts and the Indenture are qualified in their entirety by references to such documents and references herein to the Bonds are qualified in their entirety by reference to the form thereof included in the Indenture and the information with respect thereto included in the aforesaid documents. Copies of the forms of these documents may be obtained during the period of the offering from the Underwriter.

Included as an appendix to this Official Statement is information with respect to Idaho Power Company.

THE DISTRICT

The District is an instrumentality organized and existing under the laws of the State of Idaho, particularly the Irrigation District Code, Title 43, Idaho Code, as amended. Pursuant to Chapter 22 of Title 43, Idaho Code, as amended (the "State Act"), the District is authorized to finance and construct the American Falls Replacement Dam Program, to issue the Bonds and to secure the Bonds by an assignment and pledge of the Idaho Power Company Payments payable by Idaho Power Company under the Idaho Power Company Contracts.

The District was originally created in March, 1923, for the purpose of paying part of the cost of constructing the original American Falls dam and reservoir (the "Original Dam") owned by the United States, and operated as part of the Minidoka Reclamation Project, located on the Snake River in southern Idaho, adjacent to the City of American Falls, Idaho. The District operates as the holder of water storage capacity in the Replacement Dam on behalf of five canal companies located in Bingham, Bonneville, Elmore, Gooding, Jerome, Power and Twin Falls Counties, Idaho.

THE AMERICAN FALLS REPLACEMENT DAM PROGRAM

The American Falls Replacement Dam Program, authorized to be undertaken by the District pursuant to the Government Contract, consists of the construction of the Replacement Dam to replace the Original Dam, with a reservoir with an active water storage capacity of 1,700,000 acre feet, together with certain related facilities, water quality facilities, recreation and fish and wildlife mitigation facilities, a two-lane highway on the crest of the Replacement Dam and a two-lane highway bridge located immediately downstream from the Replacement Dam.

Because of certain alkali-aggregate reactions in the concrete portions of the Original Dam, in October, 1972, the United States began to operate the Original Dam at approximately two-thirds of its full active water storage capacity. Because of the probable unavailability of money for Federal funding of the cost of financing and constructing the Replacement Dam, the organizations and individuals, including Idaho Power Company, which had contracted with the United States for storage space in the reservoir behind the Original Dam (the "Spaceholders") sought and received authority from Congress pursuant to the Act of December 28, 1973, to replace the Original Dam. In the Act of December 28, 1973, Congress designated the District as the agency to represent the Spaceholders with respect to the financing and construction of the Replacement Dam. The Idaho Legislature, through the enactment of the State Act, provided authority for the District to issue the Bonds and to pay the costs of financing and constructing the American Falls Replacement Dam Program. The constitutionality of the State Act was upheld by the Idaho Supreme Court in the summer of 1974.

As required under the State Act, confirmation proceedings were instituted in 1976, resulting in a decision of the Idaho Supreme Court on July 20, 1978, affirming the decision of the trial court confirming the various acts, proceedings and contracts relating to the American Falls Replacement Dam Program, including the Bonds.

Construction of the Replacement Dam commenced in 1976, was substantially completed in 1978, and title thereto has been transferred to the United States as contemplated in the Act of December 28, 1973. Construction financing was undertaken by the District through the issuance of its Interim Notes (the "Interim Notes"), now outstanding in the aggregate principal amount of $44,750,000. The outstanding Interim Notes will be retired simultaneously with the delivery of the Bonds.

Under the Government Contract and the Spaceholder Contracts, the Spaceholders were obligated to pay their proportionate share of the cost of the American Falls Replacement Dam Program not assigned to Idaho Power Company under the Falling Water Contract. Pursuant to the provisions of the Acts of Congress of November 2, 1978, and September 25, 1979, the United States contracted to pay the portion of the total cost of the American Falls Replacement Dam Program for which the Spaceholders other than Idaho Power Company were responsible. Funds for this purpose were paid to the District on behalf of all Spaceholders other than Idaho Power Company by the United States on August 1, 1980, for deposit into the Prepayment Fund (the "Prepayment Fund") in the hands of the Trustee. On the date of delivery of the Bonds, proceeds of the sale of the Bonds and moneys in the Prepayment Fund will be used to retire the Interim Notes.

The Act of December 28, 1973, contemplated construction by Idaho Power Company of a powerplant (the "Powerplant") at the site of the Replacement Dam and the use by Idaho Power Company of water released from the Replacement Dam in the Powerplant for the production of electric energy. On March 31, 1975, Idaho Power Company received a license (the "License") from the Federal Power Commission (now the Federal Energy Regulatory Commission) authorizing the construction by Idaho Power Company of a 92.4 megawatt powerplant at the site of the Replacement Dam. Construction of the Powerplant commenced on May 24, 1976, and the third and last unit of the Powerplant was placed in service on July 28, 1978. No portion of the proceeds of the Bonds will be used to pay the cost of the Powerplant.

THE BONDS

The Bonds will be special obligations of the District and will be payable solely from and secured solely by a pledge of the Idaho Power Company Payments to be made by Idaho Power Company pursuant to the Idaho Power Company Contracts. The Bonds will not constitute an indebtedness to which the full faith and credit of the District is pledged nor a general obligation of the District, or the State of Idaho.

The Bonds will be issued in fully registered form without coupons in denominations of $5,000, or any integral multiple thereof, or as coupon Bonds, registrable as to principal only, in the denomination of $5,000. The Bonds will be dated December 1, 1980, will bear interest at the rates and mature in the amounts and at the times set forth on the cover page of this Official Statement. Interest will be payable semiannually on May 1 and November 1 of each year, commencing May 1, 1981.

The principal, premium, if any, and interest on the Bonds are payable at the principal corporate trust office of The Idaho First National Bank, appointed in the Indenture as Trustee, or at the option of the holder at the principal corporate trust office of Bankers Trust Company, in New York, New York, as Paying Agent.

Sinking Fund Redemption:

The Bonds maturing on May 1, 2001, will be subject to mandatory sinking fund redemption at 100% of the principal amount thereof, plus accrued interest to the redemption date, on May 1, 1992, and on each May 1 thereafter to and including May 1, 2000. Funds for the sinking fund will be provided by the District from Idaho Power Company Payments sufficient to redeem the following principal amount of Bonds on the dates set forth in the table below:

May 1	Principal Amount
1992	$125,000
1993	135,000
1994	150,000
1995	165,000
1996	180,000
1997	205,000
1998	225,000
1999	245,000
2000	270,000
2001	300,000*

* At maturity

The Bonds maturing on May 1, 2004, will be subject to mandatory sinking fund redemption at 100% of the principal amount thereof, plus accrued interest to the redemption date, on May 1, 2002, and on each May 1 thereafter to and including May 1, 2003. Funds for the sinking fund will be provided by the District from Idaho Power Company Payments sufficient to redeem the following principal amount of Bonds on the dates set forth in the table below:

May 1	Principal Amount
2002	$315,000
2003	350,000
2004	385,000*

* At maturity

The Bonds maturing on May 1, 2013, will be subject to mandatory sinking fund redemption at 100% of the principal amount thereof, plus accrued interest to the redemption date, on May 1, 2005, and on each May 1 thereafter to and including May 1, 2012. Funds for the sinking fund will be provided by the District from Idaho Power Company Payments sufficient to redeem the following principal amount of Bonds on the dates set forth in the table below:

May 1	Principal Amount
2005	$425,000
2006	470,000
2007	520,000
2008	575,000
2009	635,000
2010	705,000
2011	780,000
2012	860,000
2013	955,000*

* At maturity

The Bonds maturing on May 1, 2021, will be subject to mandatory sinking fund redemption at 100% of the principal amount thereof, plus accrued interest to the redemption date, on May 1, 2014, and on each May 1 thereafter to and including May 1, 2020. Funds for the sinking fund will be provided by the District from Idaho Power Company Payments sufficient to redeem the following principal amount of Bonds on the dates set forth in the table below:

May 1	Principal Amount
2014	$1,040,000
2015	1,150,000
2016	1,280,000
2017	1,425,000
2018	1,575,000
2019	1,755,000
2020	1,950,000
2021	2,165,000*

* At maturity

Optional Redemption:

The Bonds maturing on May 1, 1991, and thereafter will be subject to redemption prior to maturity at the option of the District on or after May 1, 1990, in whole on any date, or in part on any interest payment date, in inverse order of maturities, at the redemption prices (expressed as percentages of principal amount) set forth in the table below plus accrued interest to the redemption date:

Redemption Dates (Both Inclusive)	Redemption Price
May 1, 1990 through April 30, 1991	103%
May 1, 1991 through April 30, 1992	102%
May 1, 1992 through April 30, 1993	101%
May 1, 1993 and thereafter	100%

Selection of Bonds for Redemption:

If less than all of the Bonds maturing on any single date are called for redemption, the Trustee shall select the Bonds to be redeemed, from the Bonds outstanding maturing on that date not previously called for redemption, in such manner as in the Trustee's sole discretion it shall deem appropriate and fair.

Notice of Redemption:

Notice of the call of any Bonds for redemption, identifying the Bonds or portion thereof to be redeemed, specifying the redemption date, the redemption price, the places of payment, whether the redemption is conditioned upon the deposit of funds to effect the redemption, and that from the redemption date interest will cease to accrue, shall be given by the Trustee by publication at least twice in a newspaper or financial journal of general circulation published in the City of New York, New York, the first publication to be not less than thirty (30) days prior to the redemption date, and in the case of the redemption of Bonds at the time registered as to principal or fully registered, upon mailing a copy of the redemption notice by registered or certified mail at least thirty (30) days prior to the date fixed for redemption to the registered owner of each Bond to be redeemed. If all of the Bonds to be redeemed are at that time registered as to principal or fully registered, such notice shall be given by mailing only. No failure to give any such notice by mailing, or any defect therein, shall affect the validity of the proceedings for the redemption of any Bonds or portion thereof with respect to which no such failure has occurred.

SUMMARY OF COSTS

A summary of the costs of the American Falls Replacement Dam Program, and the use of proceeds from the Bonds and of moneys in the Prepayment Fund and other funds and contributions relating to the American Falls Replacement Dam Program is as follows*:

Construction costs (including engineering)	$47,624,521	
Financing expenses	$ 272,172	
Underwriter's discount	$ 643,627	
Bond discount	$ 69,750	
Total		$48,610,070
Principal amount of the Bonds	$22,095,000	
Amount from Prepayment Fund	$19,119,023	
Other funds and contributions	$ 7,396,047	
Total		$48,610,070

* In certain instances, these figures have been adjusted to reflect the issuance of the Bonds in the amount of the highest and nearest $5,000.

Accrued interest paid by the purchaser of the Bonds will be deposited in the Bond Fund created under the Indenture at the time of the delivery of the Bonds. The balance of the net proceeds of the Bonds, together with moneys from the Prepayment Fund and other funds and contributions relating to the American Falls Replacement Dam Program, will be deposited into the Construction Fund created under the Indenture, to be used for the purposes set forth therein (see "The Indenture").

THE GOVERNMENT CONTRACT

The Government Contract, entered into between the District and the United States as of March 31, 1976, pursuant to the provisions of the Act of December 28, 1973, authorizes the District, as the agency representing the Spaceholders, to finance and provide for the construction of the American Falls Replacement Dam Program. The following is a summary of certain provisions of the Government Contract:

Term: The term of the Government Contract runs from its effective date until specifically terminated by mutual agreement (see "The Falling Water Contract").

Construction of the American Falls Replacement Dam Program: The Government Contract provided that the District was responsible for the preparation of plans, designs and specifications for the American Falls Replacement Dam Program, subject to approval by the United States. Mutual rights of access to Idaho Power Company and to the District and the United States for the purpose of constructing the Powerplant and the American Falls Replacement Dam Program were provided.

Transfer of Title to, and Operation and Maintenance of, the Replacement Dam and Related Facilities: The Government Contract provided that upon the substantial completion of the Replacement Dam, together with certain related facilities, title thereto would be conveyed by the District to the United States. Transfer of title occurred on August 1, 1980, after which the United States has and will operate and maintain the Replacement Dam and the related facilities as part of the Minidoka Reclamation Project for the beneficial use of the water on the land within the service areas of the Spaceholders pursuant to the reclamation laws of the United States. The District remains responsible for the operation and maintenance of certain water quality facilities constructed as a part of the American Falls Replacement Dam Program (the "Water Quality Facilities"). See "The Water Quality Facilities Agreement".

Delivery of Water to Spaceholders: Pursuant to the Government Contract delivery of water from the Replacement Dam to the Spaceholders is contingent upon the execution of a Spaceholder Contract by each Spaceholder and the continued fulfillment of the obligations of the Spaceholder thereunder, all as provided in the Act of December 28, 1973. Each Spaceholder has executed a Spaceholder Contract.

Right of District to Enter into Falling Water Contract with Idaho Power Company: The Government Contract acknowledges that the Falling Water Contract has been entered into by the District and Idaho Power Company and has been approved by the Secretary of the Interior, and permits Idaho Power Company 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.

The Government Contract provides that, so long as Idaho Power Company is not in default under the terms of the Falling Water Contract (see "The Falling Water Contract—Default") during the term of the License or any continuation or renewal thereof, Idaho Power Company is entitled to utilize for power generation at the Powerplant the water released from the Replacement Dam.

The United States may, pursuant to the Government Contract, bypass part or all of the water released from the Replacement Dam around the Powerplant in the event that the United States 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 (see "The Water Quality Facilities Agreement").

See "The Falling Water Contract—Net Contract".

Other Provisions: The Government Contract contains various other provisions normally found in contracts entered into between waterusers and the United States with respect to reclamation projects.

The Government Contract provides that the United States may make rules and regulations as it may deem proper and necessary to carry out the Government Contract and to supply necessary details of the administration thereof which are not covered by the express provisions thereof. However, it is provided that such rules and regulations shall (i) not limit the right of Idaho Power Company to utilize for power generation at the Powerplant the water released from the Replacement Dam so long as Idaho Power Company is not in default under the Falling Water Contract; (ii) not limit the right of any Spaceholder to stored water so long as the Spaceholder is not in default under its Spaceholder Contract; or (iii) not limit the right of the District under the laws of the State of Idaho to collect the Idaho Power Company Payments.

THE FALLING WATER CONTRACT

Pursuant to the terms of the Falling Water Contract entered into as of March 31, 1976, between the District and Idaho Power Company, as authorized in the Act of December 28, 1973, Idaho Power Company agrees to make the Falling Water Payments, constituting a monetary return to the District to defray in part the cost of the American Falls Replacement Dam Program contemplated in the Act of December 28, 1973, in return for which Idaho Power Company is entitled to utilize the water released from the Replacement Dam in the Powerplant for power generation, but within the limits specified in the Government Contract.

The following is a summary of certain provisions of the Falling Water Contract.

Term: The original term of the Falling Water Contract began upon its execution and shall terminate on March 31, 2025, being fifty (50) years from the date of the License (see "The American Falls Replacement Dam Program"). If the License is continued or renewed, the Falling Water Contract shall be continued in effect during such period of continuation or the renewal term, at which time the District and Idaho Power Company may mutually consent to the making of annual payments by Idaho Power Company to the District on behalf of the Spaceholders. Under the Spaceholder Contracts, all Spaceholders other than Idaho Power Company have assigned to the United States all their right, title and interest, if any, in and to any and all "falling water" benefits accruing as a result of the construction of the American Falls Replacement Dam Program, such assignment to become effective upon the earlier to occur of the termination of the original term of the Falling Water Contract or the retirement of the Bonds.

Idaho Power Company Payments: The Idaho Power Company Payments consist of Falling Water Payments and Idaho Power Company Spaceholder Bond Payments sufficient to pay the annual combined principal and interest requirements on the Bonds, plus the fees and expenses of the Trustee and any Paying Agent. The Idaho Power Company Payments are to be paid directly to the Trustee for the account of the District. (See "The Spaceholder Contracts".)

Net Contract: The Falling Water Payments are required to be made without notice or demand and without any offset, counterclaim, deduction, defense, abatement, suspension, deferment or diminution of any kind or for any reason.

Non-Termination of Falling Water Contract or Idaho Power Company Obligation: The Falling Water Contract provides that Idaho Power Company shall have no right to terminate the Falling Water Contract or its obligations thereunder, or be entitled to the abatement, deferment or diminution of any installment of the Falling Water Payments, nor shall the obligations of Idaho Power Company be affected by reason of:

(1) any defect or impairment of the District's title to the Replacement Dam during construction, or failure to substantially complete construction;

(2) any defect or impairment of the District's right to contract with Idaho Power Company for the use of the falling water;

(3) damage to or destruction of the Replacement Dam, the Water Quality Facilities or the Powerplant by any cause, including, without limitation, fire, earthquake, explosion, wind, hail or flood;

(4) the taking by condemnation or other eminent domain proceeding of the Replacement Dam or the Powerplant, or any portion thereof;

(5) the prohibition, limitation or restriction (a) on the construction, operation or maintenance of the Replacement Dam, the Water Quality Facilities or the Powerplant, or (b) of Idaho Power Company's rights to the utilization of the water released from the Replacement Dam for power generation, or the interference with the operation of the Powerplant by Idaho Power Company, or with any such right of use by any person;

(6) any eviction of the District or 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 Idaho Power Company;

(7) any default on the part of the District under the Falling Water Contract, or of any other contract;

(8) 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 District or Idaho Power Company;

(9) any mortgage, pledge, sale, assignment or transfer by Idaho Power Company of the Powerplant or the use of the water released from the Replacement Dam, or any portion or portions thereof, or any portion of its rights under the Falling Water Contract, or under any contract;

(10) the impossibility or illegality of performance by any or all of the other parties to the Falling Water Contract, the Spaceholder Contracts, or the Government Contract;

(11) force majeure;

(12) any action or pending action of any court, administrative agency or other governmental authority;

(13) 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 the Spaceholders under certain circumstances are invalid or in whole or in part unenforceable;

(14) any order of the Federal Energy Regulatory Commission pursuant to Article 48 of the License requiring 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

(15) any other cause, whether similar or dissimilar to the foregoing, any present or future law notwithstanding.

In the event of failure of Idaho Power Company to pay when due all or any part of any installment of the Falling Water Payments, the District is required to request that the United States take such steps pursuant to the Government Contract as shall be necessary to suspend all rights of Idaho Power Company to the use of the water released from the Replacement Dam (see "The Government Contract").

License: The License was issued to Idaho Power Company on March 31, 1975. Idaho Power Company has agreed to comply with the provisions of the License so long as the same shall be in full force and effect (see "The American Falls Replacement Dam Program").

The Bonds: The Falling Water Contract provides for the issuance of the Bonds pursuant to the State Act, payable solely from the special fund contemplated in the State Act.

Default: The Falling Water Contract provides that the following are events of default:

(1) failure by Idaho Power Company to pay all or any part of any installment of the Falling Water Payments and (a) continuation of such failure for a period of five (5) days after notice that the payment referred to in the notice has not been received, or (b) continuation of any failure to so pay for a period of twelve (12) days;

(2) failure by Idaho Power Company to observe and perform any covenant, condition or agreement on its part to be observed or performed under the Falling Water Contract, other than as referred to in the immediately preceding subparagraph, for a period of ninety (90) days after written notice, specifying such failure and requesting it be remedied, given to Idaho Power Company by the District or the Trustee, unless the District and the Trustee shall agree in writing to the extension of such time; or

(3) if Idaho Power Company shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to the general bankruptcy law, as amended, or any similar Federal or state law, be adjudged a bankrupt or become insolvent, or make an assignment for the benefit of its creditors, or admit in writing its inability to pay its debts generally as they become due, or if a petition or answer proposing the adjudication of Idaho Power Company as a bankrupt or its reorganization 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 Idaho Power Company or of more than one-third of its property 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

(4) the occurrence of an "event of default" under the Indenture (see "The Indenture—Default and Remedies").

If by reason of certain "uncontrollable forces" Idaho Power Company is unable in whole or in part to carry out its agreements under the Falling Water Contract, other than the obligation to make the Falling Water Payments, Idaho Power Company shall not be deemed in default during the continuation of such inability.

Remedies: Whenever an event of default shall have happened and be subsisting, the District, or the Trustee on behalf of the District, may take the following remedial steps:

(1) upon giving not less than thirty (30) days notice, to terminate the Falling Water Contract, in which event Idaho Power Company thereafter shall have no right, title or interest in, to or with respect to water released from the Replacement Dam, but shall remain liable as provided in the Falling Water Contract;

(2) in the event of termination of the Falling Water Contract, the District or the Trustee shall be entitled to recover from Idaho Power Company, as liquidated damages, an amount equal to the then unpaid principal amount of the Bonds then outstanding;

(3) to request the United States suspend any and all rights of Idaho Power Company to the use of the water released from the Replacement Dam upon not less than twelve (12) days notice, in which event the United States may grant any or all of the suspended rights to any person for the duration of the suspension, and to begin and maintain successive proceedings against Idaho Power Company for the recovery of damages or for a sum equal to any and all installments of the Falling Water Payments;

(4) no suspension of Idaho Power Company's rights to the use of the water released from the Replacement Dam shall be construed as an election to terminate Idaho Power Company's interest under the Falling Water Contract unless a notice of intention to terminate be given to Idaho Power Company or unless such termination be decreed at the instance of the District or the Trustee by a court of competent jurisdiction; or

(5) may take whatever action at law or in equity may appear necessary or desirable to collect the Falling Water Payments.

Any amounts collected from Idaho Power Company as a result of the foregoing remedial actions are to be paid into the Bond Fund (see "The Indenture—Application of the Bond Fund").

The remedies available upon an event of default under the Falling Water Contract may be (i) in many respects dependent upon judicial actions which may be subject to discretion and delay and (ii) limited by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally.

Merger and Consolidation of Idaho Power Company; Assignments: Idaho Power Company may consolidate with or merge into another corporation and dispose of all or substantially all of its assets to another corporation which shall be organized and existing under the laws of one of the States of the United States 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 Idaho Power Company immediately prior to such acquisition, consolidation or merger, and shall assume in writing all of the obligations of Idaho Power Company under the Falling Water Contract. Subject to certain conditions and upon obtaining the consent of the United States Secretary of the Interior, Idaho Power Company may assign the Falling Water Contract without the necessity of obtaining the consent of either the District or the Trustee, but such assignment, except as hereinabove set forth, will not operate to relieve Idaho Power Company of its primary liability to make the Falling Water Payments under the Falling Water Contract.

Limited Liability of District: Idaho Power Company waives any defense based on the adequacy of a remedy at law which might be asserted as a bar to the remedy in proceedings brought against it for specific performance of the obligation to make the Falling Water Payments by the District, any receiver or the Trustee, as well as any defense to any other proceedings which might be brought to enforce any of the rights or remedies provided for in the Falling Water Contract, based on the fact that the District is or may be insolvent. Idaho Power Company's remedy for any act or omission by the District shall be limited to an action or actions for specific performance of the Falling Water Contract by the District; provided, however,

as long as any of the Bonds are outstanding no such action shall be taken which will reduce the amount of the installments of the 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 the Falling Water Payments. At the end of the term of the Falling Water Contract the parties may seek damages from each other for any cause of action which might have arisen prior to the end of the term.

Supplements and Amendments: Subsequent to the sale of the 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 (see "The Indenture—Discharge of Lien"), the Falling Water Contract may not be effectively amended, changed, modified, altered or terminated without the written consent of the Trustee and of the United States.

Amounts Remaining in Bond Fund: Any amounts remaining in the Bond Fund on the expiration or sooner termination of the original term of the 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), of the fees, charges and expenses of the Trustee and Paying Agents and of all other amounts required to be paid under the Falling Water Contract and the Indenture, shall be paid by the Trustee to Idaho Power Company.

THE GUARANTY

Under the Guaranty, Idaho Power Company will unconditionally guarantee to the Trustee for the benefit of the holders of the Bonds and of the interest coupons appertaining thereto the full and prompt payment of the principal of, and interest and premium, if any, on, the Bonds when and as the same shall become due.

Paul L. Jauregui, General Counsel of Idaho Power Company, and Reid & Priest, Special Counsel for Idaho Power Company, will pass on the due authorization, execution and validity of the Guaranty.

THE SPACEHOLDER CONTRACTS

The Spaceholder Contracts are entered into between and among the United States, the District and the Spaceholders (including Idaho Power Company as a Spaceholder) in accordance with the authority contained in the Act of December 28, 1973, and in order to provide for repayment by each Spaceholder of its proportionate share of the total cost of the American Falls Replacement Dam Program not paid by Idaho Power Company pursuant to the Falling Water Contract. Nothing was intended in the Spaceholder Contracts to alter or change the proportionate storage rights of the Spaceholders, and the Spaceholder Contracts constitute a reaffirmation by the United States of the rights of the Spaceholders under their pre-March 31, 1976 contracts with the United States except as modified by the Spaceholder Contracts and the Government Contract.

Spaceholder Obligations: Spaceholders, other than Idaho Power Company, have paid into the Prepayment Fund $19,530,629.13 of the total estimated cost of financing and constructing the American Falls Replacement Dam Program. (See "The American Falls Replacement Dam Program".) At the time of the delivery of the Bonds the District will transfer from the Prepayment Fund into the Construction Fund that portion of the moneys in the Prepayment Fund which, together with the proceeds of the sale of the Bonds, will be sufficient to pay the cost of the American Falls Replacement Dam Program. Any money remaining in the Prepayment Fund or in the Construction Fund from prepayments which is not utilized by the District for the purpose of paying the cost of the American Falls Replacement Dam Program, is to be returned to the United States.

Idaho Power Company Spaceholder Bond Payments: Idaho Power Company is the only Spaceholder which did not prepay its obligation as a Spaceholder. The Idaho Power Company Spaceholder Bond Payments are to be paid directly to the Trustee for deposit into the Bond Fund (see "The Falling Water Contract—Idaho Power Company Payments"). *No Spaceholder other than Idaho Power Company has any obligation, contractual or otherwise, to make payments into the Bond Fund or otherwise for the purpose of paying principal of, premium, if any, and interest on the Bonds.*

Amendments: Prior to the payment of the Bonds or provision for the payment thereof having been made in accordance with the provisions of the Indenture, the Spaceholder Contracts may not be effectively supplemented, amended, changed, modified, altered or terminated without the written consent of the Trustee and of the United States. The pre-March 31, 1976 contract between the United States and Idaho Power Company may not be supplemented, amended, changed, modified, altered or terminated so as to adversely affect the obligation of Idaho Power Company to make Idaho Power Company Spaceholder Bond Payments without the written consent of the Trustee.

Spaceholder Contract Payments: All Spaceholders, including Idaho Power Company, are annually obligated to pay: (i) their proportionate share of the cost of operating and maintaining the Replacement Dam (the "Spaceholder Replacement Dam Operation and Maintenance Payments") payable to the United States; and (ii) their proportionate share of certain of the costs of operating and maintaining the Water Quality Facilities (the "Spaceholder Water Quality Facilities Operation and Maintenance Payments") payable to the District. The Spaceholder Replacement Dam Operation and Maintenance Payments and Spaceholder Water Quality Facilities Operation and Maintenance Payments are collectively referred to as the "Spaceholder Contract Payments".

Default: Failure by Idaho Power Company to make all or any part either of an Idaho Power Company Spaceholder Bond Payment or a Spaceholder Contract Payment required under its Spaceholder Contract and (i) continuation of said failure for a period of five (5) days after notice thereof, or (ii) continuation of said failure for a period of twelve (12) days shall constitute a default.

The United States, upon failure to receive from Idaho Power Company a Spaceholder Replacement Dam Operation and Maintenance Payment, or upon receipt of a notice of default by Idaho Power Company with respect to an Idaho Power Company Spaceholder Bond Payment or a Spaceholder Water Quality Facilities Operation and Maintenance Payment, is obligated to withhold the delivery of water to Idaho Power Company as a Spaceholder for the year in which the default occurs and until such time as the default has been cured (see "The Government Contract—Delivery of Water to Spaceholders"). If the default is not cured by Idaho Power Company as a Spaceholder by the April 1 next succeeding the default, the Idaho Power Company Spaceholder Contract shall be terminated and the United States will no longer make the stored water available to Idaho Power Company, as a Spaceholder.

Remedies: The District, the Trustee on behalf of the District, or the United States may take whatever actions at law or in equity appear necessary or desirable to collect all or any part of the Idaho Power Company Spaceholder Bond Payments or Spaceholder Contract Payments due or to become due, or to enforce performance and observance of any obligation, agreement or covenant of Idaho Power Company under the Idaho Power Company Spaceholder Contract.

At any time the Trustee, on behalf of the District or the holders of the Bonds, is entitled to enforce any of the rights or remedies provided for in the Idaho Power Company 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 District under the Idaho Power Company Spaceholder Contract, whether or not the District shall have complied with any of the provisions of the Idaho Power Company Spaceholder Contract or proceeded to take any action authorized or permitted under applicable law.

The remedies available upon an event of default under the Idaho Power Company Spaceholder Contract may be (i) in many respects dependent upon judicial actions which may be subject to discretion and delay and (ii) limited by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally.

Under the Falling Water Contract, Idaho Power Company is also contractually obligated to supplement the Falling Water Payments in order to prevent a default on the Bonds should Idaho Power Company fail to make any required Idaho Power Company Spaceholder Bond Payment (see "The Falling Water Contract—Net Contract").

Operations and Maintenance; Delivery of Water: The United States agreed to continue to operate and maintain the Original Dam during construction of the Replacement Dam and upon substantial completion thereof undertook to operate and maintain the Replacement Dam, and to continue to make available to the Spaceholders the stored water accruing to their respective percentages of the active water storage capacity of the Replacement Dam.

Pursuant to the Idaho Power Company Spaceholder Contract, Idaho Power Company is entitled to the use of stored water accruing to 2.6471% (approximately 45,000 acre-feet) of the active water storage capacity of the Replacement Dam (approximately 1,700,000 acre-feet) for power generation.

The Spaceholder Contracts contain other provisions commonly found in contracts with the United States Water and Power Resources Service in connection with reclamation projects.

THE INDENTURE

The following is a summary of certain provisions of the Indenture.

Pledge and Security: Pursuant to the Indenture, the Idaho Power Company Payments payable by Idaho Power Company under the Idaho Power Company Contracts are to be remitted directly to the Trustee and deposited in the Bond Fund. Such Idaho Power Company Payments sufficient in amount to insure the prompt payment of the principal of, premium, if any, and interest on the Bonds, are pledged to such payment.

Covenants of the District: The District covenants promptly to pay solely from the proceeds of the Idaho Power Company Payments, the principal of, premium, if any, and interest on each Bond as it becomes due.

Application of the Bond Fund: So long as any of the Bonds are outstanding, moneys in the Bond Fund shall be used solely for the payment of the principal of, premium, if any, and interest on the Bonds and for the redemption of the Bonds prior to maturity and for the payment of the fees, charges and expenses to which the Trustee or any Paying Agent is entitled pursuant to the Indenture.

Investments: Pursuant to the provisions of the Indenture, any moneys held as part of the Construction Fund or Bond Fund shall be invested or reinvested to the extent permitted by law by the Trustee at the request of the District, in:

(1) bonds, treasury notes and other evidences of indebtedness of, and those unconditionally guaranteed as to the payment of principal and interest by, the United States of America;

(2) bonds and notes of the Federal National Mortgage Association;

(3) obligations of the Federal Intermediate Credit Corporation;

(4) obligations of Banks for Cooperatives of the Farm Credit System;

(5) bonds and notes of Federal Home Loan Banks;

(6) certificates of deposit of banks or trust companies (including the Trustee and any Paying Agent) which are members of the Federal Reserve System and have a minimum combined capital, surplus and undivided profits of not less than $10,000,000;

(7) obligations of a State, territory or possession of the United States, including the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing;

(8) commercial paper or other corporate debt securities; or

(9) any other investments, to the extent then permitted by law.

The Trustee may make any and all investments through its own bond department. Any such investments shall be held by or under the control of the Trustee and shall be deemed at all times a part of the fund for which they were made, and all income and profits on such investments shall be credited to, and all losses thereon shall be charged against, such fund.

The District and the Trustee have covenanted that no use will be made of the proceeds of the Bonds which will cause the Bonds to be classified as arbitrage bonds within the meaning of Section 103(c) of the Internal Revenue Code of 1954, as amended (the "Code").

Discharge of Lien: The lien of the Indenture shall be discharged if:

(1) the District shall pay or cause to be paid to the holders and owners of the Bonds and coupons the principal, premium, if any, and interest due or to become due at the times and in the manner stipulated therein;

(2) all fees and expenses of the Trustee and any Paying Agent shall have been paid; and

(3) the District shall have kept, performed and observed all and singular the covenants and promises in the Bonds and in the Indenture.

Any Bond shall be deemed to be paid for such purpose when payment of the principal of and premium, if any, on such Bond, plus interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in the Indenture or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided by irrevocably depositing with the Trustee, in trust and irrevocably set aside exclusively for such payment:

(1) moneys sufficient to make such payment; or

(2) moneys, certificates of deposit of banks or trust companies (including the Trustee and any Paying Agent bank) which are members of the Federal Reserve System and have a minimum combined capital, surplus and undivided profits of not less than $10,000,000, and Governmental Obligations (as hereinafter defined) (provided that such deposit does not, and is not then reasonably expected to, affect the tax exempt status of the interest on any of the Bonds) maturing as to principal and interest in such amount and at such times as will provide sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee and any Paying Agent pertaining to the Bonds with respect to which such deposit was made and, except for the purposes of such payment, such Bonds shall no longer be secured by or entitled to the benefits of the Indenture; provided, that no deposit under (2) above shall constitute discharge and satisfaction as to Bonds not immediately redeemable at the time of the making of the deposit unless such Bonds have been irrevocably called or designated for redemption on any date prior to their maturity and notice of such redemption shall have been given or irrevocable provision has been made for the giving of such notice.

As used above "Governmental Obligations" shall mean any of the following which are non-callable and which at the time of the investments are legal investments under the laws of Idaho for the moneys proposed to be invested therein: direct general obligations of, or obligations the payment of the principal and interest of which are unconditionally guaranteed by, the United States of America.

Default and Remedies: Any of the following events shall be an "event of default" under the Indenture:

(1) failure to make the due and punctual payment of any interest on any Bond;

(2) failure to make the due and punctual payment of the principal of, or premium, if any, on any Bond, whether at the stated maturity thereof, or upon unconditional proceedings for redemption thereof, or upon the maturity thereof by declaration;

(3) default on the part of Idaho Power Company under the Idaho Power Company Contracts on its obligation to pay the Idaho Power Company Payments;

(4) subject to certain conditions, default in the performance or observance of any other covenants, agreements or conditions on the part of the District in the Indenture or in the Bonds contained or default on the part of Idaho Power Company under the Falling Water Contract (other than under (3) above) and failure to remedy the same after notice thereof pursuant to the Indenture;

(5) if any material representation or warranty relating to the validity, priority or enforceability of the Guaranty made by Idaho Power Company in the Guaranty shall prove to be untrue or incorrect in any material respect as of the date made; or

(6) failure by Idaho Power Company duly to observe or perform any material covenant, condition or agreement on the part of Idaho Power Company contained in the Guaranty, and the continuation of such failure for a period of sixty (60) days after notice specifying such failure and demand that the same be remedied shall have been given to Idaho Power Company by the Trustee, or to Idaho Power Company and the Trustee by the holders of at least 25% of the principal amount of the Bonds then outstanding.

Upon the occurrence of an event of default the Trustee may, and upon the written request of the holders of not less than 25% in aggregate principal amount of Bonds then outstanding shall, by notice in writing delivered to the District, Idaho Power Company and the United States, declare the principal of all Bonds then outstanding and the interest accrued thereon immediately due and payable. Upon any declaration of acceleration the District and the Trustee may immediately declare an amount equal to all amounts then due and payable on the Bonds to be immediately due and payable as liquidated damages in accordance with the provisions of the Falling Water Contract.

The remedies available upon an event of default under the Indenture may be (i) in many respects dependent upon judicial actions which may be subject to discretion and delay and (ii) limited by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally.

Supplemental Indentures: The District and the Trustee may, without the consent of, or notice to, any of the Bondholders enter into supplemental Indentures for any one or more of the following purposes:

(1) to cure any ambiguity or defect or omission in the Indenture;

(2) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may be lawfully granted to or conferred upon the Bondholders or the Trustee; or

(3) to evidence the appointment of a separate Trustee or co-trustee, or the succession of a new Trustee or Paying Agent.

Exclusive of supplemental Indentures for the purposes set forth in the previous paragraph, the holders of not less than 60% in aggregate principal amount of the Bonds then outstanding shall have the right from time to time to consent to and approve any supplemental Indentures, except that no supplemental Indenture shall permit:

(1) an extension of the maturity of the principal of, or the interest on, any Bond; or

(2) a reduction in the principal amount of, or redemption premium on, any Bond or the rate of interest, or sinking fund redemption requirements thereon; or

(3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds; or

(4) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental Indentures; or

(5) creation of any lien ranking prior to or on a parity with the lien of the Indenture on the trust estate or any part thereof, except as thereinbefore expressly permitted; or

(6) the deprivation of the holder of any Bond then outstanding of the lien of the Indenture on the trust estate.

No such supplemental Indenture which affects any rights of Idaho Power Company shall become effective without the consent of Idaho Power Company.

Amendments to Idaho Power Company Contracts: The Idaho Power Company Contracts may not be amended, changed, modified or supplemented without the written consent of the Trustee and the United States. The Trustee and the District shall without the consent of or notice to the Bondholders consent to

any supplement, amendment, change or modification of the Idaho Power Company Contracts as may be required (i) by the provisions of the Idaho Power Company Contracts or the Indenture; (ii) for the purpose of curing any ambiguity or formal defect or omission; or (iii) in connection with any other change therein which, in the judgment of the Trustee, is not to the prejudice of the Trustee (except to the extent the prejudice of the Trustee is waived by the Trustee) or the Bondholders. Except for the supplements, amendments, changes or modifications as provided in the preceding sentence, neither the District nor the Trustee shall consent to any other supplement, amendment, change or modification of the Idaho Power Company Contracts without publication of notice and the written approval or consent of the holders of not less than 60% in aggregate principal amount of the Bonds at the time outstanding.

Rights under the Idaho Power Company Contracts: The Trustee in its name or in the name of the District may enforce all rights of the District and all obligations of Idaho Power Company under and pursuant to the Idaho Power Company Contracts for and on behalf of the Bondholders, whether or not the District is in default under the Indenture.

Funds held after Maturity: Money held by the Trustee for the payment of principal of, premium, if any, and interest on any Bond and remaining unclaimed by the holders of such Bonds and coupons for six (6) years after the date of maturity of such Bonds and coupons or the date fixed for the redemption of the Bonds shall, upon written request of the District, be paid to the District and the holders of such Bonds and coupons shall thereafter be entitled to look only to the District for payment thereof, and all liability of the Trustee with respect to such moneys shall thereupon cease. The Trustee, before being required to make any such payment to the District, may cause published notice to be given as provided in the Indenture.

Meetings of Bondholders: A meeting of Bondholders may be called at any time to:

(1) give any notice to the District, Idaho Power Company, the United States, or the Trustee, or to give any directions to the Trustee, or consent to the waiving of any default under the Indenture and its consequences, or to take any other action authorized to be taken by the Bondholders pursuant to the provisions of the Indenture relating to defaults;

(2) remove the Trustee and appoint a successor Trustee;

(3) consent to the execution of a supplemental Indenture; or

(4) take any other action authorized to be taken by or on behalf of the holders of any specified aggregate principal amount of the Bonds under any applicable provisions of the Indenture or under applicable law.

The Trustee may at any time call a meeting of Bondholders notice of which, setting forth the time and place of such meeting and in general terms the action proposed to be taken at such meeting, shall be published at least three (3) times in a financial newspaper or journal published in the City of New York, New York, the first publication to be not less than 20 nor more than 180 days prior to the date fixed for the meeting, and shall be mailed to each holder of registered Bonds, and to all holders of Bonds not registered as to principal or fully registered whose names and addresses are on file in the records kept by the Trustee. In case the District or the holders of at least 10% in aggregate principal amount of Bonds then outstanding shall have requested the Trustee to call a meeting of the Bondholders by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and if the Trustee shall not have made the first giving of notice of such meeting within twenty (20) days after receipt of such request, then the District, or the holders of the Bonds in the amount above specified, may designate the time and place for such meeting and may call such meeting to take any action above authorized to be taken at a Bondholder meeting and shall give notice thereof as above provided.

To be entitled to vote at any meeting of Bondholders, a person shall be: (i) a holder of one or more Bonds, or (ii) a person appointed by an instrument in writing as proxy for a holder or holders of Bonds. At any meeting of Bondholders the presence of persons holding or representing Bonds in aggregate principal amount sufficient under the provisions of the Indenture to take action on business for the transaction of which such meeting was called, shall constitute a quorum.

THE WATER QUALITY FACILITIES AGREEMENT

Idaho Power Company and the District, on behalf of the Spaceholders, have entered into the Water Quality Facilities Agreement for the purpose of delineating their respective obligations for the financing, ownership, construction, operation and maintenance of the Water Quality Facilities which are included in the American Falls Replacement Dam Program.

Responsibility to Construct: The District was obligated to acquire and construct the Water Quality Facilities. The actual cost of the Water Quality Facilities which are included in the American Falls Replacement Dam Program are assigned to Idaho Power Company under the Falling Water Contract.

Conveyance of Title: Title to the Water Quality Facilities is required to be transferred to the United States under the provisions of the Water Quality Facilities Agreement.

Operations and Maintenance: Idaho Power Company is obligated to operate and maintain the Water Quality Facilities for the District in accordance with the Water Quality Facilities Agreement. In the event that the United States 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, after oral notice to Idaho Power Company, the United States may bypass part or all of such water released from the Replacement Dam around the Powerplant until satisfactory arrangements are made to meet such standard.

The Spaceholders other than Idaho Power Company are obligated to pay 50% of the annual costs of operation and maintenance of the Water Quality Facilities which do not exceed $62,500 per year, which obligation shall terminate on the retirement of the Bonds, or forty (40) years from the date of execution of the Falling Water Contract, whichever is later. Idaho Power Company is responsible for the balance of the annual costs of operation and maintenance of the Water Quality Facilities not paid by the Spaceholders as above contemplated.

Additional Facilities: If additional Water Quality Facilities are required subsequent to the completion of construction of the Replacement Dam, the Spaceholders other than Idaho Power Company have agreed, under certain conditions, to share the capital cost of such additional facilities with Idaho Power Company.

Amendment: The Water Quality Facilities Agreement may not be amended, supplemented, terminated or assigned without the written consent of the Boards of Directors of Spaceholders representing ownership of 66⅔% of the total active storage capacity in the Replacement Dam, nor without the approval of the United States.

The Water Quality Facilities Agreement shall remain in effect during the term of the License, or any continuation or renewal thereof.

UNDERWRITING

The Bonds are being purchased by the Underwriter from the District at an aggregate discount of $643,627 from the initial public offering prices set forth on the cover page. The Underwriter's obligation is subject to certain conditions precedent, and the Underwriter will be obligated to purchase all Bonds if any Bonds are purchased. The initial public offering prices set forth above may be changed by the Underwriter. Idaho Power Company has agreed to indemnify the Underwriter against certain civil liabilities, including liabilities under Federal securities laws.

TAX EXEMPTION

In the opinion of Chapman and Cutler, Bond Counsel, the interest on the Bonds will not be includable in Federal gross income under the statutes, regulations, court decisions and rulings existing on the date of delivery of the Bonds and consequently will be exempt from all present Federal income taxes except with respect to interest on any Bond for any period during which such Bond is held by a person who is a substantial user of the American Falls Replacement Dam Program or any person considered to be related to such person within the meaning of Section 103(b)(9) of the Code.

In the opinion of Chapman and Cutler, Bond Counsel, under the statutes of the State of Idaho as in force on the date of delivery of the Bonds, interest on the Bonds is exempt from income taxes imposed by the Idaho Income Tax Act.

APPROVAL OF LEGAL PROCEEDINGS

Legal matters incident to the authorization, issuance and sale by the District of the Bonds and with regard to the tax exempt status thereof under existing laws, as described under the heading "Tax Exemption", are subject to the unqualified approving opinion of Chapman and Cutler, Bond Counsel, in substantially the form set forth as Appendix B. Copies of such opinion will be available at the time of the delivery of the Bonds. Legal matters pertaining to the District will be passed upon by Nelson, Rosholt, Robertson, Tolman & Tucker, attorneys of Twin Falls, Idaho. Legal matters pertaining to the United States will be passed upon by the Field Solicitor, Department of the Interior. Certain legal matters will be passed upon for Idaho Power Company by Reid & Priest, and for the Underwriter by Chapman and Cutler.

This Official Statement has been duly approved, executed and delivered by the District.

AMERICAN FALLS RESERVOIR DISTRICT

By /s/ JOHN M. BARKER
President of the Board of Directors

Dated: November 14, 1980

APPENDIX A

IDAHO POWER COMPANY

STATEMENT OF AVAILABLE INFORMATION

Idaho Power Company (the "Company") is subject to the informational requirements of the Securities Exchange Act of 1934 and in accordance therewith files reports and other information with the Securities and Exchange Commission (the "Commission"). Information, as of particular dates, concerning the Company's directors and officers, their remuneration and certain other benefits, the principal holders of the Company's securities and any material interest of such persons in transactions with the Company is disclosed in proxy statements distributed to shareholders of the Company and filed with the Commission. Such reports, proxy statements and other information can be inspected and copied at the offices of the Commission at 1100 L Street, N.W., Washington, D.C.; Room 1228, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois; Room 1100, Federal Building, 26 Federal Plaza, New York, N.Y.; and Suite 1710, Tishman Building, 10960 Wilshire Boulevard, Los Angeles, California. Copies of such material can also be obtained at prescribed rates from the Commission at its principal office at 500 North Capitol Street, N.W., Washington, D.C. 20549. The Company's Common Stock is listed on the New York and Pacific Stock Exchanges. Reports, proxy statements and other information concerning the Company can be inspected and copied at the respective offices of these Exchanges at 20 Broad Street, New York, N.Y. and 115 Sansome Street, San Francisco, California.

The information contained in this Appendix to the Official Statement has been obtained from the Company. The District and the Underwriter make no representation as to the accuracy or completeness of such information.

SUMMARY INFORMATION

The following material is qualified in its entirety by the detailed information and the financial statements and notes thereto appearing elsewhere in this Appendix.

THE COMPANY

Company	Idaho Power Company
Business	Electric utility
Service Area	Southern Idaho and small portions of Oregon and Nevada
Estimated Population of Service Area	555,000
Sources of Company-Generated Energy (Twelve months ended August 31, 1980)	72% Hydro and 28% Coal
Rate Decision	During the first quarter of 1980, the Company was authorized by the Idaho Public Utilities Commission to increase its annual revenues by $47.2 million (see "Business-Rates")

FINANCIAL INFORMATION

	Year Ended December 31, 1979	Twelve Months Ended August 31, 1980* (Unaudited)
	(Thousands of Dollars)	
Income Statement Information:		
Operating Revenues	$208,214	$231,676
Net Income	$ 31,270	$ 37,365
Earnings on Common Stock	$ 26,883	$ 32,978
Earnings per Share of Common Stock	$2.41	$2.73
Ratio of Earnings to Fixed Charges:		
Actual	1.86x	1.94x
Pro Forma	—	1.91x

* For a brief discussion of the results of operation for the twelve months ended September 30, 1980, see capsule information following Notes to Statements of Income (page A-12).

Capitalization as of August 31, 1980, reflecting the sale of 1,500,000 shares of Common Stock on September 3, 1980 and as adjusted for the Company's guarantee of approximately $22,000,000 of bonds to be issued in connection with the American Falls Replacement Dam Program is as follows:

	Actual	As Adjusted	Percent of Capitalization As Adjusted
	(Thousands of Dollars)		
Long-Term Debt	$542,997	$ 564,997	56.2%
Preferred Stock	61,500	61,500	6.1
Common Stock Equity	377,997	377,997	37.7
Total Capitalization	$982,494	$1,004,494	100.0%

THE COMPANY

Idaho Power Company is an electric public utility, incorporated under the laws of the State of Maine in 1915, engaged principally in the generation, purchase, transmission, distribution and sale of electric energy in a 20,000 square-mile area, in southern Idaho, eastern Oregon and northern Nevada, with a population of approximately 555,000 people. The principal executive offices of the Company are located at 1220 Idaho Street, P.O. Box 70, Boise, Idaho 83707; its telephone number is 208-383-2200.

INDUSTRY AND COMPANY PROBLEMS

The electric utility industry is experiencing problems such as obtaining adequate and timely rate increases, financing large construction programs during an inflationary period, obtaining sufficient capital on reasonable terms, compliance with environmental regulations, high costs and shortages of fossil fuel, delays in licensing and constructing new facilities, the effects of energy conservation on kilowatt sales and increased operating costs resulting from inflation. The severity of each of these problems varies among different companies and areas. The Company considers that its own experience to date in relation to these problems has been relatively favorable. For example, since the major portion of the Company's power supply is presently obtained from hydroelectric resources, increasing fuel costs have impacted the Company's cost of power for system load to a much lesser extent than for most other utilities. For information regarding the effect on the Company of certain of these general problems, see "Business —Regulation", "Business—Rates", "Financing Program", "Business—Environmental Regulation", "Business—Fuel", "Business—Power Supply", "Business—Conservation Program", "Statements of Income", "Management's Discussion and Analysis of Statements of Income" and "Operating Statistics".

The operations of the Company, like certain other utilities in the Northwest, are significantly affected by weather and stream flow conditions. Precipitation across southern Idaho during the spring of 1979 was substantially below normal, resulting in a hot, dry spring, summer and fall, reduced stream flows in the Snake River for the Company's largely hydroelectric system, and very high irrigation and air-conditioning use. Late in June 1979, at the time of peak power demand, a unit of the Jim Bridger plant was vandalized and remained out of service for over a month. This combination of circumstances forced the Company to take certain measures so that reliable service could be continued to all firm customers. The Company was required to draw down its reservoir storage, to purchase extraordinary amounts of high cost power from outside sources, to operate the standby combustion turbine at a very high cost and to curtail service to the Company's interruptible customers. Sales to other utilities were also sharply reduced due to the lower hydrogeneration resulting from adverse stream flows during the latter part of the year. In addition, interest rates and operating costs increased dramatically under the pressure of rising inflation that affected all business expenses. The net effect of these circumstances was lower revenues and higher operating expenses with the resultant decline in earnings between the years of 1978 and 1979. Earnings were higher in the first eight months of 1980 due primarily to the impact of rate relief granted late in March, 1980, combined with increased hydrogeneration resulting from greater precipitation and favorable operating conditions between the periods compared. By the end of the third quarter, all reservoirs were filled nearly to capacity and, assuming normal weather conditions prevail, the Company expects at least a normal supply of water for hydrogeneration for the balance of the year. For additional details, see "Management's Discussion and Analysis of Statements of Income".

The Company's service area has been unaffected by the eruptions of Mount St. Helens in Washington State during 1980. The volcano is located approximately 400 miles northwest of Boise.

CONSTRUCTION PROGRAM

The total cash construction program (excluding allowance for funds used during construction) for the five-year period 1980-1984 is presently estimated to amount to $929.8 million as follows:

	1980	1981-1984
	(Thousands of Dollars)	
Generating facilities:		
Hydro	$ 5,625	$264,414
Coal-fired	46,632	277,208
Other	—	80,716
Total generating facilities	52,257	622,338
Transmission lines and substations	27,089	42,861
Distribution lines and substations	22,574	122,663
General	6,630	33,387
Total	$108,550	$821,249

These estimates are subject to constant revision in light of changing economic, regulatory and environmental factors and patterns of conservation.

Reference is made to "Business—Environmental Regulation" for information with respect to estimated amounts allocable to environmental matters included above in the Company's estimated cash construction program for the years 1980-1984.

The construction program outlined above will rely not only on timely regulatory approvals of the various projects included within, but also will require regulatory recognition of the financial burden such construction imposes on the Company. With continued inflation and plant expansion, the Company has historically experienced a deterioration of earnings. A deterioration of earnings would affect the price or cost at which the Company could sell additional equity securities or issue new debt securities. If adequate financing cannot be secured, the Company would have to reduce or defer portions of its proposed construction program. In determining the types and amounts of future financing, the Company may be limited by restrictions contained in its Mortgage Indenture and Restated Articles of Incorporation, which restrictions have not, to date, impaired the Company's ability to finance its construction program (see "Financing Program").

The major generating projects under construction as of August 31, 1980 and included in the 1980-1984 cash construction program are listed as follows:

Name of Plant	Location	Fuel	Nameplate Rating (MW)	Company Ownership %	Company Ownership MW	Expended Through 8-31-80	Total Estimated Expenditures	Estimated Completion Date
						(Thousands of Dollars)		
Valmy Unit # 1	Winnemucca, NV	Coal	250	50	125	$69,884	$100,300	Fall, 1981
Valmy Unit # 2	Winnemucca, NV	Coal	250	50	125	2,608	106,550*	Fall, 1984

* Excludes possible costs applicable to a scrubber of $17,940.

Itemization of the cost of the proposed combustion turbines and hydroelectric projects referred to in "Business—Power Supply" is not presented as they are in the preliminary stages of development.

Valmy Project. The Company and Sierra Pacific Power Company entered into an agreement to jointly participate in the ownership, construction and operation of the North Valmy Steam Electric Generating Project. This project consists of two 250 megawatt coal-fired units and related facilities located northeast of Winnemucca, Nevada. Each company has a 50% ownership in the project and thus shares equally in substantially all costs applicable to the plant's construction and operation. The agreement between the parties allows the two companies to use the plant more efficiently because the Company experiences the highest customer demands on its system during the summer months, while Sierra Pacific experiences its peak demand during the winter months. The first 250 megawatt unit, which is not required to be equipped with a sulfur dioxide scrubber, is expected to go on-line in the fall of 1981. The coal used to fuel Unit 1 at Valmy will be supplied from mines located in southern Utah and transported by rail to the plant site (see "Business—Fuel"). A second unit of the same size is also under construction at the site and could be operating by the fall of 1984, but may not be on-line until October, 1985, if it is required to be equipped with a sulfur dioxide scrubber (see "Business—Environmental Regulation" and "Legal Proceedings —Other Environmental Matters"). The current estimates of the Company's share of the cash cost of Valmy Unit 1 and Unit 2 are $100.3 million and $106.6 million (excluding $17.9 million of possible costs applicable to a scrubber), respectively. As of August 31, 1980, approximately 65% of the work had been completed on Unit 1.

The Company's cash construction program for 1980 was previously estimated at $123,989,000. The current estimate, which incorporates eight months of actual data, is $108,550,000 of which $65,693,000 had been expended through August 31, 1980.

The Company's future construction plans do not include development of any nuclear generation, but rather contemplate continued dependence upon hydroelectric and fossil-fueled generation resources which will be combined with an aggressive conservation program to meet the future energy needs of its customers.

FINANCING PROGRAM

The Company's most recent estimate of capital requirements and sources of capital for 1980 and for the 1981-1984 period are as follows:

	1980	1981-1984
	(Thousands of Dollars)	
Capital requirements:		
Construction program	$108,550	$821,249
Long-term debt maturities and sinking fund payments	250	20,530
Project financing repayments	—	26,293
Total	$108,800	$868,072
Sources of capital:		
Internal generation	$ 36,414	$345,318
Sales of debt and equity securities	31,313	429,430
Project financing	5,258	27,214
Short and intermediate term debt borrowings—net	26,000	17,573
Pollution control bonds—trustee transfer	9,815	48,537
Total	$108,800	$868,072

These estimates are subject to constant revision in light of changing economic, regulatory and environmental factors and patterns of conservation. The amounts and types of additional securities to be sold are dependent upon market conditions and other factors, but it is the Company's long-range objective to achieve capitalization ratios of 52% long-term debt, 10-12% preferred stock and the balance common equity.

In addition to the $31,312,500 of proceeds received from the sale of additional common stock on September 3, 1980, the Company expects to raise additional funds from external sources during 1980 including the project financing arrangements covering the Company's expenditures in the Boardman plant, estimated to be $5,258,500 during 1980 (see Note 7 of Notes to Financial Statements) and through the transfer of $9,815,000 from trustees under pollution control bond issues previously sold or to be sold for environmental equipment at the Jim Bridger, Boardman and Valmy plants. Additionally, it is anticipated that the Company will have a net increase in short-term borrowings (bank loans and commercial paper) of $26,000,000 during 1980. Internally generated funds, principally from retained earnings and depreciation, are estimated to provide an additional $36,414,000 in 1980.

The major portion of the capital requirements of $868,072,000 for the 1981-1984 period is the cost of the planned construction program estimated at $821,249,000 combined with approximately $20,530,000 required for long-term debt maturities and sinking fund payments plus an estimated $26,293,000 required for semi-annual payments, commencing in January, 1984, of the Company's obligation incurred in

connection with the project financing arrangements concerning the Company's portion of the Boardman plant (see Note 7 of Notes to Financial Statements). The Company expects to finance 60% of these requirements through the issuance of debt (including short and intermediate-term borrowings) and sales of equity securities, including pollution control bond issues applicable to the Company's portion of environmental equipment to be installed at the Valmy and Bridger plants (see "Business—Environmental Regulation"), with the remainder to be derived from internal generation of funds, assuming adequate rate relief.

Under the terms of the Indenture relating to the Company's First Mortgage Bonds, additional Bonds of any series may be issued in principal amount equal to one or more of the following: (a) 60% of available bondable property; (b) the principal amount upon retirement of bonds previously issued; and (c) deposited cash; provided that, with certain exceptions in the case of (b) above, net earnings (as defined in the Indenture) are at least two times the annual interest on all Bonds and other equal or senior debt. As of August 31, 1980, the amount of available bondable property was $452,515,000, and net earnings were 3.33 times the annual interest requirement for the twelve months ended August 31, 1980. The $452,515,000 of available bondable property would support issuance of $271,509,000 of additional First Mortgage Bonds, and $181,100,000 of this amount would also be within the interest coverage requirements (assuming a 12.0% interest rate) based on the twelve months ended August 31, 1980.

The Company will guarantee approximately $22,000,000 of bonds to be issued by the American Falls Reservoir District in December, 1980 (see "The Guaranty" in the Official Statement). Proceeds from the issue of such bonds will be used to retire a like amount of short-term notes issued to pay for the Company's portion of the American Falls dam replacement cost (see Note 9 of Notes to Financial Statements).

During the five years ended December 31, 1979, the Company had gross property additions, including construction work in progress, of approximately $482,138,000 and gross retirements of approximately $28,129,000. Such gross additions approximated 63% of total utility plant at December 31, 1974.

Under the provisions of the Company's Restated Articles of Incorporation, the issuance of additional preferred stock requires, among other things, that earnings (as defined) for 12 consecutive months within the preceding 15 months be at least equal to 1.75 times the aggregate annual interest requirements on all debt securities and annual dividend requirements on all shares of preferred stock to be outstanding. As of August 31, 1980, the Company cannot issue any additional preferred stock and will not be able to do so until such time as earnings have improved.

CAPITALIZATION

The capitalization and short-term borrowings of the Company, as of August 31, 1980, reflecting the sale, and application of the net proceeds from the sale, of 1,500,000 shares of Common Stock on September 3, 1980 at a price to the Company of $20.875 per share and as adjusted for the Company's guarantee of approximately $22,000,000 of bonds to be issued in connection with the American Falls Replacement Dam program are as follows:

	Shares Authorized(b)	Outstanding August 31, 1980(a) Shares	Amount ($000's)	Percent	As Adjusted Amount ($000's)	Percent
Long-term debt (c):						
First mortgage bonds, 3¼%-10¼%, due 1981 to 2008:						
Outstanding			$432,000		$432,000	
Sinking fund debentures:						
4¼% Series due April 1983			5,780		5,780	
Pollution control revenue bonds:						
5.90% Series due 2003			27,000		27,000	
6.0% Series due 2007			24,000		24,000	
Funds on deposit with trustee			(3,024)		(3,024)	
7¼% Series due 2008			4,360		4,360	
Funds on deposit with trustee			(1,197)		(1,197)	
American Falls bond obligation			—		22,000	
Project financing—Boardman			52,514		52,514	
Unamortized premium and discount on long-term debt—net			1,564		1,564	
Total long-term debt			542,997	55.3%	564,997	56.2%
Capital stock and retained earnings:						
4% preferred stock, cumulative, $100 par	215,000	215,000	21,500		21,500	
Serial preferred stock, $100 par:	150,000					
7.68% Series, cumulative		150,000	15,000		15,000	
Serial preferred stock, without par value:	3,000,000					
9.50% Series, cumulative, $100 stated value		250,000	25,000		25,000	
Total preferred stock			61,500	6.2	61,500	6.1
Common stock, $5 par (including 1,500,000 shares sold on September 3, 1980 as outstanding)	25,000,000	13,616,914	68,085		68,085	
Premium on capital stock			192,951		192,951	
Capital stock expense			(1,788)		(1,788)	
Retained earnings			118,749		118,749	
Total common equity			377,997	38.5	377,997	37.7
Total capitalization			$982,494	100.0%	$1,004,494	100.0%
Short-term debt (d):						
Notes payable:						
Banks			$ —		$ —	
Commercial paper			34,638		34,638(d)	
Total short-term debt			$ 34,638		$ 34,638(d)	

(a) See Balance Sheet and Notes 3, 4, 5, 6, 7 and 9 of Notes to Financial Statements for additional details on notes payable, capital stock, retained earnings, long-term debt, project financing and commitments and contingent liabilities.

(b) In January, 1980, the Company reserved 500,000 authorized but unissued shares of Common Stock for use in connection with its revised Dividend Reinvestment and Stock Purchase Plan which became effective in April, 1980. As of August 31, 1980, a total of 66,914 shares had been issued and sold pursuant to this plan (see Note 4 of Notes to Financial Statements).

(c) The amount of First Mortgage Bonds issuable is limited to a maximum of $600 million, or such other maximum amount as may be fixed by supplemental indenture, and by property, earnings and other provisions of the Mortgage and Supplemental Indentures thereto. The Debenture Agreement does not authorize the issuance of additional Debentures, but prescribes limitations within which additional junior funded debt (including other debentures) may be issued. See "Financing Program" and Note 7 of Notes to Financial Statements for information on the Company's 1980 financings.

(d) Existing authorizations from regulatory authorities permit the Company to have outstanding at any one time up to $120.0 million principal amount of short-term borrowings. Lines of credit totalling $119.0 million are maintained with several commercial banks. As of August 31, 1980, the Company's short-term borrowings aggregated $65,950,000 and have been reduced by the application of the net proceeds resulting from the sale of additional common stock on September 3, 1980 ($31,312,500).

IDAHO POWER COMPANY

STATEMENTS OF INCOME

The following statements of income for the years 1975 through 1979 have been examined by Deloitte Haskins & Sells, independent Certified Public Accountants, whose opinion appears elsewhere in this Appendix. The statement for the twelve months ended August 31, 1980 has not been examined by independent Certified Public Accountants, but, in the opinion of the Company, includes all adjustments necessary for a fair statement of the results of operations. These statements should be considered in conjunction with their notes and the other financial statements and notes thereto appearing elsewhere in this Appendix.

	Twelve Months Ended					
	December 31,					August 31, 1980 (Unaudited)
	1975	1976	1977	1978	1979	
	(Thousands of Dollars)					
Operating revenues (Note A)	$121,324	$143,757	$156,405	$195,354	$208,214	$231,676
Operating expenses:						
Operation:						
Purchased power and net interchange received	981	3,707	25,210	40,082	40,689	30,854
Fuel expense (Note B)	5,691	7,231	12,321	10,780	15,784	21,820
Other operation expense	20,172	22,632	24,877	30,437	36,541	41,942
Maintenance	7,432	8,989	9,073	11,811	19,048	20,175
Depreciation	15,382	16,332	17,247	17,810	19,443	22,971
Taxes other than income taxes (Note 12)	13,614	14,106	14,118	14,290	13,539	13,544
Federal and state income taxes (Note C)	12,390	19,924	11,551	16,275	7,508	14,054
Total operating expenses	75,662	92,921	114,397	141,485	152,552	165,360
Operating income	45,662	50,836	42,008	53,869	55,662	66,316
Other income and deductions:						
Allowance for funds used during construction (Note D)	661	1,933	—	—	—	—
Allowance for equity funds used during construction (Note D)	—	—	3,700	4,294	6,903	5,994
Income tax credits—net (Note C)	—	—	2,116	2,712	—	—
Equity in earnings of subsidiary (Note E)	1,114	736	1,381	2,138	1,573	3,979
Other—net	187	65	651	1,216	941	906
Total other income and deductions	1,962	2,734	7,848	10,360	9,417	10,879
Income before interest charges	47,624	53,570	49,856	64,229	65,079	77,195
Interest charges:						
Interest on first mortgage bonds	19,018	19,230	21,441	23,240	28,505	32,522
Interest on project financing—Boardman (Note 7)	—	—	—	—	5,275	7,176
Interest on other long-term debt	1,877	1,865	2,931	3,404	3,593	3,586
Other interest	6,090	3,173	2,325	7,843	6,186	6,865
Total interest charges	26,985	24,268	26,697	34,487	43,559	50,149
Less allowance for borrowed funds used during construction (Note D and Note 7)	—	—	1,671	3,756	9,750	10,319
Net interest charges	26,985	24,268	25,026	30,731	33,809	39,830
Net income	20,639	29,302	24,830	33,498	31,270	37,365
Dividends on preferred stock	2,012	3,160	4,387	4,387	4,387	4,387
Earnings on common stock	$ 18,627	$ 26,142	$ 20,443	$ 29,111	$ 26,883	$ 32,978
Weighted average number of shares of common stock outstanding (in thousands)	7,433	8,517	9,350	9,850	11,175	12,063
Earnings per share of common stock (Note F)	$ 2.51	$ 3.07	$ 2.19	$ 2.96	$ 2.41	$ 2.73
Ratio of earnings to fixed charges (Note G)	2.18x	2.98x	2.22x	2.29x	1.86x	1.94x

NOTES TO STATEMENTS OF INCOME

For the Five Years Ended December 31, 1979 (Audited) and For the Twelve Months Ended August 31, 1980 (Unaudited)

Note A—Operating Revenues

See "Business—Rates" for information regarding recent rate orders received by the Company. For the twelve months ended August 31, 1980, total rate increase revenues collected under these rate increases were approximately $31,771,000.

Note B—Fuel Expense

Coal used to fuel the Jim Bridger plant comprises substantially all of the fuel expense. It is supplied from a jointly-owned coal mine in which a subsidiary of the Company has a one-third interest.

Note C—Federal and State Income Taxes

See Notes 1 and 2 to Financial Statements for information regarding income taxes and investment tax credits.

The Company's income taxes are allocated to operating expense and other income. For 1977 and 1978, the "Income tax credits—net" included in other income result principally from tax deductions for interest costs related to nonoperating activities, primarily construction work in progress. However, in accordance with a rate order received in March, 1979, from the state regulatory authority having principal jurisdiction, the "Income tax credits—net" are being recorded as a reduction to operating expense commencing January 1, 1979. This change in classification has no effect on net income and accordingly, amounts recorded in prior periods have not been adjusted.

Note D—Allowance for Funds Used During Construction

For 1977, 1978, 1979 and the twelve months ended August 31, 1980, the allowance for funds used during construction ("AFDC"), a non-cash item, is determined in accordance with the uniform formula adopted by the Federal Energy Regulatory Commission ("FERC") in Order No. 561 in February, 1977. The Order specifies that the equity funds component be shown as an addition to other income and the borrowed funds component as a reduction of interest charges. Based on the FERC formula, the Company's overall AFDC rate (net of income taxes) is 7.5% for 1980, and was 7.5% for 1979, 6.0% for 1978 and 6.75% for 1977, compared to 7.5% for 1976 and 1975. The Company's AFDC rate related to the Boardman plant project financing was computed at the actual cost thereon and the accounting treatment with respect to this project financing was in accordance with Staff (of the Securities and Exchange Commission) Accounting Bulletin No 28 and was approved by FERC. See Note 7 to Financial Statements for information regarding project financing.

AFDC related to borrowed funds has not been reclassified prior to 1977. The Company believes that such a reclassification would be inappropriate since the allocation between the debt and equity components for periods prior to 1977 would not be comparable to the allocation of such components utilizing the FERC formula. Different results could be obtained in reclassification based on the judgments made in the calculations. Management believes that stating the debt component of AFDC as a reduction of interest charges has no effect on the computation to determine the Company's ability to issue first mortgage bonds or preferred stock.

Through December 31, 1976, the determination of the components of the composite rates attributable to each source of funds used for construction was based on the assumption that, over the periods, funds required for construction were supplied as follows: 56% to 59% from funded debt, 6% from preferred stock and 35% to 38% from common stock equity. On this basis, and without giving effect to income tax reductions applicable to cost attributed to funded debt, the portion of the allowance for funds used during construction allocable to funds provided by common stock equity amounted to 0.5% in 1975 and 2.1% in 1976. The amount of AFDC has varied over the periods principally as a result of fluctuations in utility plant under construction. For comparative purposes, "Allowance for funds used during construction", "Allowance for equity funds used during construction" and "Allowance for borrowed funds used during construction" should be combined.

Note E—Equity in Earnings of Subsidiary

See Note 1 to Financial Statements for information regarding accounting for investment in subsidiary.

Note F—Earnings per Share of Common Stock

Earnings per share of Common Stock was computed by dividing earnings on Common Stock by the weighted average number of shares of Common Stock outstanding.

Note G—Ratio of Earnings to Fixed Charges

For purposes of calculating the ratio of earnings to fixed charges, "earnings" represent income before income taxes (excluding undistributed subsidiary earnings) and fixed charges. "Fixed charges" represent interest expense, amortization of debt discount, expense and premium—net and that portion of rentals which is a reasonable approximation of the interest component of rentals. The actual ratio of earnings to fixed charges for the twelve months ended August 31, 1980, (reflecting only those portions of rate increase revenues included in income since their effective dates, and not any other factor that might affect future earnings) is 1.94 times. The pro-forma ratio of earnings to fixed charges set forth below includes, in addition to the items defined above, fixed charges related to the Company's guarantee of approximately $22,000,000 of bonds at an assumed interest rate of 10% to be issued by the American Falls Reservoir District in December, 1980. On this basis, the pro-forma ratio of earnings to fixed charges for the twelve months ended August 31, 1980, is 1.91 times. A change of ¼ of 1% in the assumed interest rate for the bonds of the American Falls Reservoir District would change the pro-forma ratio by 0.01.

Note H—Quarterly Financial Data (Unaudited)

The business of the Company is subject to seasonal fluctuations, with the peak period coming during the summer months. Variations also occur in usage by general business customers (ultimate consumers) from season to season and from month to month within a season, primarily as a result of weather conditions and the irrigation load which occurs during the summer months. Also, sales of non-firm energy to other utilities vary by quarters and years, depending principally upon water conditions for the generation of hydro energy coinciding with the energy requirements of other utilities. Operating costs have been increasing principally due to higher fixed costs related to increased plant in service and purchased power requirements, an increase in the number of customers and inflationary factors. Accordingly, earnings information for any three-month period should not be considered as a basis for estimating operating results for a full fiscal year. Similarly, comparisons of earnings information for any two quarters within a year or the same quarter of two different years should be evaluated in light of the above factors.

The following unaudited information is presented for the first two quarters of 1980, and each quarter of 1979 and 1978 (in thousands of dollars, except for per share amounts). In the opinion of the Company, all adjustments necessary for a fair statement of such amounts for such periods have been made.

Quarter Ended	Operating Revenues	Operating Income	Net Income	Dividends on Preferred Stock	Earnings on Common Stock	Earnings Per Share of Common Stock
1978—March 31	$46,975	$16,280	$11,776	$1,097	$10,679	$1.14
June 30	44,358	12,176	7,060	1,097	5,963	0.64
September 30	59,561	13,883	8,581	1,096	7,485	0.74
December 31	44,459	11,529	6,081	1,097	4,984	0.47
1979—March 31	51,897	15,831	8,809	1,097	7,712	0.73
June 30	53,118	14,496	8,175	1,097	7,078	0.67
September 30	54,598	12,593	6,428	1,096	5,332	0.46
December 31	48,601	12,742	7,857	1,097	6,760	0.56
1980—March 31	52,939	14,801	7,848	1,097	6,751	0.56
June 30	65,459	20,595	11,544	1,097	10,447	0.87

For the twelve months ended September 30, 1980, unaudited operating revenues were $242.0 million, net income was $39.5 million and earnings per share of Common Stock on average shares outstanding were $2.88. In the opinion of the Company, all adjustments necessary for a fair statement of such amounts for such periods have been included. The increase in operating revenues, net income and earnings per share for the twelve months ended September 30, 1980, as compared with the corresponding amounts for the twelve months ended August 31, 1980, is primarily attributable to the effect of recent rate relief granted by the Idaho Public Utilities Commission and to improved water conditions resulting in increased hydrogeneration during the month of September, 1980, as compared with the same period of the prior year (see "Business—Rates" and "Business—Power Supply").

The initial annual interest requirement on the bonds to be issued by the American Falls Reservoir District is estimated to be $2,200,000 (see "Bonds" and "The Falling Water Contract" in the Official Statement).

MANAGEMENT'S DISCUSSION AND ANALYSIS OF STATEMENTS OF INCOME

Twelve Months Ended August 31, 1980

Operating Revenues

In the twelve months ended August 31, 1980, operating revenues increased $23,462,000, or 11.3%, over the year of 1979.

General business revenues (sales to ultimate consumers) increased $21,988,000, or 12.4%. The increase reflects the impact of rate relief granted since April of last year (see Note A of Notes to Statements of Income and "Business-Rates") and a greater number of customers served. These factors were offset in part by reduced energy sales primarily because of a mild winter followed by a cool, moist spring and summer this year as compared with the contrasting weather conditions experienced in 1979. Revenues from sales to other utilities increased a net of $630,000 due principally to rate relief granted by the FERC, effective December 1, 1979, for sales to CP National Corporation and to the City of Weiser, Idaho. Miscellaneous revenues, principally from rental of new transmission facilities, increased $844,000.

Operating Expenses

In the twelve months ended August 31, 1980, operating expenses increased $12,808,000, or 8.4%, over the year of 1979.

Fuel expense increased $6,036,000, or 38.2%, due primarily to greater generation at the Jim Bridger plant, sizeable increases in the per unit costs for each type of fuel consumed and the impact of the Boardman plant being placed in-service early in the month of August, 1980. Purchased power expense, by contrast, declined $9,835,000, principally as a result of reduced contractual deliveries of energy scheduled under the Company's contract with Utah Power & Light Company combined with the absence of extraordinary purchases of energy required last summer when the Bridger plant was vandalized. Other operation and maintenance expenses increased $6,527,000, of which $2,796,000 is attributable to greater production expenses associated with thermal generation and $2,810,000 due to payroll costs and other employee-related expenses. Depreciation expense increased $3,528,000, due to a greater plant investment base caused principally by the addition of the fourth and final generating unit at Jim Bridger, the fifth generating unit at Brownlee and the Boardman plant being added to the system. Total income taxes increased $6,546,000, due to a higher level of taxable income between the periods compared.

Other Income

Total other income and deductions increased a net of $1,462,000, or 15.5%, due primarily to greater subsidiary earnings (see Note 1 of Notes to Financial Statements).

Interest Charges

Total interest charges were $6,590,000 more during the first eight months of 1980 than in the comparable period last year. This increase is attributable to the effects of the Company's issuance of $62 million of first mortgage bonds in September, 1979, the impact of interest costs and related fees applicable to the project financing of the Company's portion of the Boardman plant and to greater short-term borrowings combined with a higher effective short-term interest rate for the period.

Net Income and Earnings Per Share

During the twelve months ended August 31, 1980, net income increased $6,095,000, or 19.5%, over the year of 1979, as a result of the factors described above. Earnings per share of common stock, based upon an increased number of shares outstanding for the twelve months ended August 31, 1980, amounted to $2.73, an increase of $0.32 over that recorded for the year of 1979. The increase in shares outstanding reflects the sale of 1,500,000 shares of common stock in August, 1979 plus the effect of shares issued in connection with the Company's revised Dividend Reinvestment and Stock Purchase Plan which became effective in April, 1980 (see Note 4 of Notes to Financial Statements).

Year of 1979

Operating Revenues

During 1979, operating revenues increased $12,860,000, or 6.6%, over 1978.

General business revenues increased $30,912,000, or 21.1%. Of this increase, approximately 53.0% or $16,473,000, can be attributed to rate relief granted in Idaho and Oregon and made effective on March 23, 1979, and July 1, 1979, respectively. The balance of the increase is attributable to greater energy sales, particularly to the Company's residential, commercial and irrigation customers. The increase in sales reflects an increase in the number of customers served combined with the higher demand brought about by weather variations between the periods compared.

Sales to other utilities were down $19,017,000, or 44.9%, from 1978. The decline is due to a number of factors which combined to reduce opportunity sales of energy. These factors include a high energy demand from the Company's own customers, a dry summer and fall which reduced stream flows and hydroelectric availability and the unexpected outage of one of the 508 megawatt units at the Jim Bridger plant during the month of July. Firm resale revenues also decreased as a result of the FERC wholesale rate refund adjustment in March, 1979 to C P National Corporation. Other operating revenues were up $965,000, or 14.2%, principally due to increased revenues for the transmission of energy by the Company for other utilities.

Operating Expenses

Operating expenses for 1979 increased $11,067,000, or 7.8%, over 1978.

Fuel expense increased $5,004,000, or 46.4%, primarily due to increased generation at the Jim Bridger plant, the required operation of the Company's standby combustion turbine at Hailey and increased unit prices for all types of fuel consumed. Other operation and maintenance expenses went up $13,341,000, or 31.6%, principally because of increased maintenance costs at the Jim Bridger plant in particular and throughout the system in general, increases in production-related expenses, the continuing inflationary effects on payroll costs and the addition of employees to operate the system. Income taxes decreased $8,767,000, or 53.9%, reflecting a lower level of taxable income, a decrease in the federal tax rate, and an accounting classification change affecting taxes (see Note C of Notes to Statements of Income).

Allowance for Funds Used During Construction

The total allowance for funds used during construction ("AFDC") increased $8,603,000 during 1979, as compared with the year of 1978. Approximately $5,275,000 of this increase is attributable to interest costs and related fees applicable to the project financing of the Company's portion of the Boardman Plant (see Note 7 of Notes to Financial Statements). The balance of the increase is due to an increase in the calculated rate and to an increase in the level of construction work in progress, to which the AFDC rate applied.

Interest Charges

Interest on long-term debt increased $10,729,000, or 40.3%, due to a full year's effect of a $60 million first mortgage bond issuance in August, 1978, the effect of a $62 million first mortgage bond issuance in September, 1979, and the impact of interest costs and related fees applicable to project financing of the Company's portion of the Boardman Plant (see Note 7 of Notes to Financial Statements). Interest on short-term debt decreased $1,863,000, or 27.1%, despite sharply higher short-term interest rates, as a result of a lower average level of short-term borrowings outstanding.

Net Income and Earnings Per Share

Due principally to the reduction in stream flows in the latter part of the year and the increase in higher cost thermal generation, net income decreased $2,228,000, or 6.7%, from that recorded in 1978. Earnings per share of common stock amounted to $2.41, a decrease of $0.55 from 1978. The average shares of common stock outstanding during 1979 were 11,175,000 as compared with 9,850,000 average shares during 1978. The increase in shares outstanding reflects the sale of 1,200,000 shares of common stock in August, 1978, and 1,500,000 shares in August, 1979.

Year of 1978

Operating Revenues

During 1978, operating revenues increased $38,949,000, or 24.9% over 1977.

General business revenues increased $6,261,000, or 4.5%. Of this increase, approximately 41.0%, or $2,546,000, can be attributed to rate relief effective in Idaho and Oregon throughout the entirety of 1978 as compared to only part of the previous year. The balance of the increase was due principally to an increase in customers served combined with greater energy sales to all classifications, excluding irrigation which declined because of weather variations between the periods compared.

Sales to other utilities accounted for 84.0%, or $32,645,000, of the increase in operating revenues. This substantial increase is a reflection of the water availability and market conditions for hydrogeneration during 1978 as compared with the drought-affected year of 1977.

Operating Expenses

Operating expenses for 1978 increased $27,088,000, or 23.7%, over 1977.

Payments to Utah Power & Light Company, associated with a purchased power contract for firm energy, increased $20,046,000 over the year of 1977. The increase is primarily due to greater contractual deliveries of energy. The Company was able to defray part of this cost through a resale contract with a neighboring utility which commenced in August of 1978 and terminated in March of 1979. After excluding the contract with Utah Power & Light Company, the balance of purchased power costs declined $5,174,000 due primarily to the absence of emergency power costs incurred during 1977 as a result of the drought. Overall, purchased power expense increased $14,872,000.

Fuel expense declined $1,541,000, or 12.5%, due primarily to the absence of emergency fuel expense incurred during 1977 as a result of the drought combined with an overall reduction in the operation of the Company's thermal generating facilities because of increased hydrogeneration during 1978. Other operation and maintenance expenses went up $8,298,000, or 24.4%. Of this amount, payroll and related benefits accounted for $3,266,000. Of the balance of the increase, $2,694,000 is attributable to production related expenses with the remainder being principally due to an increase in all other operation and maintenance expense categories. Income taxes, due to a higher level of taxable income, increased $4,724,000 over 1977.

Allowance for Funds Used During Construction

The total allowance for funds used during construction ("AFDC") increased $2,679,000 to $8,050,000 during 1978, as compared with 1977. The total increase in AFDC was attributable to an increase in the level of construction work in progress, to which AFDC applied.

Interest Charges

Interest on long-term debt increased $2,272,000, or 9.3%, due primarily to the issuance of $60 million first mortgage bonds and $4,360,000 of pollution control revenue bonds in August, 1978. Interest on short-term debt increased $4,754,000, reflecting a higher average level of short-term borrowings in addition to higher short-term interest rates in effect during 1978 as compared with 1977.

Net Income and Earnings Per Share

During 1978, net income increased $8,668,000, or 34.9%, over 1977. Earnings per share of common stock amounted to $2.96, an increase of $0.77, or 35.2%, over 1977. The average shares of common stock outstanding during 1978 were 9,850,000 as compared with 9,350,000 average shares during 1977. The increase in shares outstanding reflects the sale of 1,200,000 shares of common stock in August, 1978.

OPERATING STATISTICS

	Twelve Months Ended					
	December 31,					August 31,
	1975	1976	1977	1978	1979	1980
Energy generated and purchased (Mwh):						
Generated—net station output:						
Hydro	9,128,716	9,245,955	5,575,959	8,473,189	7,906,594	8,134,595
Coal and other	1,839,935	2,125,584	3,100,553	2,417,385	2,878,688	3,179,653
Total generated	10,968,651	11,371,539	8,676,512	10,890,574	10,785,282	11,314,248
Purchased and net interchange received (1)	494,389	427,398	1,416,077	2,357,793	1,479,388	859,835
Total generated and purchased	11,463,040	11,798,937	10,092,589	13,248,367	12,264,670	12,174,083
Company use and losses	(951,070)	(959,691)	(875,727)	(1,078,662)	(1,026,210)	(1,193,420)
Total energy sold	10,511,970	10,839,246	9,216,862	12,169,705	11,238,460	10,980,663
Energy sales (Mwh):						
Residential	2,197,982	2,382,178	2,570,192	2,734,411	3,097,255	3,020,196
Commercial and industrial—750 kw and over	2,789,867	2,869,217	2,738,154	2,969,879	2,887,681	3,010,788
Commercial and industrial—under 750 kw	1,264,129	1,348,763	1,415,064	1,468,738	1,620,322	1,568,628
Irrigation	1,301,885	1,381,290	1,661,065	1,463,879	1,773,534	1,538,616
Total general business	7,553,863	7,981,448	8,384,475	8,636,907	9,378,792	9,138,228
Public utilities:						
Firm sales	876,717	578,666	612,023	625,862	694,382	684,576
Opportunity sales	2,081,390	2,279,132	220,364	2,906,936	1,165,286	1,157,859
Total energy sales	10,511,970	10,839,246	9,216,862	12,169,705	11,238,460	10,980,663
Number of customers (end of period):						
Residential	172,301	180,773	189,815	200,959	208,426	209,740
Commercial and industrial—750 kw and over	82	86	93	102	115	118
Commercial and industrial—under 750 kw	25,490	26,519	27,671	27,819	28,539	29,145
Irrigation	9,490	9,978	10,258	10,520	10,751	10,974
Total general business	207,363	217,356	227,837	239,400	247,831	249,977
Public utilities	8	16	12	10	5	11
Total customers	207,371	217,372	227,849	239,410	247,836	249,988
Operating Revenues (thousands of dollars):						
Residential	$ 37,711	$ 45,602	$ 53,162	$ 57,905	$ 71,036	$ 79,235
Commercial and industrial—750 kw and over	19,855	24,521	26,649	29,536	32,780	39,767
Commercial and industrial—under 750 kw	25,104	29,413	33,624	36,070	43,055	47,844
Irrigation	15,516	19,123	26,546	22,731	30,283	32,296
Total general business	98,186	118,659	139,981	146,242	177,154	199,142
Public utilities:						
Firm sales	8,374	6,104	6,663	5,459	4,222	6,617
Opportunity sales	12,518	14,466	3,031	36,880	19,100	17,334
Miscellaneous revenues	2,246	4,528	6,730	6,773	7,738	8,583
Total operating revenues	$ 121,324	$ 143,757	$ 156,405	$ 195,354	$ 208,214	$ 231,676
Dependable generating capacity—kw:						
Hydro (2)	1,136,000	1,113,000	1,113,000	1,134,000	1,134,000	1,359,000
Coal and other	558,558	558,558	558,558	558,558	728,077	781,077
Estimated maximum generating capacity—kw (3)	2,053,258	2,053,258	2,053,258	2,118,098	2,287,617	2,565,617
Received from other sources at time of general business maximum hour—kw	517,000	512,000	689,000	542,000	354,000	208,000
Residential customers:						
Average annual kwh use per customer	13,082	13,522	13,886	14,008	15,211	14,490
Average annual revenue per customer	$ 224.45	$ 258.85	$ 287.22	$ 296.63	$ 348.87	$ 380.14
Revenue per kwh sold	1.72¢	1.91¢	2.07¢	2.12¢	2.29¢	2.62¢

(1) Purchases (in Mwh) were 1975-none; 1976-192,516; 1977-1,225,415; 1978-1,187,221; 1979-1,101,142; 12 Months Ended August 31, 1980-704,852.

(2) On a one-hour basis at summer peak and under adverse river flow conditions.

(3) Sum of the one-hour non-coincident net generating capability under the most favorable operating conditions for each plant.

BUSINESS

The Company holds franchises in approximately 70 cities in Idaho and 10 cities in Oregon, and holds Certificates from the respective public utility regulatory authorities to serve all or a portion of 24 counties in Idaho, 3 counties in Oregon and 1 county in Nevada. The business of the Company would not be classified as highly seasonal in nature. However, variations in energy usage by ultimate consumers do occur from season to season and from month to month within a season, primarily as a result of weather conditions. As of August 31, 1980, the Company supplied electric energy to 249,977 general business customers and employed 1,553 full-time employees in its operation.

For the twelve months ended August 31, 1980, approximately 92% of the Company's total operating revenues were derived from electric sales in Idaho, 7% in Oregon and 1% in Nevada. For the same period, total system electric sales to residential customers accounted for 34% of the Company's total operating revenues, commercial and industrial customers with less than 750 Kw demand accounted for 20%, commercial and industrial customers with 750 Kw demand and over accounted for 17%, irrigation customers accounted for 14%, public utilities and interchange arrangements accounted for 11% and street lighting and miscellaneous sales accounted for 4%.

The Company's principal commercial and industrial revenues are from elemental phosphorus electric furnace installations, food processing, preparation and freezing plants, phosphate fertilizer plants, general manufacturing facilities, and energy research installation, lumber plants, beet sugar factories and electric loads associated with the year-round recreational business, such as lodges, condominiums, lifts and other recreational related facilities, including those at the Sun Valley resort area. Since 1948, the Company has supplied service to FMC Corporation for its electric furnace elemental phosphorus production plant near Pocatello, Idaho. Under an agreement effective on January 1, 1974, the maximum amount of power that customer may schedule is 250,000 Kw. The agreement is subject to renegotiation every two years as to one-fourth of the power deliveries and with respect to rates and charges for the total energy supplied. In addition, the contract contains annual minimum payment guarantees and gives consideration to the customer's ability to decrease its electric demands during periods in which the Company may request reductions specified in the contract. The rate charged FMC under the contract is subject to Idaho Public Utilities Commission jurisdiction (see "Business—Rates"). The Company may reduce contract deliveries, subject to appropriate reduction in annual minimum payment guarantees, when load and capacity conditions on its system require. Revenues from FMC Corporation aggregated approximately $16.5 million for 1,474,783 MWH of energy supplied during the twelve months ended August 31, 1980.

The Company is a combination hydro-thermal based utility, operating 16 hydro power plants and a combustion turbine, and sharing ownership in two operational coal-fired generating plants. The Company relies heavily on hydroelectric power for its generating needs and remains one of the nation's few utilities with primarily a hydro base. Recently, however, as electric demand on the Company's system has out-stripped available hydro resources, the Company has turned to thermal generation in the neighboring States of Wyoming and Oregon using low-sulfur coal from Wyoming. Due to the hydrogeneration capabilities of the Company and its reliance on this generation to meet load requirements, adverse precipitation amounts may materially affect the Company's operations, expenses and revenues.

The Company's wholly-owned subsidiary, Idaho Energy Resources Co. ("IERCo"), a joint venturer in the Bridger Coal Company, is engaged in the mining of coal for use in the Jim Bridger Project, a coal-

fired steam electric generating plant located near Rock Springs, Wyoming, in which the Company owns a one-third interest (see "Business—Fuel").

Property

The Company's system includes 16 hydroelectric generating stations located in southern Idaho and eastern Oregon with an aggregate estimated maximum operating capacity of 1,784,540 Kw, an interest in two coal-fired steam electric generating plants which contribute 731,077 Kw capacity to its system, and 50,000 Kw from a combustion turbine; approximately 4,461 miles of high voltage transmission lines; 17 step-up transmission substations located at power plants; 18 transmission transformer substations; 8 transmission switching stations; and 194 distribution substations. Reference is made to "Construction Program" for new generating facilities under construction.

The Company holds licenses under the Federal Power Act for eleven hydroelectric projects from the Federal Energy Regulatory Commission ("FERC"), previously known as the Federal Power Commission. These and the other generating stations and their capacities are listed below:

Project	Maximum Operating Capacity	License Expiration
Properties Subject to Federal Licenses:		
Swan Falls	12,000 Kw	1981*
Twin Falls	10,000 Kw	1984
Lower Salmon	70,000 Kw	1997
Bliss	80,000 Kw	1998
Upper Salmon	39,000 Kw	1999
Shoshone Falls	12,500 Kw	1999
C J Strike	89,000 Kw	2000
Upper Malad	9,000 Kw	2004
Lower Malad	15,000 Kw	2004
Brownlee-Oxbow-Hells Canyon	1,345,000 Kw	2005
American Falls	92,340 Kw	2025
Other Generating Projects:		
Other Hydroelectric	10,700 Kw	
Jim Bridger (Coal-Fired Station)	678,077 Kw	
Boardman (Coal-Fired Station)	53,000 Kw	
Combustion Turbine (Gas/Oil)	50,000 Kw	

* Renewed on a year-to-year basis; application for license pending.

On December 31, 1979, the composite average ages of the principal parts of the Company's system, based on dollar investment, were: production plant, 10.6 years; transmission system and substations, 12.5 years; and distribution lines and substations, 11.3 years. The Company considers that its properties are well-maintained and in good operating condition.

The Company owns in fee, with the exception of its undivided 10% interest in the Boardman coal handling facilities, all of its principal plants and other important units of real property, except for portions

of certain projects licensed under the Federal Power Act and reservoirs and other easements, subject to the lien of its Mortgage and Deed of Trust and the provisions of its project licenses, and to minor defects common to properties of such size and character which do not materially impair the value to or use by the Company of such properties. Reference is made to "Legal Proceedings—Other Environmental Matters" relating to project operations and relicensing proceedings.

Power Supply

For many years, the Company's system has been one in which the summer peak demand was substantially greater than that recorded for maximum usage at any time during the winter months. Recently, however, the winter peak has been increasing at approximately twice the annual rate of peak demand recorded at any time during the summer months. The 1979 winter peak of 1,824 megawatts was only 125 megawatts below the 1979 summer peak of 1,949 megawatts, which was the second highest peak demand in the Company's history. As a result of the record low temperatures experienced during the winter of 1979, as well as the hot, dry weather conditions experienced during the summer, kilowatt hour usage per average residential customer for the twelve months ended December 31, 1979, increased to an unusually high level. In order to provide sufficient energy to serve its firm load during periods of heavy demand, reduced hydrogeneration, or the outage of generating units, the Company can reduce, subject to contractual limitations, and from time to time has reduced, deliveries of the interruptible portions of energy supplied to two large interruptible customers in eastern Idaho.

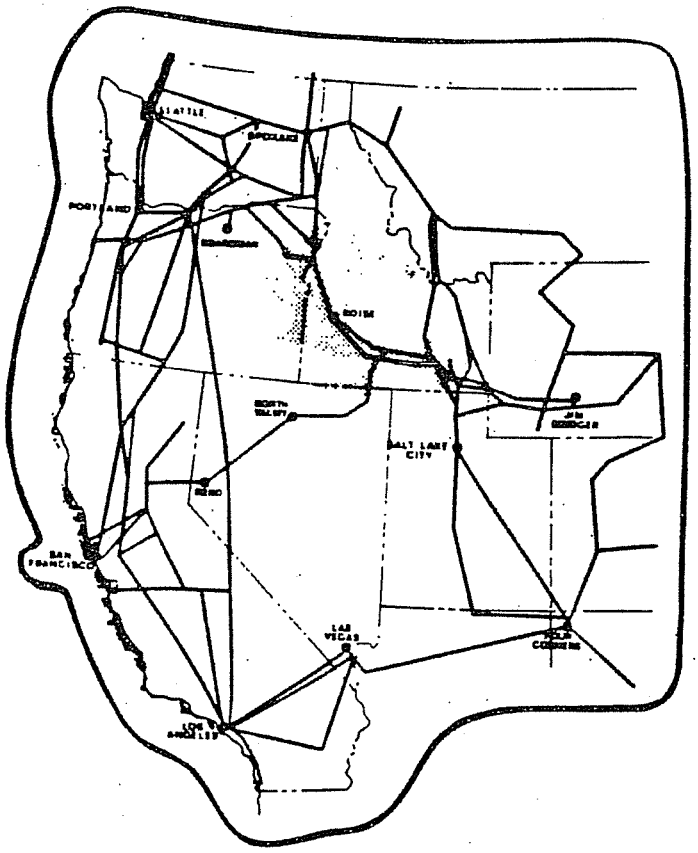
During 1979, approximately 64.5% of the Company's energy requirements were supplied by its 16 hydroelectric generating plants, 23.5% from thermal generating sources, principally the Jim Bridger plant, and the balance from purchase and interchange arrangements with neighboring utilities. The 64.5% of the load supplied by hydro in 1979 compares to: 1975—79.6%, 1976—78.4%, 1977—55.2% and 1978—64.0%.

During the twelve month period ended August 31, 1980, approximately 66.8% of the Company's energy requirements were supplied by its 16 hydroelectric generating plants, 26.1% from thermal generating sources, principally the Jim Bridger coal-fired steam generating facility, and the balance from purchase and interchange arrangements with neighboring utilities. Improved precipitation during the winter of 1979-1980 and throughout the spring and summer of 1980 has returned both stream flows and reservoir levels to above normal for this time of year. As a result of the improved water supply, the Company estimates that hydrogeneration for 1980 will be somewhat greater than its median forecast of 69% of total energy requirements.

Bonneville Power Administration ("BPA") sells electricity to certain irrigation districts and companies in southern Idaho for irrigation pumping and sells wholesale electric service to certain communities and rural cooperatives in and adjacent to the Minidoka irrigation project area in Minidoka and Cassia Counties, Idaho. Under a contract with BPA which terminates in 1986, the Company transmits power from the U.S. Water and Power Resources Service's (formerly the Bureau of Reclamation) southern Idaho plants and from the federal Columbia River plants to certain of BPA's customers mentioned above, interconnects these plants and provides transmission service between irrigation projects and to isolated pumping installations. The Company can also make opportunity purchases of energy from BPA if such energy is available.

The Company's generating facilities are interconnected through its own transmission lines and are operated on a coordinated basis in order to obtain maximum load-carrying capability and efficiency. The

following map shows that the transmission system of the Company is directly interconnected with the transmission systems of Bonneville Power Administration, The Washington Water Power Company, Pacific Power & Light Company, The Montana Power Company, Utah Power & Light Company and, beginning in May, 1980, with Sierra Pacific Power Company. Such interconnections, coupled with transmission line capacity made available under agreements with some of the above utilities, permit the advantageous interchange, purchase and sale of power between the various systems and other electric systems in the West.



The following tables show the Company expects to be able to meet its power requirements through 1984 based on its present load and resource projections which assume median water conditions for purposes of hydrogeneration. Reflected in the resource projection, in addition to existing facilities, which include the Company's one-third share of the newly operational fourth and final 508 Mw unit at Jim Bridger (November, 1979), the 225 Mw fifth generating unit at Brownlee (March, 1980) and the 10% share of the 530 Mw Boardman plant in Oregon (August, 1980), is a 50% share of the first 250 Mw unit at the Valmy plant in Nevada (fall 1981). Also included is a provision for energy under the Company's

contract with Utah Power & Light Company, which will terminate in March, 1981, and the ongoing exchange agreement the Company has for firm power with The Washington Water Power Company. Also included is additional capacity expected to be available from combustion turbines which the Company is considering installing or from purchase power contracts or other arrangements which may be executed to avoid deficiencies in energy which otherwise are predicted to occur.

	Summer Peak (MW)				
	1980	1981	1982	1983	1984
Generating capability	2,172	2,332	2,453	2,653	2,662
Contracts	254	135	135	135	135
Firm peak load	(1,966)	(2,040)	(2,115)	(2,202)	(2,291)
Capability margin	460	427	473	586	506
Percent	23.4%	20.9%	22.4%	26.6%	22.1%
Contracts:					
Washington Water Power Company	135	135	135	135	135
Utah Power & Light Company	119	—	—	—	—
Total	254	135	135	135	135

	Annual Energy—MWH (in 000's)				
	1980	1981	1982	1983	1984
Generation	12,191.4	12,486.1	12,967.7	13,714.5	14,168.1
Contracts	717.9	153.9	—	—	—
Annual load	(11,934.0)	(12,419.3)	(12,916.4)	(13,535.1)	(14,157.0)
Net surplus (deficiency)	975.3	220.7	51.3	179.4	11.1
Contracts:					
Washington Water Power Company*	0	0	0	0	0
Utah Power & Light Company**	717.9	153.9	—	—	—
Total	717.9	153.9	0	0	0

* Net summer-winter exchange.

** Net input into system (assuming 5% transmission line loss).

In 1973, to insure a supply of energy to meet its projected load under less than normal water conditions, the Company contracted with Utah Power & Light Company to purchase power from Utah's Huntington and Hunter coal-fired plants for the periods June 1, 1977, through March 31, 1978, and June 1, 1978, through March 31, 1981, respectively. Under this contract, the Company received 806,952 MWH in 1979 and 629,379 MWH during the twelve months ended August 31, 1980. The Company is entitled to purchase up to 233,208 MWH for the balance of 1980, and 162,000 MWH thereafter through March, 1981. The Company is obligated to pay both a fixed charge, and to the extent the energy is supplied, a variable cost. The Company paid $32.0 million in fixed charges and energy costs in 1979 and $28.1

million during the twelve months ended August 31, 1980. The payments for fixed charges are estimated to be a maximum of $6.4 million for the balance of 1980 and $4.6 million in 1981. To the extent energy above the Company's requirements is sold at wholesale, the fixed cost plus the additional fuel cost for energy supplied will be offset in part by amounts received by the Company.

The Company has an additional contractual power arrangement with The Washington Water Power Company. This agreement is a net summer/winter exchange agreement for about 580,000 megawatt hours annually.

In the event of below normal precipitation conditions resulting in reduced hydrogeneration or unscheduled outages of generating units, the Company may be required during the 1980-1984 period to enter into additional contractual arrangements with neighboring utilities for the purchase of power to serve its firm system load.

The Company is considering various alternatives to meet electrical energy needs in the eighties, including development of economically viable hydro resources and shared ownership with neighboring utilities in thermal power plants.

Besides new generating units already under construction, the Company, as part of its traditional reliance on hydro power, has applied to various state and federal agencies for approval of six different projects using the renewable resource of water. These projects and their proposed installed operating capacity are listed as follows:

Name of Project	Number of Plants	Proposed Installed Capacity (1)
Cascade	1	12,800Kw
North Fork Projects	2	258,000Kw
Wiley	1	86,000Kw
Dike	1	70,000Kw
Kanaka Rapids	1	20,000Kw

(1) Actual generation is subject to variations in stream flows.

With the exception of the Kanaka Rapids project, the Company has received preliminary permits from the Federal Energy Regulatory Commission and Certificates of Public Convenience and Necessity from the Idaho Public Utilities Commission for all of the hydroelectric projects listed above. In September, 1980, the Company filed for a preliminary permit on the Kanaka Rapids Project with the Federal Energy Regulatory Commission. Additionally in October, 1980 the Company filed an application for a Certificate of Public Convenience and Necessity with the Idaho Public Utilities Commission on this Project.

On June 10, 1980, the Boise Project Board of Control received a license from the Federal Energy Regulatory Commission for Project No. 2832, the Lucky Peak Power Plant Project. The Lucky Peak Power Plant Project consists of a 79,000 Kw generating plant to be constructed at Lucky Peak Dam near Boise. The Company is presently negotiating an agreement with the Boise Project Board of Control under which the Company and the Boise Project Board of Control would jointly participate in the ownership and construction of the plant and the Company would operate the plant and purchase all of the excess energy from the plant.

As these various projects come on-line, the Company anticipates it would have adequate energy supplies to cover the time frame necessary for the approval and construction of a coal-fired generating plant in the Company's southern Idaho service area or development of additional out-of-state thermal projects. The Company is optimistic about its ability to meet future customer requirements, but is cognizant that the cost of new generation will be much greater than the embedded cost of existing generating facilities and that the financing burden imposed by such construction will be substantial (see "Construction Program" and "Financing Program").

On August 3, 1979, the U.S. Senate passed Senate Bill 885, known as the Pacific Northwest Electric Power Planning and Conservation Act (the "Act"). The Act provides for, among other things, the regional pooling of the output of certain generating plants through the BPA, thus spreading throughout the region the risk of financing the construction and operation of new plants, access for customers of northwest private utilities to a block of lower cost federal power, and the establishment of the first regional conservation program in the United States with funding to be made available by BPA out of revenues from the sale of power and other services. A new bill which retains some of the basic principles set forth in the Act, but also has some rather major changes, has cleared all of the appropriate House committees and may reach the House floor for a vote prior to the end of the current legislative session. The Company cannot predict whether or in what form such legislation will be adopted.

Legislation has been enacted in Oregon to form an Oregon Domestic and Rural Power Authority ("Authority") as a state instrumentality intended to qualify as a "preference customer" for the purchase of power from BPA for resale to domestic and rural customers now supplied by the Company and other non-preference entities. The Authority would own no facilities except such distribution facilities, if any, as may be necessary to enable it to qualify as a BPA preference customer and would contract with the utilities now serving such domestic and rural customers for delivery of electricity to such customers, with compensation for such services to cover the utilities' costs including a reasonable return on investment. The Authority would obtain from such utilities any power, in addition to BPA power, needed to serve its customers. The Authority would commence operation on March 1, 1981, but only if the Public Utility Commissioner of Oregon determines after hearings, which are being held at this time, that operation by the Authority would result in substantial benefits to the citizens of Oregon and the 96th Congress has not enacted the Act or any other Pacific Northwest Energy Bill which the Governor of Oregon determines would provide equitable costs of power to all Oregon consumers. The Company cannot predict the outcome of this legislation or the current hearings but does not anticipate implementation of the legislation would have any material effect on the Company's business.

Conservation Program

Hearings were held before the Idaho Public Utilities Commission on May 27 through May 29, 1980, on the Company's two applications for energy conservation programs. Under one program as approved by the IPUC by Order No. 15592 dated June 4, 1980, the Company will provide water heater insulating jackets to all the Company's customers with electric water heaters, electrical outlet gaskets to all the Company's customers participating in the water heater insulation jacket program and shower water flow restrictors to all the Company's residential customers. These items are all provided at no cost to the customer. The water heater jackets are estimated to cost $4,500,000 with the potential annual energy saving of 81,000 MWH. The electrical outlet gaskets are estimated to cost $700,000 with the potential annual energy saving of 48,000 MWH. The shower water flow restrictors are estimated to cost $20,000 with the potential annual energy saving of 16,000 MWH.

Under the second program as approved by the IPUC by Order No. 15861 dated September 26, 1980, the Company will provide an interest free loan to those residential customers which were utilizing electric heat as a primary heating source on or before April 1, 1980, for the installation of certain weatherization material. The structures that will be eligible for this program are all single family homes, mobile homes, condominiums and common wall townhouses, as well as duplexes, triplexes and fourplexes if all units in the building are weatherized at the same time. The Company would conduct a home energy audit to determine if the weatherization would be cost effective prior to approving the installation. The customer's obligation will be to repay the Company, without interest, the installed cost of the weatherization within 10 years or at the time ownership of the residence is transferred for consideration, whichever event occurs first. It is estimated that this weatherization program would be cost effective for approximately one out of every four of the Company's electric heat customers. This would indicate that approximately 19,450 of the Company's electric heat residential customers as of March 31, 1980, would qualify for this program. The total estimated loans to these customers would be $11,000,000 with a potential annual energy saving of 76,000 MWH.

The indicated potential energy savings and associated costs for the conservation programs outlined above are preliminary estimates. The actual energy savings and costs will depend upon the number of customers participating as well as upon customer usage patterns.

Fuel

The Company, through its wholly-owned subsidiary, Idaho Energy Resources Co., owns a one-third interest in the Bridger Coal Company and the Jim Bridger coal mine which supplies low-sulfur coal to the Jim Bridger generating plant. The mine, which is located near the Jim Bridger plant, is operating under a long-term coal sales agreement currently providing for the delivery of coal over a 35-year period, the expected useful life of the Jim Bridger plant, which commenced in 1974 (see "Business—Property"). In order to maintain a level mining plan, Bridger Coal Company has entered into a contract to sell not less than 500,000 tons of coal annually through 1987 to a subsidiary of Rocky Mountain Energy Company, an operating company of Union Pacific Corporation.

Portland General Electric Company, with whom the Company is a 10% participant in the ownership, construction and operation of the Number One Boardman Station, has entered into a coal contract with AMAX Inc., on behalf of its division AMAX Coal Company, for delivery of 24 million tons of coal from its mine near Gillette, Wyoming, for Boardman Unit 1. The contract is for a period of 20 years of coal delivery which commenced in January, 1980, with the delivery at the rate of 1,200,000 tons per year.

Sierra Pacific Power Company, with whom the Company is a joint participant in the ownership, construction and operation of the North Valmy Steam Electric Generating Plant, entered into a coal contract with Southern Utah Fuel Company, a subsidiary of Coastal States Energy Corporation, for the delivery of 17.5 million tons of coal from mines near Salina, Utah for Valmy Unit 1. The contract, with options to extend, is for a period of 22 years, commencing in July of 1981, with the delivery of 850,000 tons per year for years one through four; 900,000 tons per year for years five through ten; and 725,000 tons per year for years 11 through the end of the contract period. It is anticipated that this amount of deliveries for these time periods will provide a sufficient supply to fuel the first 250 Mw unit at Valmy. Discussions between the joint participants and several potential suppliers of coal for the second 250 Mw unit at Valmy are presently underway.

In 1974, in anticipation of its future needs to obtain generating capacity from coal-fired units, the Company contracted with Black Butte Coal Company for 81 million tons of strippable coal to be delivered over a period of 25 years beginning in 1980. As denial of the Company's application to the Idaho Public Utilities Commission for permission to build the proposed Pioneer coal-fired generating plant in southern Idaho became increasingly probable, the Company entered into an Option Agreement on this coal with another utility. The option was exercised in September, 1976. Under the option, as exercised, the amount of coal to be sold to the utility each year is the amount then deliverable to the Company under the Black Butte contract, reduced in each of the years 1981-1984 by 800,000 tons which will be available for use by the Company. The Agreement is cancellable by the Company at December 31, 1984, and at the end of each five-year period thereafter by giving appropriate notice of such cancellation by no later than December 31, 1982, or at the end of each five-year period thereafter, respectively. The Company is currently examining every alternative to determine the best course of action to take with respect to the coal which will become available commencing in 1981.

The Company has a contract with a gas utility to purchase fuel for the 50,000 Kw combustion turbine located at Hailey, Idaho. The contract provides interruptible service sufficient to operate this peaking facility.

Water Rights

The Company, except as otherwise stated herein, has valid water rights, unlimited as to time, to the waters used in its generating stations, which were obtained under applicable provisions of law. Such rights, however, are subject to prior rights and, with respect to certain license provisions of certain hydroelectric facilities and water licenses, are subject to future upstream diversion of water for irrigation and other consumptive use.

Over a period of time, increased irrigation diversion on the Snake River has resulted in some reduction in the stream flows available for the Company's dependable hydroelectric generating capacity as measured at the time of peak demand. In this regard, the Company has requested a judicial determination with respect to its water rights and their priority. A state district court in Idaho has rendered its decision in this case, and the Company is appealing a portion of this decision (see "Legal Proceedings—Other Environmental Matters").

Regulation

The Company is under the regulatory jurisdiction (as to rates, services, accounting, the issuance of securities to the extent provided by applicable law and other general matters of utility operation) of the Federal Energy Regulatory Commission, the Idaho Public Utilities Commission, the Public Utility Commissioner of Oregon and the Public Service Commission of Nevada within their respective spheres of jurisdiction. The Company is also under the regulatory jurisdiction of the Public Service Commission of Wyoming as to the issuance of securities and certain of its operations. The Company is also subject to the provisions of the Federal Power Act as a "licensee" and "public utility" as therein defined. The Company's retail rates are established under the jurisdiction of the regulatory authorities in Idaho, Oregon and Nevada, and its wholesale rates are established by the Federal Energy Regulatory Commission (see "Business—Rates").

As a licensee under the Federal Power Act, the Company and its licensed projects are subject to the provisions of Part I of said Act. All licenses are subject to conditions set forth in the Act and regulations of the Federal Energy Regulatory Commission thereunder, including, but not limited to, provisions relating to condemnation of a project upon payment of just compensation, amortization of project investment from excess project earnings, possible takeover of a project after expiration of its license upon payment of "net investment" and any severance damages, and other matters (see Properties Subject to Federal Licenses—"Business—Property").

The State of Oregon also has a Hydroelectric Act providing for licenses for hydroelectric projects in that State. The Company's Brownlee, Oxbow and Hells Canyon units are located on the Snake River where it forms the boundary between Oregon and Idaho, and occupy land located in both States. The Company has obtained, with the exception of Brownlee Unit 5 for which an application is pending, Oregon licenses for these units. These units are subject, with respect to project property located in Oregon, to such provisions of the Oregon Hydroelectric Act and licenses as are not in conflict with the Federal Power Act and the FERC license.

The National Energy Plan was passed by Congress and signed by the President in November of 1978. This Plan is comprised of five separate Acts: National Energy Conservation Policy Act (NECPA); Public Utility Regulatory Policies Act of 1978 (PURPA); Power Plant and Industrial Fuel Use Act of 1978; Natural Gas Policy Act of 1978; and Energy Tax Act of 1978. Of these five Acts, it is believed NECPA and PURPA will have the most impact on the Company. PURPA requires that state regulatory agencies determine whether they will implement certain standards described in PURPA relating to rate design. Such standards include provisions relating to the institution of time of day, seasonal and interruptible rates, which are cost effective. PURPA also contains sections relating to wheeling, power pooling and provisions designed to encourage the development of co-generation and small generating facilities. On December 1, 1980, hearings are scheduled to commence before the Idaho Public Utilities Commission relative to certain rate design considerations (i.e. cost of service, declining block rates, time of day rates and seasonal rates). The Company is unable to predict the outcome of these proceedings or their effect upon the rate schedules of the Company. Under NECPA, utilities are required to participate in various energy conservation programs including providing energy audits and participation in a home weatherization financing program (see "Business—Conservation Program"). Final standards and regulations under the various portions of the Plan are being developed by federal and state regulatory agencies, and in some cases, final regulations have just recently been promulgated. For this reason, the Company is unable at this time to predict the full effect of these Acts on the Company.

Pursuant to the requirements of PURPA, the Idaho Public Utilities Commission ("IPUC") held hearings concerning co-generation and small power production and on August 8, 1980 issued an order in this proceeding. In compliance with the terms of the order, the Company, filed tariffs and other related information with the IPUC on September 12, 1980. The Company is unable to predict, however, whether the tariffs and related information so submitted will be accepted by the IPUC or whether any significant co-generation or small power production projects will result or the impact thereof on the Company's operations. In addition to co-generation and small power production, the Company is negotiating with irrigation districts and certain other state agencies relative to possible financial commitments to facilitate the construction of certain small hydroelectric projects in the Company's service area. At the present time, there are no contracts signed or estimates of the potential amount as to the financial impact of these possible commitments.

Rates

The following table sets forth certain information with respect to the Company's applications for rate increases and related proceedings within the past five years. The effective dates and amounts approved shown in this table are the effective dates of final actions with respect to the applications and the final amounts approved, with the most recent Idaho general and FMC Corporation ("FMC") rate cases being subject to adjustment pending final resolution of the FMC case. The dates of partial, interim or subsequent adjustments are not shown, nor are amounts collected subject to refund in excess of amounts finally approved.

	Requested Increase			Approved Increase		
	Filed	Amount (000)	Percent	Effective	Amount (000)	Percent
Idaho(a)	5/30/75	$24,326	25.7%	1/28/76	$15,414	16.3%
	2/25/77	20,461	17.9	12/01/77	12,129	10.3
	8/01/78	27,571	19.2	3/23/79	19,830	14.3
	(b)11/30/79	11,311	85.5	1/01/80(d)	9,191	66.6
	(c)12/28/79	57,765	34.6	3/28/80(d)	37,973	22.9
Oregon	7/22/74	634	12.8	1/20/76	634	12.8
	4/15/77	1,794	29.9	9/01/77	1,781	29.5
	4/30/79	2,668	32.4	7/01/79	663	8.2
	6/02/80	3,616	37.9	10/15/80	2,479	26.0
FERC (Resale)	1/19/76	2,024	60.1	4/30/79	337	10.0
	2/09/76	211	27.9	4/30/79	63	8.9
	7/30/79	1,404	27.9	12/01/79	893	17.7
	6/27/80	5,968	89.4	Pending	—	—

(a) Since 1975, Idaho law requires the IPUC to act upon applications for rate increase within eight months after the proposed effective date of the rate adjustment.

(b) Applicable to rates for electric service to FMC Corporation only.

(c) Applicable to rates for electric service to all Idaho customers excluding FMC Corporation.

(d) On September 30, 1980, the IPUC issued Order No. 15866, which resulted in an increase in rates charged to FMC Corporation of $9,190,900 and an increase in rates charged to all other Idaho retail customers of $37,973,100 on an annualized basis. The order is not yet final and has been stayed pending determination of a petition for rehearing.

On November 30, 1979, application for rate relief in the amount of $11,311,300 was filed with the IPUC for electric service provided to FMC's phosphate processing plant in eastern Idaho, the Company's largest customer. On the same date, FMC filed an application with the IPUC requesting that a contract rate for the calendar years 1980 and 1981 be established by the Commission, since the parties were unable

to agree as to a new contract rate. In hearings before the IPUC on December 27, 1979, the parties agreed, by stipulation, that a temporary rate would be established no later than the end of February, 1980, and that FMC would pay retroactive to January 1, 1980, with interest, any difference between the temporary rate and the rate charged FMC under its contract with the Company, which rate had expired as of the first of the year. In the stipulation, FMC reserved certain rights, including the right to contest the payment of a retroactive rate if said rate was other than a contract rate. On February 29, 1980, pursuant to the stipulation, FMC submitted its proposed contract rate to the IPUC for the 1980 calendar year. The temporary rate proposed amounted to an increase of 28.67%, or $3,956,300 on an annual basis. Hearings before the IPUC commenced on June 30, 1980, relative to FMC's request that a contract rate be established for the calendar years 1980 and 1981. The Company's position in this proceeding was that a contract rate should not be established and that electric service to FMC should be provided under a tariff rate.

On March 26, 1980, the IPUC, by Order No. 15420, authorized a uniform across-the-board increase to all Idaho customers, with the exception of FMC, of 26.0%, or $43,207,700, on an annual basis. The new rates were made effective with electric service rendered on and after March 28, 1980. This rate order was the result of an application by the Company, which was filed with the Commission on December 28, 1979, and a settlement offer by the IPUC staff, which was presented at a prehearing conference held February 21, 1980. The order established that the total Idaho jurisdictional rate relief to the Company was to be $47,164,000, or 26.21%, on an annualized basis, which included FMC's proposed revenue deficiency of $3,956,300. The order further stated that should the final revenue deficiency applicable to FMC be an amount other than the $3,956,300 proposed by FMC, that an appropriate prospective adjustment be made at that time to the rates for all other Idaho retail customers. On September 30, 1980, the IPUC issued Order No. 15866. In that order the Commission refused to establish a tariff rate for FMC and increased the contract rate by an additional $5,234,600 on an annual basis over and above the FMC interim rates established on February 29, 1980. Pursuant to the stipulation, this new rate is retroactive to January 1, 1980, with interest, for electric service rendered to FMC Corporation. In addition, the Commission decreased the rates to all other Idaho customers on an annualized basis by the additional $5,234,600 allocated to FMC. Accordingly, the Commission decreased the annual revenue deficiency for all other Idaho customers from $43,207,700, as established in Order No. 15420 on March 26, 1980, to $37,973,100.

In Order No. 15866 the Commission also ruled that since the new FMC contract rate was retroactive to January 1, 1980, and the Commission had permitted interim rates for all other Idaho customers to be placed into effect on March 28, 1980, the Company must refund that portion of the FMC increase collected from all other Idaho customers during the period from March 28, 1980 to the date the new tariff rates are approved by the Commission. The Commission ordered that the refund, in the form of credits to future customer billings, should commence March 28, 1981. As previously stated, Order No. 15866 is not yet final. On October 3, 1980, FMC filed a Motion to Stay implementation of the Commission's order. On October 10, 1980, the Commission determined that enforcement of Order No. 15866 should be stayed pending disposition of FMC's Petition for Rehearing which was filed on October 14, 1980. If the petition is granted, the Commission has ninety (90) days within which to determine if it will modify Order No. 15866.

Once the FMC rate order becomes final, the Commission intends to hold hearings on the Company's rate design. Such hearings are presently scheduled to commence on December 1, 1980, and could result in a change in the Company's rate schedules. At the present time, the Company is unaware of the specific nature of any such potential changes.

On June 2, 1980, the Company made application for rate relief with the Public Utility Commissioner of Oregon requesting a total annual increase in revenues of $3,615,600, or 37.9%, on the Company's Oregon business. On August 20, 1980, the Public Utility Commissioner of Oregon authorized an annual increase of approximately $2,479,300, or 26.0%, with rates to be made effective October 15, 1980.

On June 27, 1980, the Company applied to the FERC for rate relief for wholesale service to C P National Corporation's Oregon division and Nevada district. The application requested combined additional annual revenues from jurisdictional sales and service of approximately $5,967,700, or an increase of 89.4%. The rates were requested to be made effective on September 1, 1980. On August 29, 1980, the FERC issued an order permitting intervention by C P National Corporation, the Public Utility Commissioner of Oregon and the IPUC, and suspending the effective date for collection of the proposed rates, subject to refund with interest, until February 1, 1981. A prehearing conference is scheduled to be held before the FERC in November, 1980.

The Company is preparing a general rate increase application in the State of Nevada which is scheduled to be filed in the fourth quarter of this year and anticipates making another application for general rate relief in Idaho late in 1980. The Company is unable to predict the outcome of these proceedings.

The Company's rate schedules do not contain a fuel adjustment clause since a major portion of the Company's generating capacity is hydroelectric and the Company, through its wholly-owned subsidiary, has a captive coal supply for its share of the Jim Bridger plant. The average cost to the Company per ton of coal burned at the Jim Bridger plant for the last five years and for the twelve months ended August 31, 1980, is as follows: 1975—$5.03; 1976—$5.50; 1977—$5.79; 1978—$7.45; 1979—$8.76; and August 31, 1980—$10.91.

For rate increase amounts included in operating revenues for the twelve months ended August 31, 1980, see Note A of Notes to Statements of Income.

Environmental Regulation

Environmental controls at the federal, state, regional and local levels are having an increasing impact on the Company's operations due to the cost of installation and operation of equipment required for compliance with such controls. Environmental considerations are contributing to delays in the Company's construction program and may impair its capability to meet future service demands.

On the basis of the requirements of present environmental laws and regulations, the Company estimates that its capital expenditures (excluding allowance for funds used during construction) for environmental matters for 1980 and during the period 1981-1984 will total approximately $11.7 million and $65.6 million, respectively. However, the regulations under federal and state environmental protection laws have not been fully established and the additional costs for compliance with such laws and regulations in connection with the Company's existing facilities and facilities under construction are not presently determinable.

Air:

On January 31, 1975, the Wyoming Environmental Quality Council adopted air quality standards limiting permissible emissions of sulfur dioxide from fossil fuel burning equipment. Enforcement of these regulations will require the installation of sulfur dioxide abatement systems at the Jim Bridger plant in Wyoming. These standards limit permissible emissions of sulfur dioxide from the Company's Jim Bridger Units 1, 2 and 3 to 0.3 lb/MBtu and Jim Bridger Unit 4 to 0.2 lb/MBtu.

The Wyoming Department of Environmental Quality has issued an order containing a compliance schedule which requires the Company and Pacific Power & Light Company to install scrubbers at Jim Bridger Units 1, 2 and 3 following a performance evaluation of the scrubber installed at Jim Bridger Unit 4, which began commercial operation on November 29, 1979. Under the schedule, final compliance for Jim Bridger Units 1, 2 and 3 should be achieved by September, 1988.

The Company estimates that its share of the cost of scrubbers on the first three units at the Jim Bridger plant will require capital expenditures of approximately $97.7 million (excluding allowance for funds used during construction), of which approximately $31.9 million is expected to be incurred through 1984, and additional expenses of approximately $24.7 million per year. The Company's share of capital expenditures and annual expenses for a scrubber at Jim Bridger Unit 4 are estimated at $9.8 million (excluding allowance for funds used during construction) and $2.3 million, respectively. The total financing requirements for environmental costs of the four units will have a material effect on the Company, although the Company believes the effects of shut-down for installation and operating expenses related to such equipment would not be material. The Company's total estimated environmental expenditures for 1980 and 1981, applicable only to Jim Bridger Unit 4, are $1.2 million and $0.9 million, respectively. In addition, the installation of scrubbers for sulfur dioxide removal is expected to adversely affect the output and efficiency of the units.

The Company financed its share of the costs for pollution control equipment for its 10% interest in the Number One Boardman Station on Carty Reservoir in Morrow County, Oregon, in the amount of approximately $4.4 million in August, 1978. The Company's total estimated environmental expenditures for 1980, applicable only to the Company's portion of the Boardman plant, are $0.8 million.

The Company also entered into an agreement with the Sierra Pacific Power Company to participate as a 50% owner in the North Valmy Power Plant Project located north of Valmy, Humboldt County, Nevada, in December, 1978. The Company estimates that its 50% share of the cost of pollution control equipment on the two units under construction at the North Valmy Power Plant Project will require total capital expenditures of approximately $24.3 million (excluding allowance for funds used during construction). Excluded from this total is a provision of $17.9 million for possible expenditures which may be required for the installation of a sulfur dioxide scrubber on Unit 2 at Valmy (see "Legal Proceedings—Other Environmental Matters"). The Company's total estimated environmental expenditures for 1980 and 1981, applicable to the North Valmy Power Plant Project, are $7.8 million and $5.8 million, respectively.

Water:

The Company has received National Pollutant Discharge Elimination System Permits as required under the Federal Water Pollution Control Act Amendments of 1972 for the discharge of effluents from its hydroelectric generating plants. Reference is made to "Legal Proceedings—Other Environmental Matters" relating to Environmental Protection Agency regulation on existing and proposed dams.

The State of Oregon Department of Environmental Quality has determined that the flow of water over large dams on the Columbia and Snake Rivers can result in the supersaturation of the water with dissolved nitrogen with possible resulting damage to the fish population. In this regard, the Company has

obtained a permit from the Oregon Department to operate the Brownlee, Oxbow and Hells Canyon dams in accordance with the water quality program of the State of Oregon. The Idaho Department of Environmental Protection and Health has adopted a dissolved nitrogen gas standard which could also affect operations at the Brownlee, Oxbow and Hells Canyon dams. The Company and other utilities affected by these regulations arranged for a joint study report by an independent consultant and the report has been submitted to the state departments as to the appropriateness of these standards.

In the summer of 1978, water being released from the American Falls Reservoir through the Company's power plant did not meet the then existing State standard of 6 milligrams of dissolved oxygen per litre of water. On June 27, 1979, the Idaho Department of Health and Welfare, the agency charged with the enforcement of State water quality standards, filed a complaint with the Idaho State Board of Health and Welfare alleging that the American Falls Reservoir District as owner of the American Falls Dam, and the Company which owns and operates the power plant downstream from the Dam, were in violation of the State water standard relating to dissolved oxygen and requested an order requiring the installation of certain equipment and the implementation of certain operating procedures in order to comply with the standard. In January, 1980, the Idaho State Board of Health and Welfare adopted new water quality regulations relating to the state standard including the 6 milligrams per litre requirement for dissolved oxygen. In March, 1980, the Idaho Legislature adopted a concurrent resolution modifying this State water standard by reducing the minimum standard from 6 to 5 milligrams per litre during the period from May 15 through October 15 of each year in water downstream from hydroelectric facilities. On May 26, 1980, the American Falls Reservoir District and the Company entered into a stipulation with the Idaho Department of Health and Welfare settling the complaint previously filed alleging prior violations by agreeing to meet the State water quality standard as modified by the Idaho Legislature's concurrent resolution. On that same day, the Idaho State Board of Health and Welfare entered its order approving the stipulation and providing for an operation and a monitoring plan consistent with the State water quality regulations as modified by the Idaho Legislature. These new State water quality standards were submitted to the Federal Environmental Protection Agency ("EPA") and on August 18, 1980 the EPA Regional Administrator advised that several of the new water quality standards, including the dissolved oxygen standard, were disapproved in that they did not meet the requirements and objectives of the Federal Clean Water Act and related regulations. The Administrator further advised that the State would be required to establish revised water quality standards within 90 days or the EPA would commence rulemaking proceedings to adopt applicable standards. The Idaho Department of Health and Welfare, by letter dated September 4, 1980, to EPA, indicated that the standards as adopted by the Idaho Legislature are not subject to revision by the Idaho Board of Health and Welfare. The Company cannot predict at this time what standard will finally control the dissolved oxygen level below the American Falls power plant or the effect, if any, such standard might have upon the operation of the plant.

Legal Proceedings—Other Environmental Matters

On March 31, 1976, the Company entered into a Falling Water Contract with the American Falls Reservoir District ("District") concerning the construction and financing of a replacement dam at American Falls, Idaho, pursuant to Public Law 93-206, 87 Stat. 904. This contract generally provides, that the Company would, in return for the use of the water stored behind the dam for power generation at its American Falls power plant, (a) pay an amount sufficient to cover approximately one-half of the

replacement dam construction and financing costs, (b) guarantee the annual payments of any irrigation spaceholder whether or not that spaceholder executed a spaceholder contract with the District, and (c) guarantee the payment of interim notes (issued by the District) to finance certain costs of construction prior to completion of a long-term financing in the form of revenue bonds expected to be issued by the District late in 1980. As of August 31, 1980, there were issued and outstanding $44,750,000 in notes, the payment of which is guaranteed by the Company (see Note 9 of Notes to Financial Statements). The Burley Irrigation District ("Burley") filed two actions relating to the Falling Water Contract in which the Company was not named a party before the United States District Court for the Southern District of Idaho. In one action, Burley contended that Public Law 93-206 is unconstitutional and that it could not be denied its share of the water stored behind the replacement dam even if it did not execute a spaceholder contract or make the annual payments required in said contract. An adverse decision in this action could have resulted in a call on the Company's guarantee relating to Burley's annual payment which would be 9.02907% of the irrigation spaceholders' share of approximately one-half of the replacement dam construction and financing costs. In the other action, Burley was contesting the constitutionality of the state act enabling the District to issue revenue bonds. An adverse decision in this action could have resulted in a call on the Company's guarantee of the interim notes. On November 2, 1978, Congress passed Public Law 95-578, Section 7 of which instructed the Secretary of the Interior to pay that portion of the cost associated with the replacement of the American Falls Dam which the irrigation spaceholders were obligated to pay. The Bill appropriating funds for Public Law 95-578 was signed by the President in September of 1979. Burley, and two other small irrigation districts, held elections on July 8, 1980, approving their respective spaceholder contracts thus allowing payment of the spaceholders' shares of the construction costs pursuant to Public Law 95-578. With the execution of the spaceholders' contracts and the payment, the two actions were dismissed.

Matthew Mullaney, et al, vs. Idaho Power Company, a complaint before the Idaho Public Utilities Commission relating to the Company's water rights, is pending with no activity. In a recent decision in a related case, *Idaho Power Company* vs. *Idaho Department of Water Resources, et al,* the District Court for the Fourth Judicial District of Idaho (i) enumerated certain water rights of the Company's Swan Falls Power Plant; (ii) held that the subordination of water rights provision of the Hells Canyon Project license is a valid and an appropriate condition lawfully imposed by the Federal Energy Regulatory Commission; (iii) held that the subordination of water rights provision subordinates all of the Company's water rights for power production at all of its hydroelectric facilities on the Snake River watershed; (iv) held that by acceptance of the conditions of the license, the Company waived claim to compensation due to upstream depletion; and (v) held that the minimum flow of water in the Snake River of 3,300 cubic feet per second at the Murphy Gauging Station is a valid, appropriate and enforceable provision of the State Water Plan pursuant to the police powers of the State of Idaho. The Company has filed a notice of appeal to the Idaho Supreme Court.

The Company joined with other utilities (Hydroelectric Utility Company Group) in Federal Energy Regulatory Commission Docket No. EL78-43 in which the City of Bountiful, Utah, filed a petition for a declaratory order determining that the preference provided under Section 7(a) of the Federal Power Act for a "municipality" within the meaning of Section 3(7) applies against a non-public "original license" in a relicensing proceeding under Section 15. On June 27, 1980, the FERC issued its order relating to the

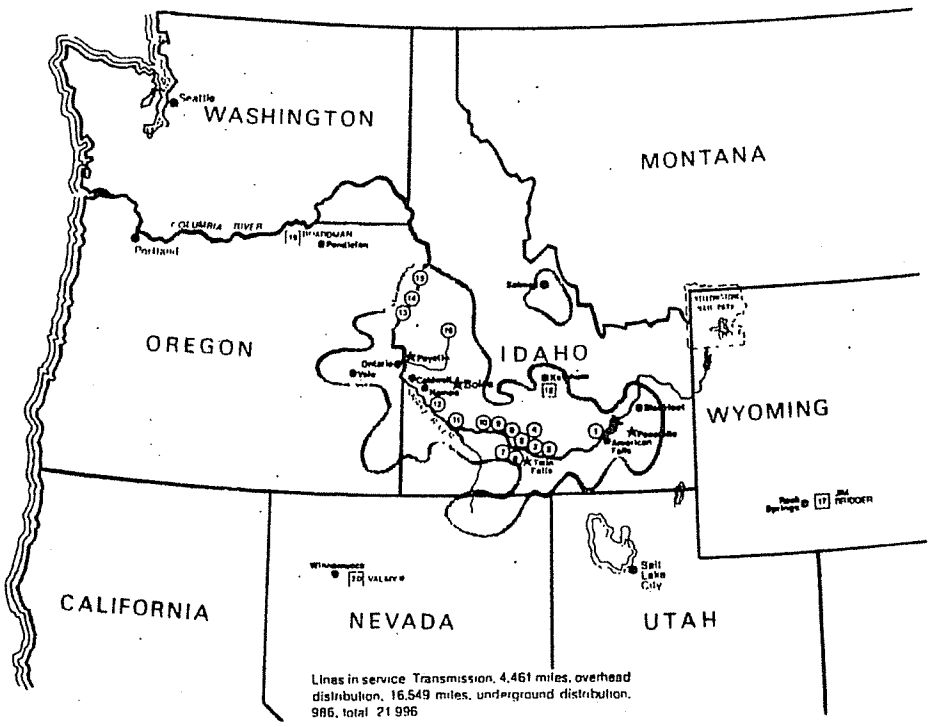
City of Bountiful's petition holding that the preference of Section 7(a) of the Federal Power Act favoring states and municipalities is applicable to all relicensing applications in which states or municipalities request successor licenses for the same water resources. The order qualified the preference by subjecting competing applications to a factual determination concerning whether the plans of a State or municipality are "equally well adapted" as those of a non-public citizen or corporation to serve the "public interest" in light of all the facts and contentions in each particular relicense case. Applications for rehearing by the Hydroelectric Utility Company Group and certain other parties were denied by FERC and appeals have been filed with the Federal District Court. The Company, as a member of the Hydroelectric Utility Company Group, plans on participating in the appeal.

On March 29, 1979, a Complaint for Declaratory Judgment, Injunction and Writ of Mandamus was filed in the United States District Court for the District of Columbia by the National Wildlife Federation against Douglas Costle as Administrator of the United States Environmental Protection Agency ("EPA") relating to an alleged failure of the EPA to regulate and require permits on existing and proposed dams under the National Pollutant Discharge Elimination System and the Clean Water Act. Since the Company owns and operates dams and reservoirs, the Company filed for and was granted intervention in the action because an adverse determination in the action could increase costs and adversely affect the Company's ability to operate its hydroelectric facilities. The Court has set November 3, 1980, as the date for the trial in this matter.

On August 24, 1979, the EPA issued a final decision determining that Unit 2 of the North Valmy Steam Electric Generating Project, jointly owned by the Company and the Sierra Pacific Power Company, would be a "new source" within the meaning of Section 111 of the Clean Air Act. The effect of this decision was to require that a scrubber be installed on Unit 2. The Company and Sierra Pacific Power Company appealed this decision by filing actions in the United States District Court for the District of Nevada and the United States Court of Appeals for the Ninth Circuit seeking a reversal of the EPA's new source determination. On May 23, 1980, EPA issued a decision letter which purports to revoke and replace its August 24, 1979, decision letter. The May 23, 1980 decision still requires the installation of a scrubber on Unit 2. The parties have appealed the May 23, 1980 decision. The Ninth Circuit has ordered that both petitions be expeditiously heard and briefs have been filed.

IDAHO POWER COMPANY

Service Area and Electric Generating Facilities



HYDRO ESTIMATED CAPACITY

1	American Falls	92 340 Kw
2	Twin Falls	10 000 Kw
3	Shoshone Falls	12 500 Kw
4	Clear Lake	2 400 Kw
5	Thousand Springs	8 000 Kw
6	Upper Salmon	39 000 Kw
7	Lower Salmon	70,000 Kw
8	Upper Malad	9 000 Kw
9	Lower Malad	15,000 Kw
10	Bliss	80 000 Kw
11	C J Strike	89 000 Kw
12	Swan Falls	12,000 Kw
13	Brownlee	675,000 Kw
14	Oxbow	220,000 Kw
15	Hells Canyon	450 000 Kw
16	Cascade	300 Kw

THERMAL CAPACITY

17	Jim Bridger	678 077 Kw
18	Combustion Turbine	50 000 Kw
19	Boardman	53,000 Kw
20	Valmy (under construction)	
	Unit 1	125,000 Kw*
	Unit 2	125,000 Kw*

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OPINION OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

Idaho Power Company:

We have examined the balance sheet of Idaho Power Company as of December 31, 1979, and the related statements of income, retained earnings, and changes in financial position for each of the five years in the period then ended. Our examinations were made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the above-mentioned financial statements present fairly the financial position of the Company at December 31, 1979, and the results of its operations and the changes in its financial position for each of the five years in the period then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

DELOITTE HASKINS & SELLS

Portland, Oregon
January 30, 1980

IDAHO POWER COMPANY

BALANCE SHEETS

ASSETS

	December 31, 1979	August 31, 1980 (Unaudited)
	(Thousands of Dollars)	
Electric utility plant (Notes 1 and 6):		
In service—at original cost	$1,040,103	$1,200,191
Less accumulated provision for depreciation and amortization	180,977	195,645
Electric plant in service—net	859,126	1,004,546
Construction work in progress (Note 9)	182,970	95,143
Held for future use	1,109	1,547
Electric plant—net	1,043,205	1,101,236
Other property and investments:		
Investment in subsidiary (Note 1)	10,010	13,055
Other	699	3,194
Total other property and investments	10,709	16,249
Current assets:		
Cash (Note 3)	1,841	2,418
Accounts receivable:		
Customer	16,113	19,326
Less allowance for uncollectible accounts	(205)	(92)
Income tax refund receivable	695	195
Other	2,128	2,322
Materials and supplies (at average cost)	7,964	8,406
Fuel stock (at average cost)	3,336	5,684
Prepayments	2,707	874
Total current assets	34,579	39,133
Deferred debits:		
Unamortized debt expense (Note 1)	3,282	3,244
Advance coal royalties	7,298	7,145
Cancellation charges (Note 8)	11,361	11,361
Other	10,448	9,593
Total deferred debits	32,389	31,343
Total	$1,120,882	$1,187,961

The accompanying notes are an integral part of these statements.

IDAHO POWER COMPANY

BALANCE SHEETS

LIABILITIES

	December 31, 1979	August 31, 1980 (Unaudited)
	(Thousands of Dollars)	
Capital stock and retained earnings (Notes 4 and 5):		
Common stock, $5 par value—authorized 25,000,000 shares; outstanding December, 1979—12,050,000 shares; August, 1980—12,116,914 shares	$ 60,250	$ 60,585
Preferred stock	61,500	61,500
Premium on capital stock	168,015	169,139
Capital stock expense	(1,580)	(1,788)
Retained earnings	116,891	118,749
Total proprietary capital	405,076	408,185
Long-term debt (Note 6)	538,485	542,997
Current liabilities:		
Notes payable (Note 3):		
Banks	—	9,500
Commercial paper	28,600	56,450
Accounts payable	13,055	9,297
Payables to subsidiary (Note 1)	5,456	7,004
Taxes accrued	4,508	10,093
Interest accrued	9,095	11,779
Cancellation charges accrued (Note 8)	1,135	1,135
Dividends declared	215	215
Other	4,314	3,924
Total current liabilities	66,378	109,397
Deferred credits:		
Customer advances for construction	4,513	4,978
Accumulated deferred investment tax credits (Note 1)	25,838	30,632
Accumulated deferred income taxes (Note 1)	76,143	80,800
Other	4,449	10,972
Total deferred credits	110,943	127,382
Commitments and contingent liabilities (Note 9)		
Total	$1,120,882	$1,187,961

The accompanying notes are an integral part of these statements.

IDAHO POWER COMPANY

STATEMENTS OF RETAINED EARNINGS

	Twelve Months Ended					
	December 31,					August 31, 1980 (Unaudited)
	1975	1976	1977	1978	1979	
	(Thousands of Dollars)					
Balance at beginning of period	$95,302	$ 99,155	$107,678	$107,925	$115,595	$115,072
Add:						
Net income	20,639	29,302	24,830	33,498	31,270	37,365
Deduct:						
Cash dividends declared:						
* Common stock	14,774	17,619	20,196	21,441	25,587	29,301
4% Preferred stock	860	860	860	860	860	860
7.68% Series, serial preferred stock	1,152	1,152	1,152	1,152	1,152	1,152
9.50% Series, serial preferred stock	—	1,148	2,375	2,375	2,375	2,375
Total dividends	16,786	20,779	24,583	25,828	29,974	33,688
Balance at end of period (Note 5)	$99,155	$107,678	$107,925	$115,595	$116,891	$118,749
* Common dividends declared per share	$2.01	$2.11	$2.16	$2.22	$2.34	$2.43

The accompanying notes are an integral part of these statements.

IDAHO POWER COMPANY
STATEMENTS OF CHANGES IN FINANCIAL POSITION

	Twelve Months Ended					
	December 31,					August 31, 1980
	1975	1976	1977	1978	1979	(Unaudited)
	(Thousands of Dollars)					
Source of funds:						
Operations:						
Net income	$20,639	$ 29,302	$ 24,830	$ 33,498	$ 31,270	$ 37,365
Non-cash charges (credits) to income:						
Depreciation	15,382	16,332	17,247	17,810	19,443	22,971
Provision for deferred income taxes	3,688	12,191	5,529	12,952	4,651	3,213
Investment tax credit adjustment	1,835	7,160	2,605	3,626	2,770	7,944
Allowance for funds used during construction	(661)	(1,933)	—	—	—	—
Allowance for equity funds used during construction	—	—	(3,700)	(4,294)	(6,903)	(5,994)
Equity in earnings of subsidiary	(1,114)	(736)	(1,381)	(2,138)	(1,573)	(3,979)
Other	318	512	(266)	(776)	165	1,019
Total funds from operations	40,087	62,828	44,864	60,678	49,823	62,539
Outside financing:						
Short-term notes payable—net increase	—	—	77,800	—	—	22,445
First mortgage bonds	—	30,000	—	60,000	62,000	62,000
Pollution control revenue bonds	—	—	24,000	4,360	—	—
Pollution control revenue bond funds received from (retained by) trustee	1,586	1,833	(17,370)	4,956	6,798	3,563
Project financing—Boardman	—	—	—	—	49,341	1,980
Preferred stock	—	25,000	—	—	—	—
Common stock	25,719	28,315	—	31,626	37,523	1,458
Sale-Leaseback of Boise Operations Center	—	—	—	—	8,220	8,220
Temporary cash investments	—	—	10,712	—	—	—
Increase (decrease) in long-term debt due within one year	—	5,000	5,000	2,000	(12,000)	(12,000)
Cancellation charges accrued	4,186	5,098	—	—	—	—
Decrease in cancellation charges deferred	—	—	13	4,230	—	—
Miscellaneous—net	2,165	(1,396)	1,412	2,911	(1,423)	(821)
Total source of funds	$73,743	$156,678	$146,431	$170,761	$200,282	$149,384
Application of funds:						
Construction expenditures	$49,910	$ 56,962	$116,404	$117,489	$141,373	$121,877
Allowance for funds used during construction	(661)	(1,933)	—	—	—	—
Allowance for equity funds used during construction	—	—	(3,700)	(4,294)	(6,903)	(5,994)
Funds used for construction expenditures	49,249	55,029	112,704	113,195	134,470	115,883
Cash dividends:						
Common stock	14,774	17,619	20,196	21,441	25,587	29,301
Preferred stock	2,012	3,160	4,387	4,387	4,387	4,387
Temporary cash investments	—	10,712	—	—	—	—
Retirement of sinking fund debentures	248	249	249	250	250	250
Retirement of first mortgage bonds	—	—	5,000	10,000	12,000	12,000
Short-term notes payable—net decrease	11,675	54,050	—	17,435	31,765	—
Investment in subsidiary	—	618	—	—	—	—
Increase (decrease) in maturing long-term debt	—	5,000	5,000	2,000	(12,000)	(12,000)
Advance coal royalties	—	4,533	—	—	—	—
Cancellation charges deferred	4,186	13,622	—	—	—	—
Decrease in cancellation charges accrued	—	—	605	7,530	—	—
Other changes in working capital, increase (decrease):						
Cash	640	(1,906)	333	(1,324)	(653)	622
Receivables:						
Income tax refund	(6,757)	3,374	(1,992)	(709)	22	—
Other	(285)	811	3,212	1,082	1,434	5,933
Materials and supplies	1,505	(252)	(1,147)	1,641	2,420	3,904
Accounts payable	(980)	(5,871)	(459)	(4,032)	(3,324)	(1,259)
Taxes accrued	(2,325)	(2,418)	377	1,510	921	(3,777)
Other	(199)	(1,652)	(2,034)	(3,645)	3,003	(5,860)
Total application of funds	$73,743	$156,678	$146,431	$170,761	$200,282	$149,384

The accompanying notes are an integral part of these statements.

IDAHO POWER COMPANY

NOTES TO FINANCIAL STATEMENTS

For the Five Years Ended December 31, 1979 (Audited) and For the Twelve Months Ended August 31, 1980 (Unaudited)

NOTE 1—Summary of Accounting Policies

System of Accounts

The Company is an electric utility and its accounting records conform to the Uniform System of Accounts prescribed by the Federal Energy Regulatory Commission (formerly Federal Power Commission) and adopted by the public utilities commissions of Idaho, Oregon, Nevada and Wyoming.

Plant Additions and Retirements

The cost of additions to electric plant in service represents the original cost of contracted services, direct labor and material, allowance for funds used during construction and indirect charges for engineering, supervision and similar overhead items. Maintenance and repairs of property and replacements and renewals of items determined to be less than units of property are charged to operations. For property replaced or renewed, except for extraordinary retirements, the original cost plus removal cost less salvage, is charged to accumulated provision for depreciation; cost of related replacements and renewals is added to electric plant.

Depreciation

Electric plant is depreciated on a straight-line method except for production facilities constructed prior to January 1, 1968 of the T E Roach Hells Canyon Development (consisting of the Brownlee, Oxbow and Hells Canyon hydroelectric power plants) for which depreciation is based on the five percent present-worth method. Annual depreciation provisions as a percent of average depreciable electric plant in service approximated 2.13% for 1975, 2.18% for 1976, 2.22% for 1977, 2.15% for 1978 and 2.12% for 1979 and 2.28% for the twelve months ended August 31, 1980 and are considered adequate to amortize the original cost over the estimated service lives of the properties. For federal and state income tax purposes, depreciation is determined by the use of accelerated methods of depreciation with useful lives established according to the "guideline" lives, and beginning in 1971, the "class" life system allowed under the Internal Revenue Code.

Income Taxes

The Company, for income tax purposes, uses liberalized depreciation methods for assets acquired prior to 1971 and the "class" life system for assets acquired in 1971 and thereafter. Deferred income taxes (commonly referred to as normalized accounting) are provided on coal-fired generation facilities for the difference between income tax depreciation and financial accounting depreciation as well as for certain other capitalized costs (taxes and operator training) related to coal-fired plant construction. On other facilities, deferred income taxes are provided for the difference between actual income tax depreciation and straight-line depreciation using "guideline" lives. Deferred income taxes are also provided for the tax reduction or increase applicable to various items that are capitalized or deferred on the books and expensed or considered income for tax purposes. This accounting is consistent with the indicated rate-making policy of the state regulatory authority having principal jurisdiction (see Note 2 for amounts comprising the provision for deferred income taxes).

Investment Tax Credit

For income tax reductions arising from the investment tax credits an equivalent amount has been charged to operating expenses and the resulting credit deferred to be amortized to income over the estimated service lives of the related properties (see Note 2).

Investment in Subsidiary

The Company uses the equity method of accounting for its investment in Idaho Energy Resources Co., a wholly-owned subsidiary. This subsidiary is a joint venturer in Bridger Coal Company, which operates the mine supplying coal for the Jim Bridger steam generation plant. Coal purchased by the Company from the joint venture amounted to $5,422,000 in 1975, $6,436,000 in 1976, $10,978,000 in 1977, $11,603,000 in 1978, $14,270,000 in 1979 and $19,642,000 during the twelve months ended August 31, 1980. As of August 31, 1980, the total assets, total liabilities and total net worth of Idaho Energy Resources Co. were $14,884,000, $1,829,000 and $13,055,000, respectively. Such total amounts for the Bridger Coal Company were $57,919,000, $35,085,000, and $22,834,000, respectively, of which Idaho Energy Resources Co.'s share was one-third. For rate-making purposes, the state regulatory authority having principal jurisdiction requires that the equity in earnings of subsidiary be considered as a part of operating income and the investment in subsidiary be included in the rate base.

Separate financial statements are not presented as this subsidiary is not considered significant.

Payables to Subsidiary

Idaho Energy Resources Co. does not maintain cash in its own account. Excess funds are transferred to the Company and recorded as payables with interest computed at the Company's effective cost of short-term borrowings (see Note 3).

Other Accounting Policies

Revenues are recognized on the basis of cycle billings and are recorded when customers are billed. Debt discount, expense and premium are being amortized over the terms of the respective debt issues.

NOTE 2—Income Taxes

A reconciliation between the statutory Federal income tax rate and the effective rate is as follows:

	Twelve Months Ended					
	December 31,					August 31, 1980 (Unaudited)
	1975	1976	1977	1978	1979	
	(Thousands of Dollars)					
Computed income taxes based on statutory Federal income tax rate	$15,938	$23,632	$16,447	$22,589	$18,035	$23,811
Reduction in taxes resulting from:						
Allowance for funds used during construction	(317)	(928)	(2,578)	(3,864)	(5,134)	(4,381)
Excess of tax over book depreciation—not normalized	(2,299)	(2,357)	(2,686)	(2,992)	(2,509)	(1,728)
Other—net	(757)	(415)	(1,748)	(2,170)	(2,455)	(3,304)
Total provision for income taxes	12,565	19,932	9,435	13,563	7,937	14,398
Amount (charged) credited against other income	(175)	(8)	2,116	2,712	(429)	(344)
Federal and state income tax expense included in operating expenses	$12,390	$19,924	$11,551	$16,275	$ 7,508	$14,054
The provision for income taxes consists of the following:						
Income taxes currently payable (refundable):						
Federal	$ 5,599	$ (985)	$ 750	$(3,185)	$ 57	$ 1,789
State	1,071	939	551	170	459	1,452
Total	6,670	(46)	1,301	(3,015)	516	3,241
Deferred taxes included in expenses—net:						
Federal	3,251	10,780	4,880	11,445	4,069	2,782
State	437	1,411	649	1,507	582	431
Total	3,688	12,191	5,529	12,952	4,651	3,213
Investment tax credit:						
Deferred	2,375	8,101	3,117	4,128	3,340	8,589
Restored	(168)	(314)	(512)	(502)	(570)	(645)
Total	2,207	7,787	2,605	3,626	2,770	7,944
Total provision for income taxes	$12,565	$19,932	$ 9,435	$13,563	$ 7,937	$14,398
The provision for deferred income taxes is comprised of the following:						
Deferred:						
Excess of tax over book depreciation —normalized	$ 4,726	$ 6,908	$ 6,958	$ 7,124	$ 6,407	$ 5,563
Advance coal royalties expensed for tax purposes	—	2,309	—	—	—	—
Customer contributions for construction	—	(1,732)	(1,667)	3,399	—	—
Project cancellation charges	—	5,046	214	1,688	—	—
Other	(292)	574	866	1,003	(206)	(760)
Total	4,434	13,105	6,371	13,214	6,201	4,803
Restored	(746)	(914)	(842)	(262)	(1,550)	(1,590)
Total	$ 3,688	$12,191	$ 5,529	$12,952	$ 4,651	$ 3,213

The investment tax credit for 1975 and 1976 includes accrual of the additional 1% credit, payable to the Company's employees' common stock purchase plan, in the amounts of $371,600 and $626,777, respectively. The actual payment to the plan made in the following year was $343,077 for 1975 and $662,797 for 1976. The investment tax credit for 1979 includes accrual of the additional 1% and 1/2% credit carried over from 1977 in the amounts of $825,302 and $330,272, respectively. The actual payments to the plan were also made in 1979. For 1978, 1979 and the twelve months ended August 31, 1980 the additional credit could not be claimed because the Company was not able to utilize all of the ten percent investment tax credit (see Note 11).

Unused 10% investment tax credits at December 31, 1979, generated during the years of 1978 and 1979, amounted to approximately $23,500,000, which may be carried forward, none of which will expire until 1985.

NOTE 3—Notes Payable

Lines of credit totalling $119,000,000 are maintained with various banks. Commercial paper, not exceeding 25% of operating revenues for the latest twelve-month period, may be issued in an amount equal to unused bank lines of credit. Under borrowing arrangements with seven of the banks, the Company is currently required to maintain compensating balances of $350,000.

Balances and interest rates of short-term borrowings were as follows:

	Year Ended			
	December 31, 1979		August 31, 1980	
	Banks	Commercial Paper	Banks	Commercial Paper
	(Thousands of Dollars)			
Maximum balance during period	$19,500	$52,205	$14,000	$56,450
Average daily balance during period	$ 4,400	$34,804	$ 3,689	$35,645
Effective annual interest rate during period	17.8%	12.1%	21.7%	14.1%
Effective annual interest rate at end of period	—	16.2%	13.7%	10.5%

NOTE 4—Capital Stock

Detail of capital stock at December 31, 1979 and August 31, 1980 was as follows:

	December 31, 1979	August 31, 1980
	(Thousands of Dollars)	
Common Stock:		
$5 par; authorized 25,000,000 shares; outstanding December, 1979—12,050,000 shares; August, 1980—12,116,914 shares	$60,250	$60,585
Preferred Stock:		
4% preferred stock, cumulative, $100 par; authorized and outstanding 215,000 shares	$21,500	$21,500
Serial preferred stock, $100 par; authorized 150,000 shares:		
7.68% series, cumulative; outstanding 150,000 shares	15,000	15,000
Serial preferred stock, without par value; authorized 3,000,000 shares:		
9.50% series, cumulative, $100 stated value; outstanding 250,000 shares	25,000	25,000
Total preferred stock	$61,500	$61,500

The total value at par of the Company's Common Stock will increase $7,500,000 as a result of the sale of 1,500,000 shares of additional Common Stock on September 3, 1980.

The 4% Preferred Stock presently outstanding is callable at $104 per share plus accrued dividends.

The 7.68% Series, Serial Preferred Stock, is callable, before adding accrued and unpaid dividends, at $106.81 per share through November 15, 1982; $104.89 per share through November 15, 1987; and $102.97 per share thereafter.

The 9.50% Series, Serial Preferred Stock, is callable, before adding accrued and unpaid dividends, at $109.50 per share through August 20, 1981 (not refundable at a cost of less than 9.615% through this date); $107.10 per share through August 20, 1986; $104.75 per share through August 20, 1991; and $101.00 per share thereafter.

Premium on capital stock amounts to $278,826 on the 4% Preferred Stock; $17,550 on the 7.68% Series, Serial Preferred Stock; $68,036,725 on the Common Stock sold prior to 1975; $20,719,000 on the Common Stock sold in December, 1975; $23,315,000 on the Common Stock sold in November, 1976; $25,626,000 on the Common Stock sold in August, 1978; $30,022,500 on the Common Stock sold in August, 1979; and $1,123,101 on the Common Stock sold in May and August of 1980 in connection with the Company's Dividend Reinvestment and Stock Purchase Plan. Premium on Capital Stock will increase $23,812,500 as a result of the sale of 1,500,000 shares of additional Common Stock on September 3, 1980.

Capital stock expense amounts to $503,847 on the 4% Preferred Stock; $33,859 on the 7.68% Series, Serial Preferred Stock; $408,579 on the Common Stock sold prior to 1975; $69,691 on the 1,000,000 shares of Common Stock sold in December, 1975; $367,898 on the 9.50% Series, Serial Preferred Stock sold in July, 1976; $88,644 on the 1,000,000 shares of Common Stock sold in November, 1976; $107,730 on the 1,200,000 shares of Common Stock sold in August, 1978; and $167,503 on the 1,500,000 shares of Common Stock sold in August, 1979; and $40,415 on the 66,914 shares of Common Stock sold in May and August of 1980 in connection with the Company's Dividend Reinvestment and Stock Purchase Plan.

In January, 1980, the Company reserved 500,000 authorized but unissued shares of Common Stock for use in connection with its revised Dividend Reinvestment and Stock Purchase Plan which became effective in April, 1980. As of August 31, 1980, a total of 66,914 shares had been issued and sold—30,250 on May 20 and 36,664 on August 20.

There is no plan in effect for amortization of capital stock expense.

NOTE 5—Retained Earnings

The agreement relating to the Company's outstanding debentures provides that the Company will not declare or pay any dividend or make any other distribution on its Common Stock (other than in Common Stock), or acquire any shares of its Common Stock, if the aggregate amount and cost thereof after 1957 shall exceed the aggregate net income (as defined) attributable to the Common Stock after 1957 plus $7,500,000 and plus the amount of proceeds from sales of Common Stock after 1957. No portion of the retained earnings at December 31, 1979 and August 31, 1980 was restricted under this provision.

Undistributed subsidiary earnings represented, $1,719,536, $2,455,736, $3,836,538, $5,974,432, $7,547,054 and $10,591,855 of the December 31, 1975, 1976, 1977, 1978, 1979 and August 31, 1980 retained earnings balances, respectively.

Pursuant to Section 10(d) of the Federal Power Act, which requires the creation of a reserve account after twenty years of operation of a licensed project for earnings in excess of a specified rate, the Company has computed a Federal amortization reserve on certain of its licensed hydroelectric projects. Such a reserve constitutes an appropriation of retained earnings which, at December 31, 1979 and August 31, 1980 amounted to $1,473,553 and $1,543,966, respectively.

NOTE 6—Long-Term Debt

Balance at December 31, 1979 and August 31, 1980 was as follows:

	December 31, 1979	August 31, 1980
	(Thousands of Dollars)	
First mortgage bonds:		
3¼% Series due 1981	$ 15,000	$ 15,000
4½% Series due 1987	20,000	20,000
4¾% Series due 1987	15,000	15,000
4 % Series due April 1988	10,000	10,000
4½% Series due October 1988	15,000	15,000
5 % Series due 1989	15,000	15,000
4⅞% Series due 1990	15,000	15,000
4½% Series due 1991	10,000	10,000
5¼% Series due 1996	20,000	20,000
6⅛% Series due 1996	30,000	30,000
7¾% Series due 2002	30,000	30,000
8⅜% Series due 2004	35,000	35,000
10 % Series due 2004	50,000	50,000
8½% Series due 2006	30,000	30,000
9 % Series due 2008	60,000	60,000
10¼% Series due 2003	62,000	62,000
First mortgage bonds	432,000	432,000
Sinking fund debentures:		
4¼% Series due April 1983	5,780	5,780
Pollution control revenue bonds:		
5.90% Series due 2003	27,000	27,000
6.0 % Series due 2007	24,000	24,000
less amount held by trustee	(3,986)	(3,024)
7¼% Series due 2008	4,360	4,360
less amount held by trustee	(1,630)	(1,197)
Pollution control revenue bonds	49,744	51,139
Project financing—Boardman (Note 7)	49,341	52,514
Unamortized premium on long-term debt (Note 1)	1,932	1,868
Unamortized discount on long-term debt (Note 1)	(312)	(304)
Total long-term debt	$538,485	$542,997

The amount of First Mortgage Bonds issuable is limited to a maximum of $600,000,000 and by property, earnings and other provisions of the mortgage and supplemental indentures thereto. Substantially all of the electric utility plant is subject to the lien of the indenture relating to the First Mortgage Bonds.

Sinking fund requirements for 1980 through 1984 for the First Mortgage Bonds outstanding at August 31, 1980 are: 1980, $4,320,000, and for each of the years 1981-1984, $4,170,000. Sinking fund requirements for debentures outstanding at August 31, 1980 are $250,000 for the years 1980-1982. These requirements may be met by the deposit of cash, or deposit of bonds and debentures, or as to the First Mortgage Bonds by certification of property additions at the rate of 167% of requirements. At August 31, 1980, the Company had purchased for the sinking fund $346,000 of the debentures to meet this requirement for the year 1980. First Mortgage Bonds maturing are $15,000,000 in 1981. Sinking fund debentures maturing are $5,030,000 in 1983.

NOTE 7—Project Financing

On February 22, 1979, the Company completed arrangements for the project financing of its 10 percent interest in the Boardman coal-fired plant, excluding certain pollution control and coal-handling facilities. This financing involves the sale of commercial paper issued by a financing intermediary and is backed by a bank credit agreement. The Company is authorized to guarantee up to $65,000,000 of the commercial paper issued in connection with the project, which amount may be increased to $80,000,000 upon agreement by the affected parties. Under the original agreement, the Company was required to satisfy the actual obligation incurred by the financing intermediary within three years following commercial operation of said project (August, 1980). However, in August of 1980 the Company completed arrangements to defer this repayment obligation for approximately another three years. At August 31, 1980 the amount of commercial paper outstanding pursuant to the agreement totalled $52,435,000.

The Company included its portion of the costs of construction applicable to the Boardman plant in construction work in progress. The principal amount of commercial paper outstanding together with capitalized interest and related fees thereon is included in long-term debt. During the period of construction, interest and related fees in the amount of $5,274,999 for the year 1979 and $6,742,781 for the 12 months ended August 31, 1980 were included in interest charges, offset by a like amount included in Allowance for Borrowed Funds Used During Construction. Since commercial operation of said project, an additional $433,652 of interest and related fees applicable to the project financing have been incurred and included in interest charges.

NOTE 8—Cancellation Charges

Approval to construct the proposed Pioneer coal-fired generating plant on the site selected by the Company was denied by the Idaho Public Utilities Commission in 1976. Total cancellation charges in

connection with this project were estimated, at August 31, 1980, to be a maximum of $11,361,131 ($5,567,000 net of applicable income taxes). Of this amount $10,226,131 had been incurred, as of August 31, 1980, and consists of preliminary investigation charges, primarily engineering and environmental studies, and actual cancellation charges incurred. If it is determined that the work performed to date has to be abandoned, the Company intends to request rate relief sufficient to recover, over a ten-year amortization period, the actual costs incurred. However, should the request be denied, the charges, net of applicable income taxes, will be written off against income of the period during which such denial occurs.

The Company's management has assessed the potential impact on the financial statements of an adverse determination of the recoverability of these charges through rate relief, and has concluded that the effect of any adjustments which would be required would not be material to the financial position of the Company.

NOTE 9—Commitments and Contingent Liabilities

Commitments under contracts and purchase orders relating to the Company's program for construction of facilities and power supply agreements amounted to approximately $96,600,000 at December 31, 1979 and $60,800,000 at August 31, 1980. The commitments are generally revocable by the Company subject to reimbursement of manufacturers' expenditures incurred and/or other termination charges.

The Company acts as guarantor for one-third of one equipment lease between Bridger Coal Company and lessors. One-third of such lease obligation was approximately $5,400,000 at December 31, 1979 and $5,200,000 at August 31, 1980.

The Company acts as guarantor for $44,750,000 of short-term notes of the American Falls Reservoir District issued for replacement of the American Falls Dam.

NOTE 10—Leases and Rentals

Total lease and rental expense charged to operations was less than 1% of gross revenue for the years 1975-1979 and for the twelve months ended August 31, 1980, respectively. All existing leases are considered as operating leases for rate-making and financial statement purposes.

NOTE 11—Retirement Plans for Employees

The Company maintains a trusteed, noncontributory pension plan for all employees who work 1,000 hours or more during a calendar year. Pension costs under the plan were $1,577,815 in 1975, $2,326,793 in 1976, $1,841,571 in 1977, $2,231,718 in 1978, $2,474,400 in 1979 and $3,240,308 in the twelve months ended August 31, 1980. Of these amounts approximately $1,099,000, $1,637,000, $1,278,000, $1,539,000, $1,735,000 and $2,279,000, respectively, were included in operating expenses and the remainder was charged to electric plant. The Company's policy is to fund pension costs accrued with independent corporate trustees.

As of January 1, 1980, date of the actuarial valuation, the unfunded past service cost was approximately $26,676,000 and the vested benefits exceeded the assets of the plan by approximately $13,157,000. The actuarial present value of vested and nonvested accumulated plan benefits were approximately $32,712,000 and $1,485,000, respectively, at an assumed average annual interest rate of 7.5%. The plan's net assets available for benefits were approximately $19,555,000 at January 1, 1980. Major changes in plan provisions in the valuation at January 1, 1980 included changing the benefit formula from career average formula to one based on final average pay and the inclusion of a cost-of-living adjustment to retirees effective July 1, 1980.

In 1979 the Company adopted a nonqualified, deferred compensation plan for 62 senior management employees and directors that provides for benefit payments to the participant and his or her family upon retirement or death. The plan is being funded by life insurance policies, with premiums being paid by the Company and each participant. Deposits on insurance premiums, paid by the Company in 1979 and in the twelve months ended August 31, 1980 for this plan, were $96,080 and $395,482, respectively.

The Company has in effect a common stock purchase plan for employees whereby for each $1 of employee contribution, the Company will contribute 50% thereof, all such amounts to be invested by a trustee in Idaho Power Company common stock. The Company's contribution amounted to $247,483 for 1975, $303,485 for 1976, $359,896 for 1977, $460,093 for 1978, $479,129 for 1979 and $539,702 for the twelve months ended August 31, 1980.

As provided in the Internal Revenue Code, the employees' common stock purchase plan was amended in 1975 to qualify the Plan as an Employee Stock Ownership Plan (ESOP) which allows the Company to claim an additional investment tax credit of one percent. In 1977 the Plan was further amended to take advantage of an additional credit of one-half percent if the amount is matched by the employees. Both the one percent and one-half percent reduce the Company's federal income taxes payable accordingly. Credits of $343,077 for 1975, $662,797 for 1976 and $825,302 for 1977, applicable to the one percent credit, and $330,272 for 1977, applicable to the one-half percent credit were contributed to the trustee and allocated among employees participating in the ESOP. However, for the years 1978 and 1979 and for the twelve months ended August 31, 1980, no such credits can be claimed because the Company is not currently able to use all of the ten percent investment tax credit (see Note 2).

IDAHO POWER COMPANY

NOTES TO FINANCIAL STATEMENTS—(Continued)

NOTE 12—Supplementary Information

	Twelve Months Ended					
	December 31,					August 31, 1980 (Unaudited)
	1975	1976	1977	1978	1979	
	(Thousands of Dollars)					
Taxes other than income taxes are as follows:						
Property	$11,787	$12,236	$11,938	$11,880	$10,804	$10,634
State kilowatt-hour	1,436	1,353	1,105	1,275	1,586	1,510
Federal and state social security	1,060	1,209	1,441	1,745	2,018	2,294
Miscellaneous	510	575	544	703	633	742
Total	$14,793	$15,373	$15,028	$15,603	$15,041	$15,180
Charged to:						
Operating expenses—taxes	$13,614	$14,106	$14,118	$14,290	$13,539	$13,544
Other income	9	11	31	31	37	55
Construction, clearing and sundry	1,170	1,256	879	1,282	1,465	1,581
Total	$14,793	$15,373	$15,028	$15,603	$15,041	$15,180

The amounts of maintenance and repairs charged to clearing and other accounts and not shown separately in the financial statements were not material. The amounts of royalties and advertising costs were less than 1% of gross revenue.

NOTE 13—Jointly Owned Projects

The Company is involved in the ownership and operation or construction of three jointly-owned generating facilities. Each facility and extent of Company participation as of August 31, 1980 are listed as follows:

Name of Plant	Location	Electric Plant in Service	Accumulated Provision for Depreciation	Company Ownership		Expended Through 8-31-80	Total Estimated Expenditures	Estimated Completion Date
				%	MW			
				(Thousands of Dollars)				
Bridger Units 1-3	Rock Springs, WY	$181,145	$29,155	33	508	$ —	$ —	—
—Unit 4	Rock Springs, WY	96,823	2,163	33	170	—	—	—
—Environmental*	Rock Springs, WY	—	—	—	—	575	99,404	Various
Boardman**	Boardman, OR	54,941	—	10	53	—	—	—
Valmy Unit 1	Winnemucca, NV	—	—	50	125	69,884	100,300	Fall, 1981
—Unit 2***	Winnemucca, NV	—	—	50	125	2,608	106,550	Fall, 1984

The Company's Statements of Income include the Company's proportionate and corresponding direct operation and maintenance expenses incurred during the respective periods directly applicable to the projects enumerated above. All costs of construction are financed by each individual participant on their own behalf.

* Even though all four Bridger units are fully operational, substantial environmental expenditures remain to be incurred to complete the scrubber installation on Unit 4 and to retrofit Units 1, 2 and 3 with scrubbers (see "Business—Environmental Regulation").

** Computation and application of depreciation accrual to commence in September, 1980, one month after the plant was placed in-service.

*** Excludes possible costs applicable to a scrubber of $17,940 (see "Construction Program—Valmy Project").

IDAHO POWER COMPANY

SUPPLEMENTAL FINANCIAL INFORMATION (UNAUDITED)

1. Replacement Cost:

The following replacement cost data is presented to comply with the reporting requirements of the Securities and Exchange Commission's Regulation S-X, Rule 3-17, as set forth in Accounting Series Release No. 190.

Users of this replacement cost data should understand that it is based upon certain assumptions and subjective judgments which are summarized herein. The replacement costs, where practical, were based on current available technology and incorporated considerations of current environmental requirements. This data does not represent the value of the current plant in service and should not be used as a measurement of the effect of inflation upon the Company.

Replacement cost of production plant was based on existing hydro-thermal generation mix and duplicating each facility in kind. Each hydro production facility, due to site-sensitive characteristics, was trended using the Handy-Whitman Construction Index (Plateau Division); replacement cost of thermal generation facilities was computed on a current cost per KW basis. Included in this portion of production plant is an incorporation of the latest environmental protection equipment required under anti-pollution control laws and regulations in effect as of December 31, 1978 and 1979. For distribution plant, lines were trended using the index described above, while substations were replaced on a current cost per KVA basis. For transmission plant, lines were replaced based upon a current cost per pole mile by voltage classification, while stations were replaced on a current cost per KVA basis. The calculations for both distribution and transmission facilities include provision for currently required environmental protection costs. General plant was trended using the GNP Implicit Price Deflator Index.

The related accumulated provision for depreciation, based on the replacement cost, was developed by multiplying the reserve ratios by the replacement cost of each related asset. Additionally, the annual depreciation expense was determined by multiplying the accrual rate currently in use by the replacement cost of each related asset account.

Because they are not defined as productive capacity, land, intangible plant, property held for future use and construction work in progress are not reflected in replacement cost data. Inventories of materials are maintained for construction and maintenance rather than for resale, and were not considered in the replacement cost determination process.

IDAHO POWER COMPANY

SUPPLEMENTAL FINANCIAL INFORMATION (UNAUDITED—Continued)

Replacement Cost—(Continued)

The following tabulation compares historical cost with replacement cost and related depreciation, as of December 31, 1978 and 1979.

	1978		1979	
	Computed Replacement Cost	Actual Historical Cost	Computed Replacement Cost	Actual Historical Cost
	(Thousands of Dollars)			
Electric Plant in Service (excluding land and intangible plant)	$2,035,112	$893,955	$2,331,666	$1,009,174
Less accumulated depreciation	479,813	163,911	546,455	180,977
Electric Plant in Service—Net	1,555,299	730,044	1,785,211	828,197
Land and intangible plant		29,905		30,929
Plant held for future use		917		1,109
Construction work in progress		168,466		182,970
Electric Plant—Net	$1,555,299	$929,332	$1,785,211	$1,043,205
Depreciation expense for the twelve months ended December 31,	$ 38,097	$ 17,810	$ 44,687	$ 19,443

The Company is subject to regulatory jurisdiction in the determination of a fair return on its investment. Current rate-making policy considers only the historical costs of the Company's plant investment, and does not allow the Company to recover the excess of replacement costs over historical costs. The Company's ability to replace plant in the future will depend on its ability to finance the needed additions which, in turn, will depend on the Company's ability to obtain adequate and timely rate relief. It is not possible to predict the effects of the additional revenue that might be realized from the recovery of the higher replacement costs, including related depreciation expense. Nor is it possible to predict potential savings from operating efficiencies arising from the use of technically improved replacement facilities.

The Securities and Exchange Commission has cautioned investors and financial analysts of the misconceptions resulting from a simplistic usage of this replacement cost data. Also, the Commission intentionally determined not to require disclosure of the effect replacement cost data might have on net income, since there remain substantial theoretical problems in the determination of an income effect.

IDAHO POWER COMPANY

SUPPLEMENTAL FINANCIAL INFORMATION (UNAUDITED—Continued)

2. The Effects of Changing Prices:

The following supplementary information is supplied in accordance with the requirements of FASB Statement No 33, "Financial Reporting and Changing Prices," for the purpose of providing certain information about the effects of changing prices. It should be viewed as an estimate of the approximate effect of inflation, rather than as a precise measure.

Constant dollar amounts represent historical costs stated in terms of dollars of equal purchasing power, as measured by the Consumer Price Index for All Urban Consumers.

The current year's provision for depreciation on the constant dollar amounts of property, plant, and equipment was determined by applying the Company's depreciation rates to the indexed plant amounts.

Fuel inventories and the cost of fuel used in generation have not been restated from their historical cost in nominal dollars. Regulation limits the recovery of fuel costs through adjustments in basic rate schedules to actual costs. For this reason fuel inventories are effectively monetary assets.

As prescribed in Statement 33, income taxes were not adjusted.

Under the rate-making prescribed by the regulatory commissions to which the Company is subject, only the historical cost of plant is recoverable in revenues as depreciation. Therefore, the excess of the cost of plant stated in terms of constant dollars over the historical cost of plant is not presently recoverable in rates as depreciation, and is reflected as a reduction to net recoverable cost. While the rate-making process gives no recognition to the cost of replacing property, plant, and equipment, based on past practices, the Company believes it will be allowed to earn on the increased cost of its net investment when replacement of facilities actually occurs.

To properly reflect the economics of rate regulation in the Statement of Income, the reduction of net property, plant, and equipment should be offset by the gain from the decline in purchasing power of net amounts owed. During a period of inflation; holders of monetary assets suffer a loss of general purchasing power while holders of monetary liabilities experience a gain. The gain from the decline in purchasing power of net amounts owed is primarily attributable to the substantial amount of debt which has been used to finance property, plant, and equipment. Since the depreciation on this plant is limited to the recovery of historical costs, the Company does not have the opportunity to realize a holding gain on debt and is limited to recovery only of the embedded cost of debt capital.

IDAHO POWER COMPANY

SUPPLEMENTAL FINANCIAL INFORMATION (UNAUDITED—Concluded)

The Effects of Changing Prices—(Continued)

STATEMENT OF INCOME ADJUSTED FOR THE EFFECTS OF CHANGING PRICES FOR THE YEAR ENDED DECEMBER 31, 1979

(Thousands of Dollars)

	Conventional Historical Cost	Constant Dollar Average 1979 Dollars
Operating revenues	$208,214	$ 208,214
Purchased power expense	40,689	40,689
Fuel expense	15,784	15,784
Other operation and maintenance expense	55,589	55,589
Depreciation expense	19,443	35,741
Taxes other than income taxes	13,539	13,539
Federal and state income taxes	7,508	7,508
Other income and deductions—Net	(9,417)	(9,417)
Net interest charges	33,809	33,809
Total expenses	176,944	193,242
Net income (excluding reduction to net recoverable cost)	$ 31,270	$ 14,972*
Reduction of electric plant to net recoverable cost		$(108,148)
Gain from decline in purchasing power of net amounts owed		80,893
Net		$ (27,255)

* Including the reduction to net recoverable cost, the net income (loss) on a constant dollar basis would have been $(93,176) for 1979.

FIVE-YEAR COMPARISON OF SELECTED SUPPLEMENTARY FINANCIAL DATA ADJUSTED FOR EFFECTS OF CHANGING PRICES

(In Thousands of Average 1979 Dollars)

	Years Ended December 31,				
	1975	1976	1977	1978	1979
Historical Cost Data Adjusted for General Inflation					
Operating revenues	$163,697	$183,385	$187,427	$217,449	$208,214
Net income (excluding reduction to net recoverable cost)					14,972
Income per common share (after dividend requirements on preferred stock and excluding reduction to net recoverable cost)					$ 0.95
Net assets at year-end at net recoverable cost					382,728
Additional Data Adjusted for General Inflation					
Gain from decline in purchasing power of net amounts owed					80,893
Cash dividends declared per common share	$ 2.73	$ 2.70	$ 2.61	$ 2.50	$ 2.38
Market price per common share at year-end	$ 33.68	$ 37.28	$ 31.99	$ 25.86	$ 19.96
Average consumer price index (1967 = 100)	161.2	170.5	181.5	195.4	217.5 (Estimated)

APPENDIX B

[LETTERHEAD OF CHAPMAN AND CUTLER]

Re: $22,095,000 AMERICAN FALLS REPLACEMENT DAM BONDS OF THE AMERICAN FALLS RESERVOIR DISTRICT, STATE OF IDAHO

The American Falls Reservoir District, State of Idaho (the "District"), has on this date issued its American Falls Replacement Dam Bonds (the "Bonds") in the aggregate principal amount of $22,095,000, dated as of December 1, 1980, bearing interest and maturing on May 1 of each of the years as set forth below, subject to redemption and sinking fund payments by the District prior to maturity in the manner and upon the terms set forth in the hereinafter referred to Indenture:

Amount	Interest Rate	Year
$ 55,000	7.50%	1982
60,000	7.75%	1983
60,000	8.00%	1984
65,000	8.20%	1985
70,000	8.40%	1986
80,000	8.60%	1987
85,000	8.75%	1988
95,000	8.90%	1989
100,000	9.00%	1990
110,000	9.15%	1991
2,000,000	10.25%	2001
1,050,000	10.25%	2004
5,925,000	10⅝%	2013
12,340,000	11.00%	2021

The Bonds are issued pursuant to the provisions of Chapter 22 of Title 43, Idaho Code, as amended (the "Act"), for the purpose of preserving, restoring, protecting and maintaining the rights of storage, diversion and delivery of water necessary and appurtenant to the purposes for which the District was organized by paying a portion of the costs of reconstructing, rehabilitating, replacing and improving the American Falls Dam and other related structures and works, together with all necessary appurtenances related thereto, on the Snake River in southern Idaho, adjacent to the City of American Falls, Idaho, consisting of a replacement dam (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, and certain related facilities, recreation and fish and wildlife mitigation facilities, and water quality facilities (the "American Falls Replacement Dam Program"), and for the purpose of paying all expenses preliminary and incident thereto.

The District, pursuant to authority contained in the Act of Congress approved December 28, 1973 (87 Stat. 904) (the "Act of December 28, 1973"), acquired the right to finance and construct the American Falls Replacement Dam Program under a contract, dated as of March 31, 1976, with the United States of America (the "Government Contract"). Upon approval of the United States Secretary of the Interior, as contemplated in the Act of December 28, 1973, the District has entered into a Falling Water Contract, dated as of March 31, 1976, with Idaho Power Company, a Maine corporation (the "Company"), pursuant to which the Company is authorized to utilize the water released from the Replacement Dam for power generation at a powerplant constructed, operated and maintained by the Company and attached to the Replacement Dam, in accordance with the provisions of a license for Project No. 2736 issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) on March 31, 1975, expiring on March 1, 2025. Pursuant to the Falling Water Contract and pursuant to a contract dated as of March 31, 1976 (the "Spaceholder Contract"), among the United States of America, the District and the Company, the Company is obligated to make certain Falling Water Payments and Spaceholder Bond Payments (the "Company Payments"), the proceeds of which Company Payments have been pledged to the payment of principal of, premium, if any, and interest on the Bonds.

In connection with the issuance of the Bonds, we have examined the following:

(1) The Act, the Act of December 28, 1973, and such other state and federal statutes as we deem relevant to this opinion.

(2) Certified copies of the proceedings of the Board of Directors of the District, preliminary to and in connection with the issuance of the Bonds, authorizing, among other things, the following:

(a) the execution and delivery of the Government Contract, the Falling Water Contract and the Spaceholder Contract;

(b) the execution and delivery of an Indenture of Trust (the "Indenture"), dated as of December 1, 1980, by and between the District and The Idaho First National Bank, in Boise, Idaho, as trustee (the "Trustee"), securing the Bonds and setting forth the covenants and undertakings of the District in connection with the Bonds and the assignment to the Trustee of the District's right, title and interest to all of the revenues and other sums of money derived from the Company Payments; and

(c) the issuance, sale and delivery of the Bonds.

(3) Evidence of the adoption of resolutions by the Board of Directors of the Company authorizing, among other things, the following:

(a) the execution and delivery of the Falling Water Contract and the Spaceholder Contract; and

(b) the execution and delivery of a Guaranty Agreement (the "Guaranty"), dated as of December 1, 1980, between the Company and the Trustee, which by its terms provides that the Company unconditionally guarantees to the Trustee for the benefit of the holders of the Bonds and interest coupons appertaining thereto, the full and prompt payment of the principal of, premium, if any, and interest on any Bond when and as the same shall become due.

(4) Executed counterparts of the Government Contract, the Falling Water Contract, the Spaceholder Contract, the Indenture and the Guaranty.

(5) Executed Bond number one.

(6) The opinion of even date herewith of Paul L. Jauregui, General Counsel of the Company.

(7) The opinion of even date herewith of Reid & Priest, special counsel for the Company.

(8) The opinion of even date herewith of Nelson, Rosholt, Robertson, Tolman & Tucker, counsel to the District.

(9) The opinion of even date herewith of Joseph B. Brooks, Field Solicitor of the Department of the Interior.

(10) Such other matters and documents as we deem necessary for the purpose of this opinion.

Based upon the foregoing, we are of the opinion that:

(i) The Government Contract, the Falling Water Contract, the Spaceholder Contract and the Indenture have been duly authorized, executed and delivered by the District and each such instrument is a legal and binding instrument upon the District according to its terms and is in full force and effect, assuming due authorization, execution and delivery by the other parties thereto, except to the extent that the enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally.

(ii) The proceedings show lawful authority for the issuance and delivery of the Bonds under the laws of the State of Idaho now in force; the Bonds, to the amount named, are valid and legally binding special obligations of the District payable according to their terms as provided in the Indenture, and are equally and ratably secured thereunder, except to the extent that the enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally; the Bonds are and will continue to be payable solely from the Company Payments pursuant to the Falling Water Contract and the Spaceholder Contract which have been ordered set aside and pledged under the Indenture to the payment of principal of, premium, if any, and interest on the Bonds as the same become due; and no interest in the American Falls Replacement Dam Program or other property or interest, except the pledge of the Company Payments hereinbefore described, has been pledged or assigned to the Trustee as security for the Bonds.

(iii) Interest on the Bonds will not be included in Federal gross income under the statutes, regulations, court decisions and rulings existing on the date of the delivery of the Bonds, and consequently will be exempt from all present Federal income taxes, except that no opinion is expressed with respect to interest on any Bond for any period during which such Bond is held by a person who is a substantial user of the American Falls Replacement Dam Program or any person considered to be related to such person [within the meaning of Section 103(b)(9) of the Internal Revenue Code of 1954, as amended].

(iv) Under the statutes of the State of Idaho in force on the date of delivery of the Bonds, interest on the Bonds is exempt from income taxes imposed by the Idaho Income Tax Act.

(v) The issuance of the Bonds and the execution thereof have been duly authorized by action of the Board of Directors of the District and all conditions precedent to the delivery of the Bonds have been fulfilled.

(vi) The offer, sale and delivery of the Bonds and the execution and delivery of the Guaranty under the circumstances contemplated do not require registration of the Bonds or the Guaranty under the Securities Act of 1933, as amended, and likewise do not require qualification of the Indenture under the Trust Indenture Act of 1939, as amended.

The opinions of counsel referred to in paragraphs 6 and 7 above state, among other things, that the Falling Water Contract, the Spaceholder Contract and the Guaranty constitute legal, valid and binding obligations enforceable against the Company in accordance with their terms, except to the extent enforceability may be limited by bankruptcy laws, insolvency laws, and laws affecting creditors' rights generally.

CHAPMAN AND CUTLER

Exhibit 45

Bond Counsel Opinion at 20 (Chapman and Cutler Feb. 21, 1990)

Subject to compliance by the District and Idaho Power Company with certain covenants, in the opinion of Chapman and Cutler, Bond Counsel, under present law (i) interest on the Bonds will not be includible in gross income of the owners thereof for federal income tax purposes, except for interest on any Bond for any period during which such Bond is owned by a person who is a substantial user of the facilities constituting the American Falls Replacement Dam Program or any person considered to be related to such person (within the meaning of Section 103(b)(13) of the Internal Revenue Code of 1954) and (ii) interest on the Bonds will not be treated as an item of tax preference in computing the alternative minimum tax for individuals and corporations. Such interest will be taken into account, however, in computing the corporate alternative minimum tax, as more fully discussed herein. Under the laws of the State of Idaho, as presently enacted and construed, interest on the Bonds which is excludible from gross income of the owners thereof for federal income tax purposes will be excludible from gross income of the owners thereof for Idaho income tax purposes. See "TAX EXEMPTION" herein.

NEW ISSUE—BOOK ENTRY ONLY

Ratings: Moody's: "A3 "
S&P: "A"
Duff & Phelps: "A"
See "Ratings" herein.

$21,425,000
American Falls Reservoir District
Idaho
American Falls Refunding Replacement Dam Bonds, 1990 Series A

Dated: March 1, 1990

Due: May 1, as shown below

The Bonds are payable solely from and secured by an assignment and pledge of certain payments derived pursuant to contracts between the District and Idaho Power Company, subject to a lien thereon in favor of the owners of the Prior Bonds, as more fully described herein. The Bonds, together with the premium, if any, and interest thereon, are special, limited obligations of the District, and will not constitute a charge against the general credit or ad valorem taxing powers of the District or the State of Idaho, and the full faith and credit of neither the District nor the State of Idaho is pledged to the payment of the principal of, premium, if any, or interest on the Bonds or the performance of any obligation under the Indenture. The Trustee has received an unconditional guaranty of the principal of, premium, if any, and interest on the Bonds from

IDAHO POWER COMPANY

The Bonds will be issuable as fully registered Bonds without coupons in the name of a nominee of The Depository Trust Company, New York, New York ("DTC"). DTC will act as securities depositary for the Bonds. Purchases will be made in book-entry form through DTC participants only in the principal amount of $5,000 or any integral multiple thereof. Except as herein described, purchasers will not receive certificates representing their beneficial interests in the Bonds. So long as DTC or its nominee is the registered owner of the Bonds, payments of principal of, premium, if any, and interest on the Bonds will be made directly to DTC or its nominee. Disbursement of such payments to the DTC participants is the responsibility of DTC and disbursement of such payments to the beneficial owners is the responsibility of the DTC participants. See "THE BONDS—Global Bonds; Book-Entry System" herein.

The Bonds will be subject to optional redemption and mandatory redemption prior to maturity as more fully described herein.

Maturity Schedule
$2,110,000 Serial Bonds — Price 100%

Maturity	Amount	Interest Rate	Maturity	Amount	Interest Rate
1991	$110,000	6.00%	1997	$205,000	6.60%
1992	125,000	6.10%	1998	225,000	6.70%
1993	135,000	6.20%	1999	245,000	6.75%
1994	150,000	6.30%	2000	270,000	6.85%
1995	165,000	6.40%	2001	300,000	6.90%
1996	180,000	6.50%			

$ 1,050,000 7¼% Term Bonds due May 1, 2004 — Price 100%
$ 3,330,000 7½% Term Bonds due May 1, 2010 — Price 100%
$14,935,000 7¾% Term Bonds due May 1, 2021 — Price 100%
(Accrued interest to be added.)

The Bonds are offered when, as and if issued, subject to the approval of legality by Chapman and Cutler, Bond Counsel, and certain other conditions. Legal matters pertaining to the District will be passed upon by its counsel, Nelson, Rosholt, Robertson, Tolman & Tucker, Twin Falls, Idaho. Certain legal matters will be passed upon for Idaho Power Company by Robert W. Stahman, General Counsel of Idaho Power Company and Reid & Priest, Special Counsel for Idaho Power Company, and for the Underwriters by Chapman and Cutler and Sullivan & Cromwell. It is expected that delivery of the Bonds will be made in New York, New York, on or about March 28, 1990.

PaineWebber Incorporated

Piper, Jaffray & Hopwood Incorporated

February 21, 1990

MAIL 102829

Payments and the Idaho Power Company Spaceholder Bond Payments as so revised pursuant to the Supplemental Falling Water Contract are hereinafter sometimes referred collectively to as the "Idaho Power Company Payments". See "THE BONDS — Security; Limited Obligations" herein. Payment of the principal of, premium, if any, and interest on the Bonds will be unconditionally guaranteed by Idaho Power Company pursuant to the Guaranty Agreement, dated as of March 1, 1990 (the "Guaranty") between Idaho Power Company and the Trustee. Brief descriptions of the District, the American Falls Replacement Dam Program, the Bonds, the Government Contract, the Falling Water Contract, the Supplemental Falling Water Contract, the Guaranty, the Spaceholder Contracts and the Indenture are included in this Official Statement. All references herein to the Government Contract, the Falling Water Contract, the Supplemental Falling Water Contract, the Guaranty, the Spaceholder Contracts and the Indenture are qualified in their entirety by references to such documents and references herein to the Bonds are qualified in their entirety by reference to the form thereof included in the Indenture and the information with respect thereto included in the aforesaid documents. Descriptions of the Indenture, the Bonds, the Idaho Power Company Contracts and the Guaranty are qualified by reference to bankruptcy laws affecting the remedies of the rights and security provided therein. Copies of the forms of these documents may be obtained during the period of the offering from the Underwriters.

Included as an appendix to this Official Statement is information with respect to Idaho Power Company.

THE DISTRICT

The District is an instrumentality organized and existing under the laws of the State of Idaho, particularly the Irrigation District Code, Title 43, Idaho Code, as amended. Pursuant to Chapter 22 of Title 43 Idaho Code, as amended, and Section 57-504, Idaho Code (the "State Act"), the District is authorized to finance the American Falls Replacement Dam Program, to issue the Bonds and to secure the Bonds as hereinafter described.

The District was originally created in March, 1923, for the purpose of paying part of the cost of constructing the original American Falls dam and reservoir (the "Original Dam") owned by the United States, and operated as part of the Minidoka Reclamation Project, located on the Snake River in southern Idaho, adjacent to the City of American Falls, Idaho. The District operates as the holder of water storage capacity in the Replacement Dam on behalf of three canal companies located in Bingham, Elmore, Gooding, Jerome, Power and Twin Falls Counties, Idaho.

THE AMERICAN FALLS REPLACEMENT DAM PROGRAM

The American Falls Replacement Dam Program consisted of the construction of the Replacement Dam to replace the Original Dam, with a reservoir with a present active water storage capacity of 1,672,590 acre feet, together with certain related facilities, water quality facilities, recreation and fish and wildlife mitigation facilities, a two-lane highway on the crest of the Replacement Dam and a two-lane highway bridge located immediately downstream from the Replacement Dam.

Because of certain alkali-aggregate reactions in the concrete portions of the Original Dam, it became necessary to replace the Original Dam. Pursuant to an Act of

Congress approved on December 28, 1973 (the "Act of December 28, 1973"), the District and the United States of America, acting through the Regional Director, Pacific Northwest Region, Bureau of Reclamation, entered into the Government Contract which provided for the construction and financing of the Replacement Dam by the District. Construction of the Replacement Dam commenced in 1976 and was substantially completed in 1978. Title to the Replacement Dam was transferred to the United States on August 1, 1980, as contemplated in the Act of December 28, 1973, and the Replacement Dam is currently owned, operated and maintained by the United States.

The Act of December 28, 1973 contemplated construction by Idaho Power Company of a powerplant (the "Powerplant") at the site of the Replacement Dam and the use by Idaho Power Company of water released from the Replacement Dam in the Powerplant for the production of electric energy. On March 31, 1975, Idaho Power Company received a license (the "License") from the Federal Power Commission (now the Federal Energy Regulatory Commission) authorizing the construction by Idaho Power Company of a 92.4 megawatt powerplant at the site of the Replacement Dam. Construction of the Powerplant commenced on May 24, 1976, and the third and last unit of the Powerplant was placed in service on July 28, 1978. Idaho Power Company is entitled to the beneficial use of certain falling water released from the Replacement Dam for use in the generation of electric energy at the Powerplant pursuant to the Falling Water Contract. Idaho Power Company is also entitled to an undivided interest in the water stored behind the Replacement Dam pursuant to the Idaho Power Company Spaceholder Contract.

PRIOR BONDS; REFUNDING OF THE PRIOR BONDS

On December 18, 1980, the District issued the Prior Bonds in the aggregate principal amount of $22,095,000 for the purpose of paying a portion of the cost of reconstructing, rehabilitating, replacing and improving the American Falls Replacement Dam Program. The balance of the costs of the American Falls Replacement Dam Program was paid from other sources, including the United States. Payment of the Prior Bonds was secured by a pledge by the District, under the Indenture pursuant to which the Prior Bonds were issued (the "Prior Bond Indenture"), of the Falling Water Payments and the Idaho Power Company Spaceholder Bond Payments which, together with certain other amounts payable by Idaho Power Company under the Falling Water Contract and the Idaho Power Company Spaceholder Contract, were sufficient to amortize the Prior Bonds as to principal, premium, if any, and interest, together with related expenses of the trustee for the Prior Bonds and any paying agent. Payment of the principal of, premium, if any, and interest on the Prior Bonds was unconditionally guaranteed by Idaho Power Company pursuant to a Guaranty Agreement, dated as of December 1, 1980, between Idaho Power Company and West One Bank, Idaho, N.A. (formerly The Idaho First National Bank) as trustee for the Prior Bonds (the "Prior Bond Trustee").

In order to accomplish the refunding of the Prior Bonds, the District is issuing the Bonds. Pursuant to the provisions of the Supplemental Falling Water Contract, the District will cause the proceeds of the Bonds, other than accrued interest thereon, if any, to be deposited with West One Bank, Idaho, N.A., as Escrow Agent (the "Escrow Agent") pursuant to an Escrow Agreement, dated as of March 1, 1990 (the "Escrow Agreement"), among the District, Idaho Power Company and the Escrow Agent. Idaho Power Company will, simultaneously with the delivery of the Bonds, deposit in escrow with the Escrow Agent that sum of money which, together with the proceeds of sale of the Bonds, other than accrued interest, if any, and together with any investment earnings on the amounts on

redemption. The Trustee will provide for the selection for redemption of portions of the principal of Bonds of a denomination larger than $5,000. In selecting Bonds for redemption, the Trustee will treat each Bond as representing that number of Bonds which is obtained by dividing the principal amount of such Bond by $5,000.

Notice of Redemption

The Trustee will give notice, in the name of the District, of the redemption of any of the Bonds, which notice will (i) specify the Bonds to be redeemed by stating the complete designation of such Bonds with the series designation, CUSIP number, the issue date, the maturity date, the department of the Trustee which is responsible for facilitating the redemption of such Bonds and the telephone number of such department, the redemption date, the redemption price, and the place where amounts due upon such redemption will be payable and, if less than all of the Bonds are to be redeemed, the numbers of the Bonds, and the portions thereof, so to be redeemed, (ii) state any condition to such redemption and (iii) state that on the redemption date, and upon the satisfaction of any such condition, the Bonds or portions thereof to be redeemed will cease to bear interest. Such notice may set forth any additional information relating to such redemption. Such notice will be given by Mail (as defined in the Indenture) at least thirty (30) days but not more than sixty (60) days prior to the date fixed for redemption. Failure to duly give such notice by Mail, or any defect therein, will not affect the validity of any proceedings for the redemption of Bonds with respect to which no such failure or defect occurred.

THE GOVERNMENT CONTRACT

The Government Contract, entered into between the District and the United States as of March 31, 1976, pursuant to the provisions of the Act of December 28, 1973, authorized the District, as the agency representing the Spaceholders (as hereinafter defined), to finance and provide for the construction of the American Falls Replacement Dam Program. The following is a summary of certain provisions of the Government Contract:

Term: The term of the Government Contract runs from its effective date until specifically terminated by mutual agreement (see "THE FALLING WATER CONTRACT").

Transfer of Title to, and Operation and Maintenance of, the Replacement Dam and Related Facilities: The Government Contract provided that upon the substantial completion of the Replacement Dam, together with certain related facilities, title thereto would be conveyed by the District to the United States. Transfer of title occurred on August 1, 1980, after which the United States has and will continue to operate and maintain the Replacement Dam and the related facilities as part of the Minidoka Reclamation Project for the beneficial use of the water on the land within the service areas of the Spaceholders pursuant to the reclamation laws of the United States. The District remains responsible for the operation and maintenance of certain water quality facilities constructed as a part of the American Falls Replacement Dam Program (the "Water Quality Facilities").

Delivery of Water to Spaceholders: Pursuant to the Government Contract delivery of water from the Replacement Dam to the Spaceholders is contingent upon the execution of a Spaceholder Contract by each Spaceholder and the continued fulfillment of

the obligations of the Spaceholder thereunder, all as provided in the Act of December 28, 1973. Idaho Power Company is a Spaceholder and has executed the Idaho Power Company Spaceholder Contract.

Right of District to Enter into Falling Water Contract with Idaho Power Company: The Government Contract acknowledges that the Falling Water Contract has been entered into by the District and Idaho Power Company and has been approved by the Secretary of the Interior, and permits Idaho Power Company 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.

The Government Contract provides that, so long as Idaho Power Company is not in default under the terms of the Falling Water Contract (see "THE FALLING WATER CONTRACT—Default") during the term of the License or any continuation or renewal thereof, Idaho Power Company is entitled to utilize for power generation at the Powerplant the water released from the Replacement Dam.

The United States may, pursuant to the Government Contract, bypass part or all of the water released from the Replacement Dam around the Powerplant in the event that the United States 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.

The Government Contract provides that the United States may make rules and regulations as it may deem proper and necessary to carry out the Government Contract and to supply necessary details of the administration thereof which are not covered by the express provisions thereof. However, it is provided that such rules and regulations shall (i) not limit the right of Idaho Power Company to utilize for power generation at the Powerplant the water released from the Replacement Dam so long as Idaho Power Company is not in default under the Falling Water Contract; (ii) not limit the right of any Spaceholder to stored water so long as the Spaceholder is not in default under its Spaceholder Contract; or (iii) not limit the right of the District under the laws of the State of Idaho to collect the Idaho Power Company Payments.

THE FALLING WATER CONTRACT

Pursuant to the terms of the Falling Water Contract entered into as of March 31, 1976, between the District and Idaho Power Company, as authorized in the Act of December 28, 1973, Idaho Power Company agreed to make the Falling Water Payments, constituting a monetary return to the District to defray in part the cost of the American Falls Replacement Dam Program contemplated in the Act of December 28, 1973, in return for which Idaho Power Company is entitled to utilize the water released from the Replacement Dam in the Powerplant for power generation, but within the limits specified in the Government Contract.

The following is a summary of certain provisions of the Falling Water Contract.

Term: The original term of the Falling Water Contract began upon its execution and shall terminate on March 31, 2025, being fifty (50) years from the date of the License. If the License is continued or renewed, the Falling Water Contract shall be

continued in effect during such period of continuation or the renewal term, at which time the District and Idaho Power Company may mutually consent to the making of annual payments by Idaho Power Company to the District on behalf of the Spaceholders. All Spaceholders other than Idaho Power Company have assigned to the United States all their right, title and interest, if any, in and to any and all "falling water" benefits accruing as a result of the construction of the American Falls Replacement Dam Program, such assignment to become effective upon the earlier to occur of the termination of the original term of the Falling Water Contract or the retirement of the Bonds.

Idaho Power Company Payments: The Idaho Power Company Payments with respect to the Prior Bonds, together with certain other amounts payable by Idaho Power Company pursuant to the Falling Water Contract and the Idaho Power Company Spaceholder Contract, are sufficient to pay the annual combined principal of, premium, if any, and interest on the Prior Bonds, plus the fees and expenses of the Prior Bond Trustee and any paying agent. Pursuant to the Supplemental Falling Water Contract, the Idaho Power Company Payments are to be revised as of May 1, 1990 to reflect the interest rates on the Bonds, and will be sufficient, together with certain other amounts payable by Idaho Power Company pursuant to the Falling Water Contract and the Idaho Power Company Spaceholder Contract, to pay the annual combined principal of, premium, if any, and interest on the Bonds, plus the fees and expenses of the Trustee, the registrar and any paying agent. The Idaho Power Company Payments are to be paid directly to the Trustee for the account of the District. (See "THE SUPPLEMENTAL FALLING WATER CONTRACT" herein.)

Net Contract: The Falling Water Payments are required to be made without notice or demand and without any offset, counterclaim, deduction, defense, abatement, suspension, deferment or diminution of any kind or for any reason.

Non-Termination of Falling Water Contract or Idaho Power Company Obligation: The Falling Water Contract provides that Idaho Power Company shall have no right to terminate the Falling Water Contract or its obligations thereunder, or be entitled to the abatement, deferment or diminution of any installment of the Falling Water Payments, nor shall the obligations of Idaho Power Company be affected by reason of:

(1) any defect or impairment of the District's title to the Replacement Dam during construction, or failure to substantially complete construction;

(2) any defect or impairment of the District's right to contract with Idaho Power Company for the use of the falling water;

(3) damage to or destruction of the Replacement Dam, the Water Quality Facilities or the Powerplant by any cause, including, without limitation, fire, earthquake, explosion, wind, hail or flood;

(4) the taking by condemnation or other eminent domain proceeding of the Replacement Dam or the Powerplant, or any portion thereof;

(5) the prohibition, limitation or restriction (a) on the construction, operation or maintenance of the Replacement Dam, the Water Quality Facilities or the Powerplant, or (b) of Idaho Power Company's rights to the utilization of the water released from the Replacement Dam for power generation, or the interference with the operation of the Powerplant by Idaho Power Company, or with any such right of use by any person;

(6) any eviction of the District or 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 Idaho Power Company;

(7) any default on the part of the District under the Falling Water Contract, or of any other contract;

(8) 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 District or Idaho Power Company;

(9) any mortgage, pledge, sale, assignment or transfer by Idaho Power Company of the Powerplant or the use of the water released from the Replacement Dam, or any portion or portions thereof, or any portion of its rights under the Falling Water Contract, or under any contract;

(10) the impossibility or illegality of performance by any or all of the other parties to the Falling Water Contract, the Spaceholder Contracts, or the Government Contract;

(11) force majeure;

(12) any action or pending action of any court, administrative agency or other governmental authority;

(13) 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 the Nonparticipating Waterusers (as defined in the Falling Water Contract) under certain circumstances are invalid or in whole or in part unenforceable;

(14) any order of the Federal Energy Regulatory Commission pursuant to Article 48 of the License requiring 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

(15) any other cause, whether similar or dissimilar to the foregoing, any present or future law notwithstanding.

In the event of failure of Idaho Power Company to pay when due all or any part of any installment of the Falling Water Payments, the District is required to request that the United States take such steps pursuant to the Government Contract as shall be necessary to suspend all rights of Idaho Power Company to the use of the water released from the Replacement Dam (see "THE GOVERNMENT CONTRACT").

License: The License was issued to Idaho Power Company on March 31, 1975. Idaho Power Company has agreed to comply with the provisions of the License so long as the same shall be in full force and effect (see "THE AMERICAN FALLS REPLACEMENT DAM PROGRAM").

Arbitrage and Tax Exemption Certifications and Covenants: Under the Supplemental Falling Water Contract, Idaho Power Company in its capacity as party to the Falling Water Contract and in its capacity as Spaceholder under the Idaho Power Company Spaceholder Contract, and the District, jointly and severally, covenant for the benefit of each other and for the benefit of the owners of the Bonds that, so long as any of the Bonds remain outstanding (within the contemplation of the Indenture), they will not take any action, or permit to be taken any action, and that the moneys on deposit in any fund or account in connection with the Bonds, whether or not such moneys were derived from the proceeds of the sale of the Bonds or from any other source, will not be used or invested in a manner, which will cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986 (the "Code") or which will otherwise cause interest on the Bonds to be includable in the gross income of the owners thereof for purposes of federal income taxation. The District and the Company shall not be deemed to have violated this covenant by virtue of the fact that interest on any of the Bonds becomes includible (a) in the gross income of a person who is a "substantial user" of the facilities constituting the American Falls Replacement Dam Program or a "related person" within the meaning of Section 103(b)(13) of the Internal Revenue Code of 1954, or (b) in the computation of the alternative minimum tax imposed by Section 55 of the Code, the environmental tax imposed by Section 59A of the Code or the branch profits tax on foreign corporations imposed by Section 884 of the Code. The District and Idaho Power Company further covenant and agree that they will comply with the Tax Exemption Certificate and Agreement entered into to establish compliance with the applicable provisions of the Code, in accordance with its terms.

Revised Schedules of Falling Water Payments and Idaho Power Company Spaceholder Bond Payments: The Supplemental Falling Water Contract provides for the preparation of a revised schedule of Falling Water Payments and a revised schedule of Idaho Power Company Spaceholder Bond Payments, reflecting the interest rate borne by the Bonds, which schedules are to be effective May 1, 1990, except as otherwise provided in the Supplemental Falling Water Contract. Each such revised schedule is required to be approved by the Trustee and filed with the Trustee, Idaho Power Company, in its capacity as a party to the Falling Water Contract and as a Spaceholder under the Idaho Power Company Spaceholder Contract, the United States of America and the District. Each revised schedule which is approved by the Trustee and filed, as contemplated in the Supplemental Falling Water Contract, is binding upon Idaho Power Company in its capacity as a party under the Falling Water Contract and as a Spaceholder under the Idaho Power Company Spaceholder Contract.

Waiver: Pursuant to the Supplemental Falling Water Contract, 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 the Idaho Power Company to make the Idaho Power Company Payments and certain other payments, as contemplated and provided for in the Supplemental Falling Water Contract, by the District, 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 the Supplemental Falling Water Contract based on the fact that, at the time any payment hereunder is requested, the District is or may be insolvent. Idaho Power Company's remedy for any act or omission by the District is limited to an action or actions for specific performance of the Supplemental Falling Water Contract by the District; provided, however, as long as any of the Bonds are outstanding no such action shall be taken which

will reduce the amount of the installments of the Idaho Power Company Payments and other 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 Idaho Power Company Payments and other payments.

THE GUARANTY

Under the Guaranty, Idaho Power Company unconditionally guarantees to the Trustee for the benefit of the owners of the Bonds the full and prompt payment of the principal of, and interest and premium, if any, on, the Bonds when and as the same shall become due.

THE SPACEHOLDER CONTRACTS

The Spaceholder Contracts have been entered into, as of March 31, 1976, between and among the United States, the District and the parties owning an undivided interest in the water stored behind the Replacement Dam (the "Spaceholders") (including Idaho Power Company as a Spaceholder) in accordance with the authority contained in the Act of December 28, 1973, and in order to provide for repayment by each Spaceholder of its proportionate share of the total cost of the American Falls Replacement Dam Program not paid by Idaho Power Company pursuant to the Falling Water Contract. Nothing was intended in the Spaceholder Contracts to alter or change the proportionate storage rights of the Spaceholders, and the Spaceholder Contracts constitute a reaffirmation by the United States of the rights of the Spaceholders under their pre-March 31, 1976 contracts with the United States except as modified by the Spaceholder Contracts and the Government Contract.

Spaceholder Obligations: Prior to the delivery of the Prior Bonds, the payment obligations of all Spaceholders except Idaho Power Company were satisfied through the payment by the United States of such obligation in an amount sufficient, together with the proceeds of the sale of the Prior Bonds, to pay the cost of the American Falls Replacement Dam Program.

Idaho Power Company Spaceholder Payments: Idaho Power Company is the only Spaceholder which did not prepay its obligation as a Spaceholder. Payments by Idaho Power Company under the Idaho Power Company Spaceholder Contract are to be paid directly to the Trustee for deposit into the Bond Fund (see "THE FALLING WATER CONTRACT—Idaho Power Company Payments"). No Spaceholder other than Idaho Power Company has any obligation, contractual or otherwise, to make payments into the Bond Fund or otherwise for the purpose of paying principal of, premium, if any, and interest on the Bonds.

Amendments: Prior to the payment of the Bonds or provision for the payment thereof having been made in accordance with the provisions of the Indenture, the Spaceholder Contracts may not be effectively supplemented, amended, changed, modified, altered or terminated without the written consent of the Trustee and of the United States. The pre-March 31, 1976 contract between the United States and Idaho Power Company may not be supplemented, amended, changed, modified, altered or terminated so as to adversely affect the obligation of Idaho Power Company to make payments under the Idaho Power Company Spaceholder Contract without the written consent of the Trustee.

Spaceholder Contract Payments: All Spaceholders, including Idaho Power Company, are annually obligated to pay: (i) their proportionate share of the cost of operating and maintaining the Replacement Dam (the "Spaceholder Replacement Dam Operation and Maintenance Payments") payable to the United States; and (ii) their proportionate share of certain of the costs of operating and maintaining the Water Quality Facilities (the "Spaceholder Water Quality Facilities Operation and Maintenance Payments") payable to the District. The Spaceholder Replacement Dam Operation and Maintenance Payments and Spaceholder Water Quality Facilities Operation and Maintenance Payments are collectively referred to as the "Spaceholder Contract Payments".

Default: Failure by Idaho Power Company to make all or any part either of an Idaho Power Company Spaceholder Bond Payment or a Spaceholder Contract Payment required under its Spaceholder Contract and (i) continuation of said failure for a period of five (5) days after notice thereof, or (ii) continuation of said failure for a period of twelve (12) days shall constitute a default.

The United States, upon failure to receive from Idaho Power Company a Spaceholder Replacement Dam Operation and Maintenance Payment, or upon receipt of a notice of default by Idaho Power Company with respect to an Idaho Power Company Spaceholder Bond Payment or a Spaceholder Water Quality Facilities Operation and Maintenance Payment, is obligated to withhold the delivery of water to Idaho Power Company as a Spaceholder for the year in which the default occurs and until such time as the default has been cured (see "THE GOVERNMENT CONTRACT--Delivery of Water to Spaceholders"). If the default is not cured by Idaho Power Company as a Spaceholder by the April 1 next succeeding the default, the Idaho Power Company Spaceholder Contract shall be terminated and the United States will no longer make the stored water available to Idaho Power Company, as a Spaceholder.

Remedies: The District, the Trustee on behalf of the District, or the United States may take whatever actions at law or in equity appear necessary or desirable to collect all or any part of the Idaho Power Company Spaceholder Bond Payments or Spaceholder Contract Payments due or to become due, or to enforce performance and observance of any obligation, agreement or covenant of Idaho Power Company under the Idaho Power Company Spaceholder Contract.

At any time the Trustee, on behalf of the District or the owners of the Bonds, is entitled to enforce any of the rights or remedies provided for in the Idaho Power Company 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 District under the Idaho Power Company Spaceholder Contract, whether or not the District shall have complied with any of the provisions of the Idaho Power Company Spaceholder Contract or proceeded to take any action authorized or permitted under applicable law.

The remedies available upon a default under the Idaho Power Company Spaceholder Contract may be (i) in many respects dependent upon judicial actions which may be subject to discretion and delay and (ii) limited by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally.

Under the Falling Water Contract, Idaho Power Company is also contractually obligated to supplement the Falling Water Payments in order to prevent a default on the Bonds should Idaho Power Company fail to make any required Idaho Power Company Spaceholder Bond Payments (see "THE FALLING WATER CONTRACT--Net Contract").

Delivery of Water: Pursuant to the Idaho Power Company Spaceholder Contract, Idaho Power Company is entitled to the use of stored water accruing to 2.6471% (approximately 44,275 acre-feet) of the present active water storage capacity of the Replacement Dam (approximately 1,672,590 acre-feet) for power generation.

THE INDENTURE

The following is a summary of certain provisions of the Indenture.

Pledge and Security: Except as otherwise designated above under "THE BONDS --Security; Limited Obligation", pursuant to the Indenture, the Idaho Power Company Payments payable by Idaho Power Company under the Idaho Power Company Contracts are to be remitted directly to the Trustee and deposited in the Bond Fund. Such Idaho Power Company Payments sufficient in amount to insure the prompt payment of the principal of, premium, if any, and interest on the Bonds, are pledged to such payment.

Covenants of the District: The District covenants promptly to pay solely from the proceeds of the Idaho Power Company Payments, the principal of, premium, if any, and interest on each Bond as it becomes due.

Application of the Bond Fund: So long as any of the Bonds are outstanding, moneys in the Bond Fund shall be used solely for payment of the principal of, premium, if any, and interest on the Bonds and for the redemption of the Bonds prior to maturity and for the payment of the fees, charges and expenses to which the Trustee, the registrar for the Bonds or any paying agent is entitled pursuant to the Indenture.

Investments: Pursuant to the provisions of the Indenture, any moneys held as part of the Bond Fund shall be invested or reinvested to the extent permitted by law by the Trustee at the request of Idaho Power Company, in:

(1) bonds, treasury notes and other evidences of indebtedness of, and those unconditionally guaranteed as to the payment of principal and interest by, the United States of America;

(2) bonds and notes of the Federal National Mortgage Association;

(3) obligations of the Federal Intermediate Credit Corporation;

(4) obligations of Banks for Cooperatives of the Farm Credit System;

(5) bonds and notes of Federal Home Loan Banks;

(6) certificates of deposit of banks or trust companies (including the Trustee and any paying agent) which are members of the Federal Reserve System and have a minimum combined capital, surplus and undivided profits of not less than $10,000,000;

(7) obligations of a State, Territory or possession of the United States, including the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing;

(8) commercial paper or other corporate debt securities; or

laws. The Underwriters' obligation is subject to certain conditions precedent, and the Underwriters will be obligated to purchase all Bonds if any Bonds are purchased. The initial public offering prices set forth above may be changed by the Underwriters.

TAX EXEMPTION

The Code contains a number of requirements and restrictions which apply to the Bonds, including investment restrictions, periodic payments of arbitrage profits to the United States, requirements regarding the proper use of bond proceeds and the facilities financed therewith, and certain other matters. The District and Idaho Power Company have covenanted to comply with all requirements of the Code that must be satisfied in order for the interest on the Bonds to be excludible from gross income for federal tax purposes. Failure to comply with certain of such requirements could cause interest on the Bonds to become includible in gross income retroactive to the date of issuance of the Bonds.

Subject to the condition that the District and Idaho Power Company comply with the above-referenced covenants, under present law, in the opinion of Chapman and Cutler, Bond Counsel, interest on the Bonds will not be includible in the gross income of the owners thereof for federal income tax purposes, except for interest on any Bond for any period during which such Bond is owned by a person who is a substantial user of the facilities constituting the American Falls Replacement Dam Program or any person considered to be related to such person (within the meaning of Section 103(b)(13) of the Internal Revenue Code of 1954) and, because the Prior Bonds were issued prior to August 8, 1986, **the interest on the Bonds will not be treated as an item of tax preference in computing the alternative minimum tax for individuals and corporations.** Such interest will be taken into account, however, in computing an adjustment used in determining the alternative minimum tax for certain corporations.

The Code includes provisions for an alternative minimum tax ("AMT") for corporations. The AMT is levied for taxable years beginning after December 31, 1986 in addition to the regular corporate tax in certain cases. The AMT, if any, depends upon the corporation's alternative minimum taxable income ("AMTI"), which is the corporation's taxable income with certain adjustments. One of the adjustment items used in computing the AMTI of a corporation (excluding S Corporations, Regulated Investment Companies, Real Estate Investment Trusts and REMICs) is an amount equal to 50% of the excess of such corporation's "adjusted net book income" over an amount equal to its AMTI (before such adjustment item and the alternative tax net operating loss deduction). For taxable years beginning after 1989, such adjustment item will be 75% of the excess of such corporation's "adjusted current earnings" over an amount equal to its AMTI (before such adjustment item and the alternative tax net operating loss deduction). Both "adjusted net book income" and "adjusted current earnings" would include all tax-exempt interest, including interest on the Bonds.

In rendering its opinion, Bond Counsel will rely upon certain certifications of the Company and the District with respect to certain material facts solely within the Company's and the District's knowledge relating to the American Falls Replacement Dam Program and the application of the proceeds of the Prior Bonds.

Ownership of the Bonds may result in collateral federal income tax consequences to certain taxpayers, including, without limitation, corporations subject to either the environmental tax or the branch profits tax, financial institutions, certain

insurance companies, certain S corporations, individual recipients of Social Security or Railroad Retirement benefits and taxpayers who may be deemed to have incurred (or continued) indebtedness to purchase or carry tax-exempt obligations. Prospective purchasers of the Bonds should consult their tax advisors as to applicability of any such collateral consequences.

Under the laws of the State of Idaho, as presently enacted and construed, interest on the Bonds which is excludible from gross income of the owners thereof for federal income tax purposes will be excludible from gross income of the owners thereof for Idaho income tax purposes.

APPROVAL OF LEGAL PROCEEDINGS

Legal matters incident to the authorization, issuance and sale by the District of the Bonds and with regard to the tax exempt status thereof under existing laws, as described under the heading "TAX EXEMPTION", are subject to the unqualified approving opinion of Chapman and Cutler, Bond Counsel, in substantially the form set forth as Appendix B. Copies of such opinion will be available at the time of the delivery of the Bonds. Legal matters pertaining to the District will be passed upon by its counsel, Nelson, Rosholt, Robertson, Tolman & Tucker, Twin Falls, Idaho. Certain legal matters will be passed upon for Idaho Power Company by Robert W. Stahman, General Counsel of Idaho Power Company and Reid & Priest, Special Counsel for Idaho Power Company and for the Underwriters by Chapman and Cutler and Sullivan & Cromwell.

This Official Statement has been duly approved, executed and delivered by the District.

AMERICAN FALLS RESERVOIR DISTRICT

By /s/ John M. Barker
President of the Board of Directors

Dated: February 21, 1990

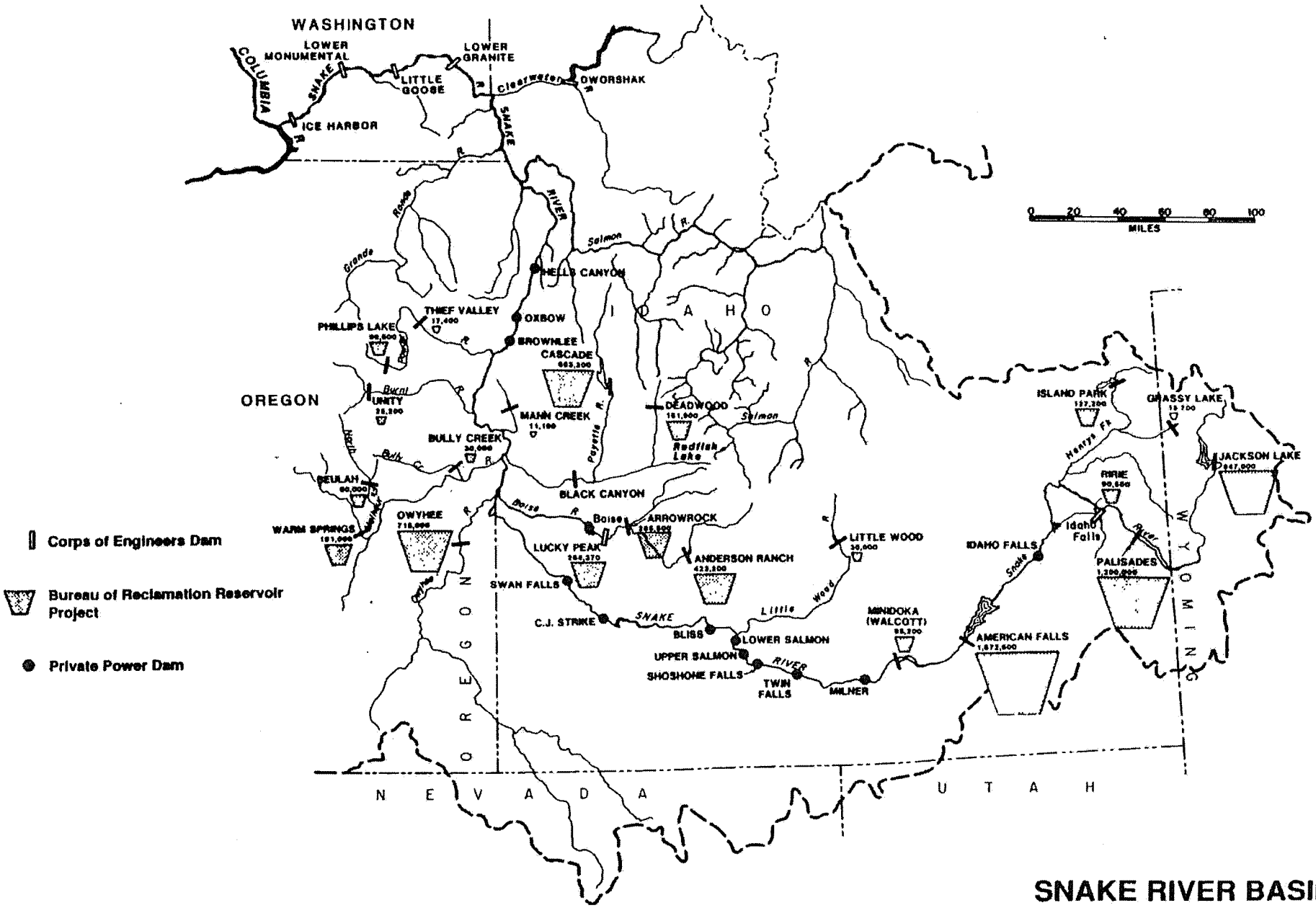
Exhibit 46

Upper Snake River Basin: A Description of Bureau of Reclamation System Operations Above Milner Dam (USBOR Jan. 1996)

The Upper Snake River Basin

A Description of Bureau of Reclamation System Operations Above Milner Dam

Bureau of Reclamation
Boise Idaho
January 1996
(revised December 1977)



SNAKE RIVER BASIN

Acronyms and Abbreviations

BPA	Bonneville Power Administration
cfs	Cubic feet per second
Corps	U.S. Army Corps of Engineers
ESA	Endangered Species Act
FCRPS	Federal Columbia River Power System
FERC	Federal Energy Regulatory Commission
IDFG	Idaho Department of Fish and Game
IDWR	Idaho Department of Water Resources
IPC	Idaho Power Company
IWRB	Idaho Water Resources Board
kW	Kilowatt
NMFS	National Marine Fisheries Service
Reclamation	Bureau of Reclamation
RMP	Resource Management Plan
SOP	Standing Operating Procedures
USFS	U.S. Forest Service
USFWS	U.S. Fish and Wildlife Service
USGS	U.S. Geological Survey

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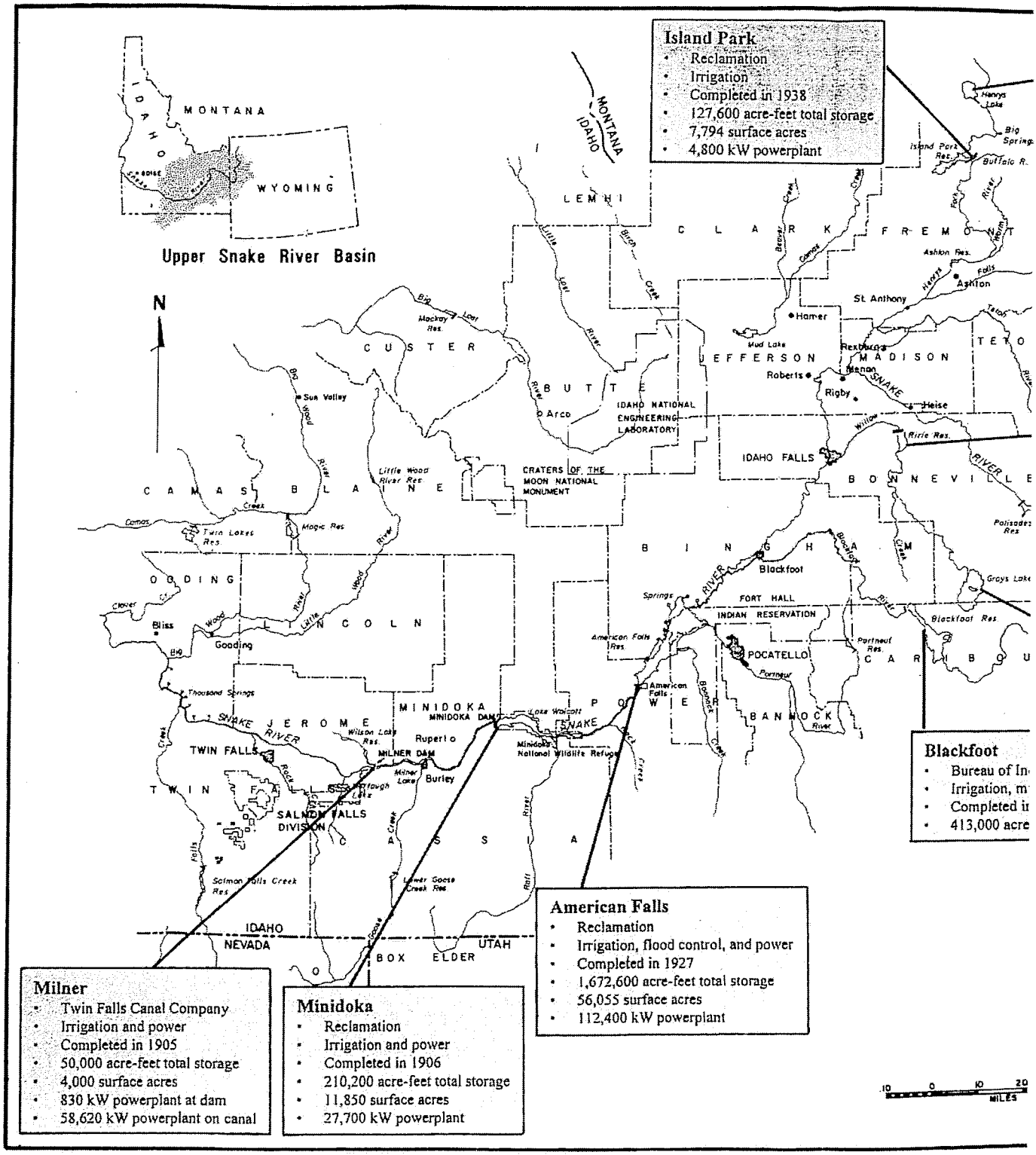
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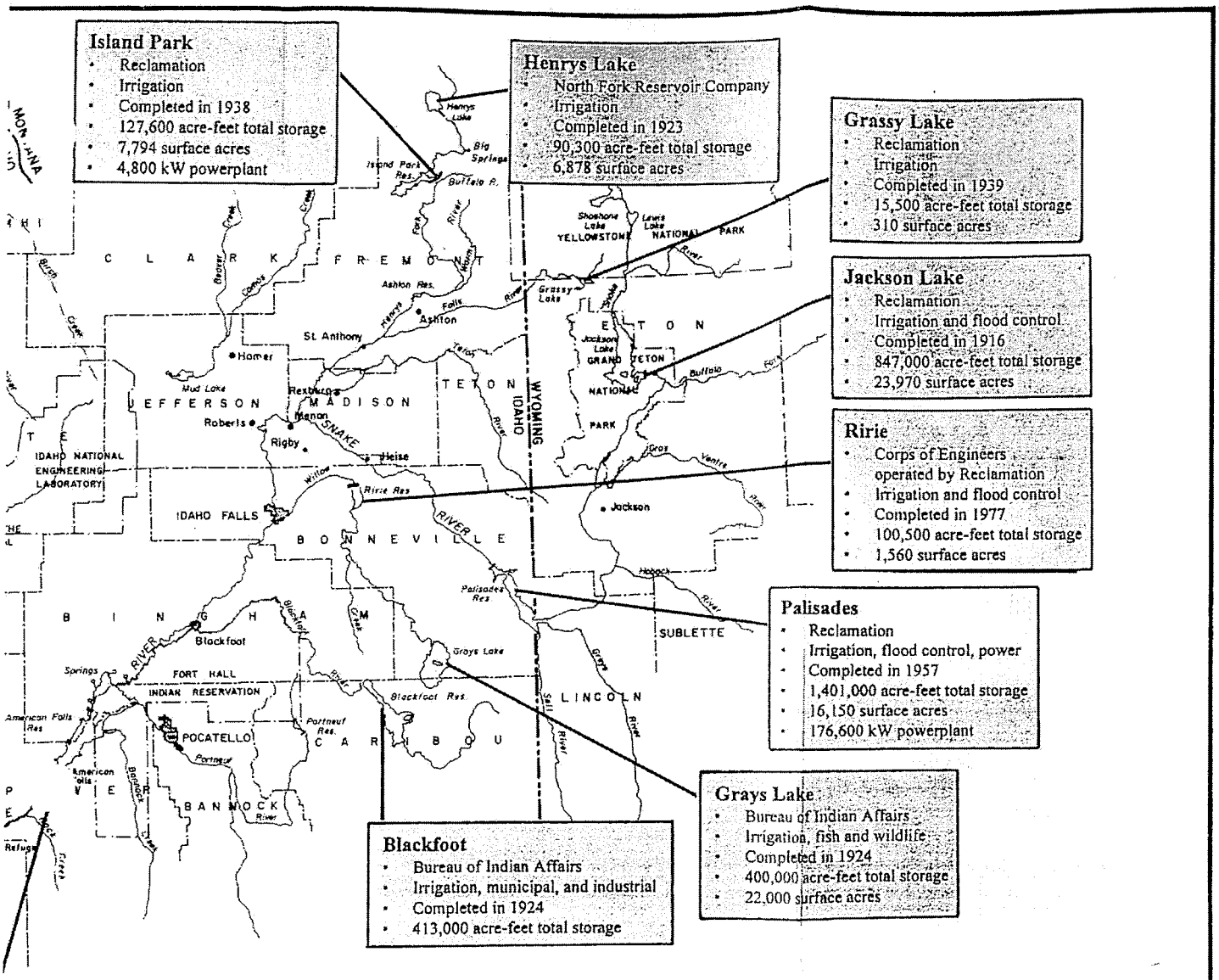
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Upper Snake River Basin
IDAHO
MONTANA
WYOMING
N
Island Park
• Reclamation
• Irrigation
• Completed in 1938
• 127,600 acre-feet total storage
• 7,794 surface acres
• 4,800 kW powerplant
Blackfoot
• Bureau of In
• Irrigation, m
• Completed i
• 413,000 acre
American Falls
• Reclamation
• Irrigation, flood control, and power
• Completed in 1927
• 1,672,600 acre-feet total storage
• 56,055 surface acres
• 112,400 kW powerplant
Milner
• Twin Falls Canal Company
• Irrigation and power
• Completed in 1905
• 50,000 acre-feet total storage
• 4,000 surface acres
• 830 kW powerplant at dam
• 58,620 kW powerplant on canal
Minidoka
• Reclamation
• Irrigation and power
• Completed in 1906
• 210,200 acre-feet total storage
• 11,850 surface acres
• 27,700 kW powerplant
10 0 10 20
MILES



Upper Snake River Basin

Major Storage Facilities Above Milner Dam

I. Introduction

This report is intended as an overview of the operation of the Snake River/Federal storage system above Milner Dam. Increasing demands and controversy over the use of Snake River resources require an understanding of the history of water development, river hydrology, characteristics of the dams and reservoirs, and the legal and institutional requirements for operation of the current system. Water operations in the past focused on out-of-stream diversions to irrigate land and flood control. In recent years, additional demands on the water resource have focused primarily on instream uses including recreation and recovery of endangered species. Since 1991, the Bureau of Reclamation (Reclamation) has been asked to provide water to augment flows in the lower Snake River for enhancement of endangered salmon. Part of this water is being provided from the upper part of the Snake River basin. Reclamation also has been asked to modify operations to accommodate other species listed under the Endangered Species Act (ESA). Groups representing resident fishery, white water rafting, and water quality interests are asking for system operation changes to better accommodate their concerns.

This document focuses on the Snake River in the reach upstream from Milner Dam which is located near Burley, Idaho. This region is designated as Water District 01 by the State of Idaho and closely corresponds to the reach of the Snake River where a majority of the diversions from the main stem are for irrigation of lands and where most of the main stem reservoir storage is located. Irrigated lands further downstream in the Snake River basin, except those watered by diversions from the Milner pool, are watered from tributaries and storage development on those tributaries, e.g., the Boise, Little Wood, Owyhee, and Payette Rivers in Idaho and several streams in eastern Oregon. This document does not consider system operation of the Snake River downstream from Milner Dam.

Consumptive use of the Snake River is primarily for agriculture. However, it is important to recognize that less than one-half of the irrigated land in the upper Snake River basin[1] was developed under Federal authorities. The majority of the irrigation development in the upper Snake River basin is private development which relies on natural flow rights and ground water pumping. Federal irrigation development, in contrast, applies to those lands that were mostly privately developed but rely on storage rights for either a supplemental water supply or a full water supply. Several points, which are further developed throughout this document, should be kept in mind in considering Reclamation operation of the upper Snake River system:

- Irrigation water rights are appurtenant to the land, and the Federal Government does not hold most of these. Reclamation does hold storage rights at Reclamation dams.

- Water rights are administered by the State; Reclamation law, beginning with the 1902 Reclamation Act, requires Reclamation to comply with state law with regard to control, appropriation, use, and distribution of waters.

- Use of federally developed storage is closely controlled by three factors:
  - Federal authority for operation of the Federal facilities as enacted by the Congress
  - State water rights
  - Contracts for storage.

[1]Upper Snake River basin and upper Snake River are used throughout this report to indicate the Snake River and basin located upstream from Milner Dam. See chapter VII (Glossary) for additional definitions.

- Of almost 2.5 million acres irrigated upstream from Milner Dam, less than 1.1 million acres receive water from Reclamation storage, and only 210,000 acres receive a full water supply from Reclamation storage.

This paper is organized to provide more detailed information in succeeding chapters. Chapter II provides a description of the area, and chapter III provides a short history of water resource development upstream from Milner Dam. Major Federal and private facilities and water rights are discussed in chapter IV. Chapter V adds a general discussion of river system operations and includes a series of graphs of reservoir levels and river flows to illustrate the effects of water supply. River operations by function are expanded in chapter VI. Chapter VII identifies several issues related to operation of the Snake River/reservoir system. A list of acronyms and abbreviations appears at the front of this document and a glossary of hydrologic and other terms follows chapter VII as an aid to the reader.

II. Description of Area

Geography

The Snake River originates in Yellowstone National Park at an elevation in excess of 9,500 feet, flows south through western Wyoming, turns west and curves north in Idaho, and north of Idaho Falls curves south to make an arc through southern Idaho (see Snake River Basin and Major Storage Facilities above Milner Dam maps). At the Oregon border, the Snake River turns north, forming much of the border between Idaho and Oregon and a short portion of the border between Idaho and Washington. From Lewiston, the river makes an arc to join the Columbia River near the tri-cities of Richland, Pasco, and Kennewick, Washington. The Snake is the largest tributary of the Columbia River.

In Wyoming, the major tributaries to the main stem Snake River (sometimes referred to as the South Fork) are the Buffalo Fork, Gros Ventre, Hoback, Greys, and Salt Rivers. North of Idaho Falls, the main stem is joined by the Henrys Fork (often referred to as the North Fork) which flows from the north. The Henrys Fork originates in the northeast corner of Idaho at Henrys Lake, and flows south through Island Park Reservoir and to the confluence of the Warm River. After this confluence, the flow of the Henrys Fork is generally southwest to the confluence with the main stem. The major tributaries of the Henrys Fork are the Warm, Falls, and Teton Rivers.

Downstream to Milner Dam, most of the surface inflow is from streams that flow northward to join the main stem. These streams include the Blackfoot, Portneuf, and Raft Rivers and Willow Creek.

In addition to streams, springs provide a significant contribution to the Snake River. Many of these springs flow directly into the Snake River and are hidden. The largest contribution to the river is the highly visible Thousand Springs located downstream from Milner Dam.

Water Supply and Historical Change of Flows

Figure 1 shows the estimated annual water supply for the upper Snake River basin for the period from 1928 to 1989; the average supply during this period was about 10 million acre-feet. The estimated natural flow at Milner is the amount of water that would pass Milner Dam if there were no storage reservoirs and no irrigation or other diversion of the basin water supply. These estimates of natural flow were derived using the State of Idaho Monthly Planning Model and require adjusting observed runoff for the effects

of upstream storage, diversions, and return flows. Estimates of natural flow for the years following 1989 are not available at this time. The most difficult part of making this estimate is the determination of return flow and reuse which are affected by a complex relationship between surface flows and ground-water flows. The Snake Plain Aquifer intersects the river and provides significant water. Timing of this ground-water influence is difficult to assess, and data on ground-water movement does not provide exact results.

Natural flow in figure 1 is contrasted with the observed flow past Milner. This contrast shows the effect of operating the river/storage system with storage of water and out-of-stream diversions.

Figure 1.—Annual Discharge of the Snake River at Milner, Idaho.

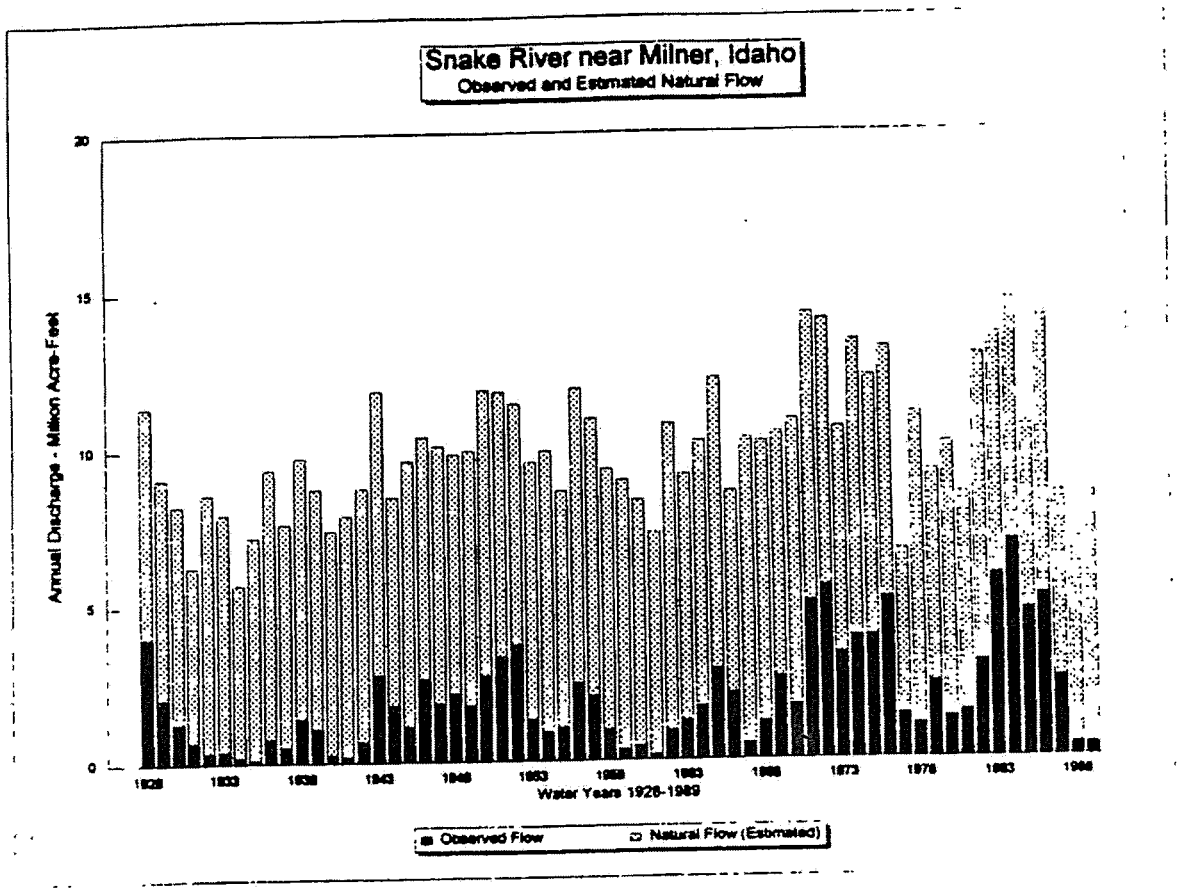
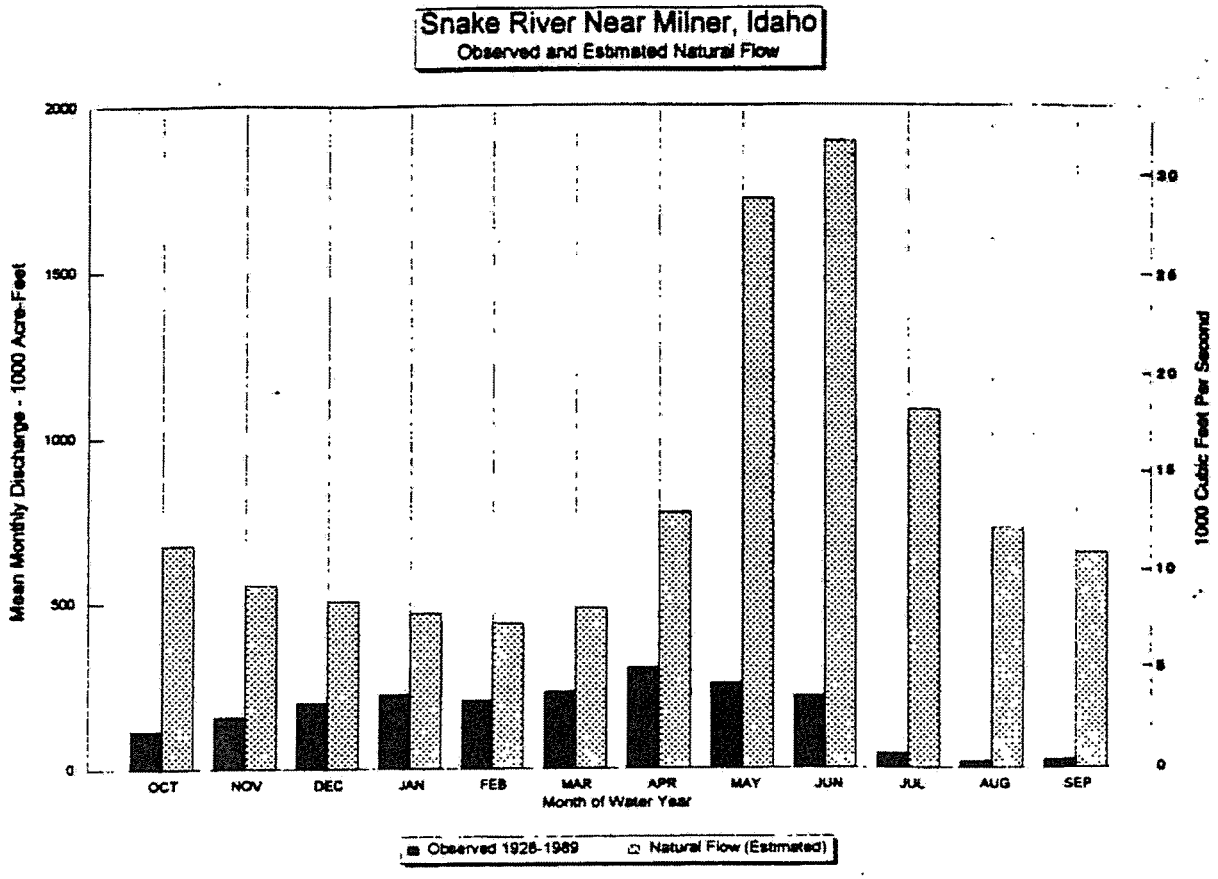


Figure 2 shows the average monthly flow past Milner for natural flow (no water development and no diversions) for the period 1928-1989. Natural flow past Milner would peak in June at a level of nearly four times the natural flow in February. With the current irrigation and reservoir development, flows peak in April and decline to minimums in August and September. Average monthly flows past Milner with system development are lower in all months than the average monthly flow for the lowest flow month without development (natural river flow).

Figure 2.—Average Monthly Discharge of the Snake River at Milner, Idaho



During early development of irrigation, but before major storage was developed, the natural flows during the winter changed very little, whereas, summer flows were substantially diminished by diversions for irrigation. With the current level of storage development, winter flow as well as summer flow are substantially altered.

It is important to note that the Minidoka Project was initiated because irrigated agriculture was already highly developed and experienced shortages in summer months. Project storage was designed and developed to capture excess winter and spring season flows for use in the summer, because the river was being severely depleted. Summer flows at Blackfoot were sometimes reduced to zero. Also, the aquifer was in an early stage of charging, and springflows and other subsurface return flows were smaller than they are today.

Although this report focuses only on the Snake River upstream from Milner Dam, upstream diversions and water use affect the downstream reach of the river. Some of those effects are complex. For instance, a minimum flow of 200 cubic feet per second (cfs) past Milner Dam is quickly augmented by irrigation return flows and to a much larger extent by the discharge of the Snake Plain Aquifer at Thousand Springs. Average discharge at Thousand Springs was around 4,000 cfs in the early 1900's and increased to almost 7,000 cfs in the 1950's. It has since decreased to about 5,000 cfs.

III. History of Water Resource Development

In the late 19th century, Utah farmers were attracted to the Snake River Valley upstream from American Falls, Idaho because of the relative abundance of water. The area where the two forks of the Snake River join (north of Idaho Falls) was especially attractive because of the fertile plain and many natural water channels. This interest led to extensive construction of canal systems around American Falls prior to 1900. Due to arid conditions in the west, the riparian doctrine of water rights that developed in the more humid east was discarded throughout the west as inappropriate, and the prior appropriation doctrine of water rights was developed. Under the prior appropriation doctrine, a person could use water from a stream without ownership of abutting land provided that the use did not interfere with an earlier use. Priority of appropriation became the recognized principle, with the courts ultimately determining the priority sequence and the amount of water of each appropriation. A law regulating the appropriation of water and affirming the prior appropriation doctrine was passed in Idaho in 1881. The Idaho State Constitution affirmed the principle that the stream belonged to the State, and a procedure was established through which future appropriation of water was to be made by application to the State Engineer (currently the Director of the Idaho Department of Water Resources). For administrative purposes, the State of Idaho has divided the Snake River into three sections. Water District 01 extends from Milner Dam to Palisades Reservoir including all of the Snake River drainage in Idaho above Milner Dam.

In Idaho, public land was acquired largely under the Homestead Act (1862), the Desert Land Act (1877), and the Carey Act (1884). The Carey Act was used quite extensively in the development of lands for irrigated agriculture production in the Upper Snake River system. Under the Carey Act, each state, where irrigation was feasible, was to select up to 1 million acres of arid Federal lands to secure their reclamation by inducing private capital to construct the works necessary for irrigation. The Secretary of the Interior was authorized to ". . . donate, grant, and patent to the State free of cost for survey or price . . ." desert land for reclamation, cultivation, and settlement. The State Land Board was to approve the plans for development, set a price to be charged by the developing company, and provide supervision for the projects. The promoting company was to acquire a lien upon the lands of the settlers as security for payment of the obligation due for the water rights.

The first project constructed under the Carey Act was the Aberdeen-Springfield Canal completed in 1895 to divert 1,230 cfs from the Snake River at a point 3 miles downstream from the Firth bridge. Further to the west, the Twin Falls Land and Water Company was formed to provide for the development of Milner Dam and for the construction of the Twin Falls Canal to convey water to lands south of the Snake River. Upon completion in 1905, the Twin Falls tract included 202,000 acres.

Although the Desert Land Act and the Carey Act were somewhat effective in promoting irrigation development by private enterprise, development was limited by the financial resources of the individual promoters and the state. As the less complex irrigation projects were completed, the Federal Government was pressured to participate in development of irrigation by providing financing and water through storage development. Early settlers often overestimated the available water supply, not realizing that natural flows in August and September were insufficient to dependably irrigate crops.

At about the same time, the U.S. Geological Survey (USGS) had been formed and was actively classifying public lands and examining the geologic structure, mineral resources, and products of the national domain. The USGS reviewed opportunities for storage of water and

irrigation of lands. Included in this evaluation were lands for a proposed Minidoka Project, lying to the north and south of the Snake River and extending up to 35 miles west from Minidoka Rapids (situated 6 miles south of the town of Minidoka) and water storage facilities in the upper basin. In 1902, the Reclamation Act was passed and work on the proposed Minidoka project was assigned to the newly created Reclamation Service. At the time that the Reclamation Service became involved in the investigation of irrigation potentials, Snake River flows were being used to irrigate some 275,000 acres upstream of Minidoka Rapids. Construction of Minidoka Dam and carriage facilities began in 1904, and a rockfilled crib dam was constructed at Jackson Lake in 1907. By 1912, 110,000 acres of the Minidoka Project could be irrigated.

As irrigation development proceeded, it became clear that the water supply was not as abundant as had once been thought. The irrigation season of 1905 was the first time that the Snake River canals experienced a serious water shortage. During the summer, the Snake River was dry for a distance of 10 miles in the vicinity of Blackfoot. Irrigation diversion came under the jurisdiction of the court which mandated the closing and opening of the headgates to only partially fulfill water claims so that a total loss of crops in the Blackfoot area was averted.

Completion of the Twin Falls North Side Project under the Carey Act to irrigate up to 180,000 acres on the north side of the Snake River was delayed until storage could be obtained from an enlarged Jackson Lake. In 1919, Jackson Lake (by then reconstructed to a capacity of 847,000 acre-feet) failed to fill, and a serious water shortage occurred. In 1924, another water shortage occurred, and crops on the North Side Twin Falls tract were in jeopardy.

The dry years and the resulting loss of agricultural production and financial instability provided the impetus for construction of additional Federal storage capacity. Additional storage capacity became available with the completion of American Falls Dam in 1927. While both Jackson Lake Dam and American Falls Dam were constructed by Reclamation, up front funding was secured from the participants to supplement Federal appropriations so that construction could proceed.

Federal irrigation development continued with the Gooding Division of the Minidoka Project in 1927, the Upper Snake River Division in 1935, the North Side Pumping Division in 1950, and other irrigation projects in the upper Snake region.

Reclamation involvement in irrigation development of the region is the response of the Congress to requests for Federal participation. Federal involvement began primarily with the USGS, which began classification of public lands at the request of Congress. The 1902 Reclamation Act provided the broad authority under which the Reclamation Service (later the Bureau of Reclamation) operates to identify and pursue irrigation potentials. The Reclamation Project Act of 1939 provided additional broad authorities particularly in the area of expending funds and recovering construction charges on Federal reclamation projects. The Federal Water Project Recreation Act of 1965 (Public Law 89-72) further broadens authorities by essentially authorizing recreation and fish and wildlife enhancement as a function at all existing reservoirs. More recently, Title XXVIII of Public Law 102-575 provides some additional broad authorities. Other public laws, especially the various flood control acts, provide further authorities for consideration and authorization of other functions. Specific authorizations of projects, divisions, and units or specific facilities are contained in a variety of individual project or facility authorizing acts and in some appropriation acts.

A USGS study in 1990 indicates that there are about 2,470,000 acres of irrigated land upstream of Milner Dam. This includes about 60,000 acres of the Fort Hall Indian Project which is irrigated

with natural flows, ground water, and storage in Blackfoot Reservoir and Grays Lake.
About 1,070,000 acres are part of Reclamation's Minidoka and Michaud Flats Projects with about 210,000 acres receiving a full water supply and about 860,000 acres receiving a supplemental water supply from Reclamation storage. The remaining 1,340,000 acres are outside Federal projects and much of this acreage is irrigated from ground water; none receive storage water developed by Reclamation.

Annual withdrawal of water is about 14,365,000 acre-feet, of which 6,581,000 acre-feet are from ground water and 7,784,000 acre-feet are from surface water. The annual consumptive use of water (net use of water) totals about 4,661,000 acre-feet.

IV. Overview

Federal Projects

There are five major Federal projects associated with development of irrigation and water and land resources in the upper Snake. The Federal projects include the following:

Fort Hall Indian Project, constructed and operated by the Bureau of Indian Affairs

Minidoka Project, constructed and operated by Reclamation

Michaud Flats Project, constructed and operated by Reclamation

Palisades Project, constructed and operated by Reclamation

Ririe Project[1], constructed by the U.S. Army Corps of Engineers (Corps) and operated by Reclamation

Minidoka Project lands extend discontinuously along the Snake River from the town of Ashton on the Henrys Fork to the town of Bliss in south-central Idaho, about 300 miles downstream. Project lands downstream from Milner Dam are served by diversions from the Milner Pool.

Project facilities furnish a full or supplemental water supply to more than 1 million acres of land from five reservoirs that have a combined active storage capacity of about 2.8 million acre-feet (Note: this does not include the storage of the Palisades and Ririe Projects). Major project works consist of Minidoka Dam and Powerplant, Jackson Lake Dam, American Falls Dam, Island Park Dam, and Grassy Lake Dam. In addition, there are thousands of miles of canals, laterals, and drains and many water supply wells.

The Fort Hall Indian Project is an irrigation project constructed primarily on the Fort Hall Indian Reservation. The water supply is provided from Blackfoot Reservoir, which has an active capacity of about 350,000 acre-feet; Grays Lake, which has an active capacity of about 40,000 acre-feet; and the Snake River. Operation of Blackfoot Reservoir and Grays Lake are not integrated into the operation of other Federal reservoirs in the upper basin.

The Michaud Flats Project is an irrigation project developed by Reclamation for irrigation of about 11,000 acres of land adjacent to the town of American Falls. There was no storage facility constructed specifically for the project which gets its water supply from storage space in American Falls and Palisades Reservoirs and from ground water.

[1]Ririe Dam and Reservoir are considered to be Reclamation facilities for the purposes of this document.

The Palisades Project consists of Palisades Dam and Reservoir which were constructed to provide additional storage of 1,200,000 acre-feet in the upper basin. (Palisades Project is often combined in common speech with Minidoka Project, e.g., "the Minidoka-Palisades Project" because the two are so closely related. Often, a speaker includes the operation of the Palisades Project when the stated subject is the Minidoka Project.)

The Ririe Project consists of Ririe Dam and Reservoir and was constructed for flood control and irrigation. The reservoir has an active storage capacity of more than 80,000 acre-feet.

Reclamation Project Authorizations

Most of the Reclamation reservoirs in the upper Snake River basin were authorized as part of the Minidoka Project under the 1902 Reclamation Act with subsequent authorization of specific facilities by the Secretary of the Interior or the President. From 1902 to 1910, the Secretary of the Interior had authority to approve construction after a finding of feasibility. The Act of June 25, 1910 modified the procedure to require the President to approve the authorization. The 1939 Reclamation Act returned authorization authority to the Secretary of the Interior but a finding of feasibility had to be submitted to the President and the Congress. Authorizing legislation sometimes clearly states the authorized purpose of the project or facility but often indicates only that the project is to be constructed in accordance with a cited report.

The authorized purpose is an important consideration because it determines the limits within which a Federal facility can be operated. Flood control, as a project function, was authorized after most facilities were constructed. Recreation, including fish and wildlife enhancement, is an authorized function at projects and reservoirs generally through legislation that was passed after the facilities were constructed. However, the general authorizations for recreation apply to management of water and land surfaces and the development of facilities for recreation or safety purposes; they do not authorize reallocation of water supply for other purposes.

The Minidoka Project was authorized by the Secretary of the Interior on April 23, 1904, under the 1902 Reclamation Act. Investigation and construction funds for the Gooding Division (Gravity Extension Unit) were provided by the Act of January 12, 1927, and the Secretary's finding of feasibility dated July 2, 1928 was approved by the President on July 3, 1928. The Upper Snake River Division was authorized by a finding of feasibility of the Secretary and approved by the President on September 20, 1935. The North Side Pumping Division was authorized for construction by the Act of September 30, 1950. Replacement of American Falls Dam was authorized by the Act of December 28, 1973 (Public Law 93-206).

The Palisades Project was initially authorized by the Secretary of the Interior on December 9, 1941 under the Reclamation Project Act of 1939. It was reauthorized by the Act of September 30, 1950 (Public Law 81-864).

The Michaud Flat Project was authorized by the Act of August 31, 1954 (Public Law 83-741) and the Ririe Dam and Reservoir Project was authorized by the Act of October 23, 1962 (Public Law 87-874).

Table 1 shows the original authorization associated with each reservoir.

Table 1.—Authorization of Reclamation Storage Facilities		
Facility and Construction[1]	**Authorization**	**Original Authorized Purpose[2]**
Minidoka Dam 1904-1906	Secretary of the Interior on April 23, 1904 (under the 1902 Reclamation Act)	Irrigation and power
Jackson Lake Dam, 1907, 1910-11, 1916	Secretary of the Interior on April 23, 1904 (under the 1902 Reclamation Act)	Irrigation
American Falls Dam 1925-27, 1976-78	(under 1902 Reclamation Act[3]). Replacement by Act of December 28, 1973	Irrigation and power
Island Park Dam 1935-38	President on September 20, 1935 (under 1902 Reclamation Act)	Irrigation
Grassy Lake Dam 1932-39	President on September 20, 1935 (under 1902 Reclamation Act)	Irrigation
Palisades Dam 1951-57	Secretary of the Interior on December 9, 1941. Reauthorized by Act of September 30, 1950	Irrigation, power, flood control, and fish and wildlife
Ririe Dam[4] 1970-77	Act of October 23, 1962	Flood control, irrigation, and recreation.

[1]Multiple construction periods indicate reconstruction or additional construction to reach the current storage capacity.
[2]The Act of September 30, 1950, by reference, appears to authorize the upper Snake River Reservoir system to be operated for flood control. In addition, several flood control acts have essentially authorized flood control at all Reclamation reservoirs. Public Law 89-72 along with Public Law 102-575 have essentially authorized recreation (including fish and wildlife enhancement) at all Reclamation projects. However, this authorization is primarily for construction of facilities and management of lands and does not authorize a change in the use of storage space in a reservoir.
[3]Legislation in 1924 addresses purchase of Indian lands and expenditure of monies for construction of the reservoir; however, a specific document authorizing construction has not been identified.
[4]Constructed by the Corps, but operated by Reclamation.

History and Operation of Reclamation Dams

The major Reclamation dams are discussed below in the approximate order in which they were constructed. Table 2 summarizes the capacities of Reclamation reservoirs located upstream of Milner Dam. (Additional information on reservoir space is included in Appendix A.)

Table 2.—Capacities of Federal Reservoirs					
Reservoir	Elevation at Full Pool (feet above sea level)	Capacity (Acre-Feet)			
		Active[1]	Inactive[2]	Dead[3]	Total
Minidoka	4,245	95,200	115,000	--	210,200
Jackson Lake	6,769	847,000	--	--	847,000
American Falls	4,354.5	1,672,590	--	--	1,672,590
Grassy Lake	7,120	15,200	--	270	15,470
Island Park	6,302	127,265	381	--	127,646
Palisades	5,620	1,200,000	157,000	44,000	1,401,000
Ririe	5,119	80,500	6,000	4,000	[4]90,500
Total	Not Applicable	4,037,755	278,400	48,270	4,364,406

[1]Water that can be released for specific purposes.
[2]Water that can be released from the reservoir but is normally retained for a specific purpose, e.g., Island Park and Ririe--sediment control; Palisades and Minidoka--power or operational head (see also Appendix A).
[3]Water that cannot be released by gravity flow because it is below the elevation of the outlet.
[4]Does not include 10,000 acre-feet of exclusive flood control space.

Minidoka Dam

Construction of Minidoka Dam began in 1904 and was completed in 1906; Minidoka Powerplant was completed in 1909. In 1909, the overflow spillway section was raised 5 feet with the addition of 334 stop-log piers and bays. Development of Minidoka Project lands began with diversion of water from Minidoka Dam to the Minidoka Irrigation District and the Burley Irrigation District. Lands around Lake Walcott (the impoundment formed by Minidoka Land) are withdrawn by Reclamation and managed by the U.S. Fish and Wildlife Service (USFWS) as part of the Minidoka National Wildlife Refuge which was established in 1909.

Several activities have recently taken place at Minidoka Dam. The spillway radial gates were replaced in 1989-90. The original gates were installed in 1913 and were in need of complete replacement. Rehabilitation and construction activities at the powerplant have been initiated and are expected to be completed in 1997. The "old" Minidoka Powerplant is being replaced with a new, two unit powerplant built near the left abutment of the embankment dam. Units 1 through 5 will be retired and preserved as museum pieces in the old powerplant. Existing Unit 6 will be completely replaced and Unit 7 will have modern controls installed. The new powerplant will house Units 8 and 9. With this construction, generation nameplate capacity will be increased from 13,4 kilowatts (kW) to about 28 kW.

Minidoka Dam is primarily a diversion dam and a power generating facility. Lake Walcott is the easiest reservoir to fill because it is relatively small and winter flows in the Snake River at Minidoka are always sufficient to fill it. An early priority storage right means that the storage right must be physically filled somewhere in the system before junior storage rights can be filled (see additional discussion under "Water Rights").

Normal spring/summer operation is to raise the elevation to 4245 feet and to maintain that level to provide adequate flow to the main canals of the Burley and the Minidoka Irrigation Districts. Flows from American Falls Reservoir are diverted to the canals and/or passed through Minidoka Dam downstream to Milner Dam. In late summer,

deliveries are made from storage if needed. In the fall, when irrigation deliveries will not be affected, the reservoir is drawn down and maintained at elevation 4240 feet or lower. This protects the concrete overflow spillway stop-logs, piers, and bays from ice damage. Winter inflow includes any releases from American Falls plus reach gains that normally total 250 to 350 cfs.

Jackson Lake Dam

The original Jackson Lake Dam (rockfilled crib) was completed at the outlet of a large existing lake in 1907 but partially failed in 1911; the size of the original lake is unknown but may be as much as 2 million acre-feet . A concrete gravity structure with earth embankment wings was built at the site in 1911 and further raised in 1916. Safety concerns were identified at the dam in the mid-1970's, and from 1977 to 1989 the level of Jackson Lake was maintained at a lower than normal level because of concerns for possible dam failure during an earthquake. In 1989, reconstruction was completed under the authority of the Reclamation Safety of Dams Acts making the full capacity again available. Lands around the lake are withdrawn by Reclamation. Since the lands are inside the boundary of Grand Teton National Park, they are managed by the National Park Service. (See also "Snake River Compact.")

Jackson Lake is operated in conjunction with Palisades Reservoir for flood control. In the late summer or early fall, flood control space is evacuated, lowering the lake to 647,000 acre-feet of storage; normal summer operation sometimes empties the flood control space. Winter inflow, minus outflow, is stored until the 647,000 acre-feet is reached and then passed to maintain that level; however, additional flood control releases may be made in the late winter or early spring. Winter flow releases are generally above 200 cfs. In the spring and summer, inflow is stored until full pool is reached or released as needed to meet irrigation demands.

American Falls Dam

American Falls Dam was completed in 1927 and rebuilt in 1977. Idaho Power Company (IPC) owns and operates a powerplant under a Federal Energy Regulatory Commission (FERC) license at the dam. Lands around American Falls Reservoir were withdrawn and acquired and are managed by Reclamation; lands located on the Fort Hall Indian Reservation are managed by the Shoshone-Bannock Tribes.

A winter minimum release of at least 300 cfs is maintained from November until spring; in recent years the release from December to February has averaged 4,050 cfs. The magnitude of the winter flow depends principally on the amount of carryover storage in American Falls Reservoir and the system upstream. If American Falls is nearly drained at the end of the irrigation season, a flow of about 350 cfs is commonly released to maintain water quality downstream. If carryover storage is good, estimates are made of the amount of unstorable flow expected prior to the irrigation season. This unstorable flow is then released as uniformly as feasible to provide higher flows throughout the winter.

The primary winter operation goal is to fill American Falls by April 1 or the onset of the irrigation season. IPC often moves some of its American Falls storage water (total of 44,276 acre-feet) in December and this may increase the flow for a short time. If inflows to American Falls are much higher than normal or if the carryover storage is substantial, winter releases may range from 1,000 to 5,000 cfs. Some flood control operations may be made at American Falls but are incidental to irrigation operations. Summer releases from American Falls are dictated by downstream irrigation demands and downstream water rental pool leases below Milner Dam.

Island Park Dam

Island Park Dam was completed in 1938, primarily for irrigation of land in the St. Anthony to Rexburg area. Safety of Dams work was completed in the early 1980's. In 1991, the Fall River Rural Electric Cooperative (FRREC) received a FERC license to construct and operate a small powerplant at the dam; generation began in 1994. FRREC also received approval in 1995 to modify the spillway to enhance hydropower generation. This modification will increase the active storage capacity to 135,000 acre-feet and improve water temperature conditions downstream in the Henrys Fork that will benefit its world famous rainbow trout fishery. A combination of withdrawn and acquired lands around Island Park Reservoir are managed by the U.S. Forest Service (USFS).

Winter releases are established in late October and November of each year and are dependent on carryover storage and fall inflows Although there is no requirement for a minimum release, Reclamation has worked with spaceholders and others to try to maintain a release of 300 cfs between irrigation seasons. Recent winter releases have ranged from 100 to 300 cfs. With good carryover and normal to above normal runoff, a release of about 500 cfs is maintained. Close communication is maintained with the Henrys Fork Foundation (a private conservation group) and the Idaho Department of Fish and Game (IDFG) on all release operations, and consideration is given to fish and swan habitat.

Island Park is operated to provide additional flow in the winter months using water that was adversely stored (storage accumulated adverse to a senior storage priority) in the fall after the irrigation season. In the spring and early summer, water is stored with the goal of filling the reservoir in April. Some incidental flood control operation may occur if the forecast dictates. In the past, Island Park Reservoir was managed to maintain a surcharge of one additional foot above the dam's spillway lip to meet contractual irrigation storage obligations. With the spillway modification and resultant increase in active capacity, this water will no longer be in surcharge.

Grassy Lake Dam

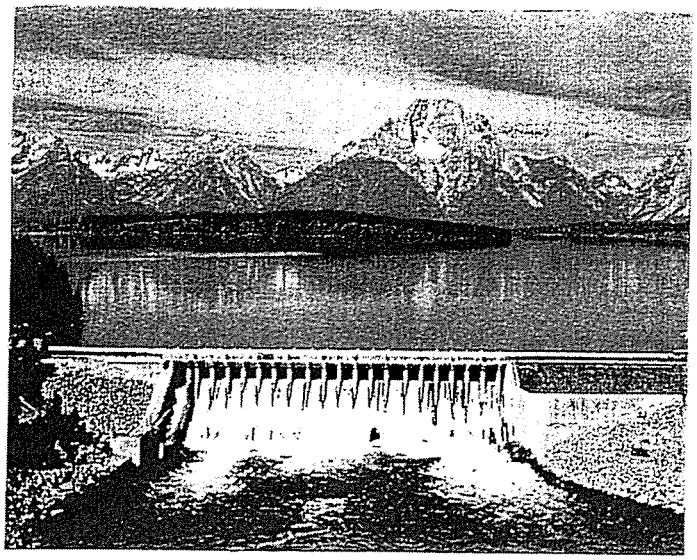
Grassy Lake Dam was completed in 1939. Grassy Lake is a small reservoir located in Wyoming just outside the southwest corner of Yellowstone Park. Lands around Grassy Lake are withdrawn by Reclamation and managed by the USFS.

Water is diverted from Cascade Creek to Grassy Lake in the fall, winter, and early spring. No water is diverted during periods of high inflow, full reservoir conditions, or during the summer months. Grassy Lake does not normally release water in the winter. Diversions into the lake begin in late winter and early spring with the goal of filling Grassy Lake in early summer. Releases are made on demand, normally in July and August. Additional releases are made if necessary to reach the winter operation level. Grassy Lake is difficult to fill the following spring if drawn down to 7,000 acre-feet or lower.

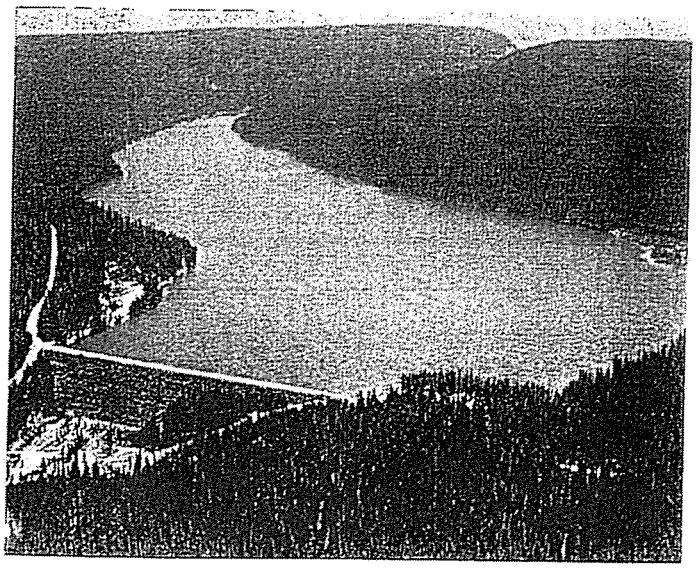
Palisades Dam

Palisades Dam was completed in 1957. The powerplant was uprated in 1994 and all four units were rewound increasing the nameplate rating from the original 118,750 kW to 176,600 kW. As part of the mitigation for the powerplant uprate, a fish screen was constructed on an irrigation diversion on Palisades Creek, a small tributary which joins the Snake River approximately 3 miles downstream from the dam. The acquired and withdrawn lands around Palisades Reservoir are managed by the USFS.

At Palisades, winter minimum releases are established in early November on the basis of fall carryover storage and fall inflow and are maintained throughout the winter. A minimum flow of 550-750 cfs is usually maintained depending on the severity of drought conditions. The usual minimum flow is 1,100-1,200 cfs. If



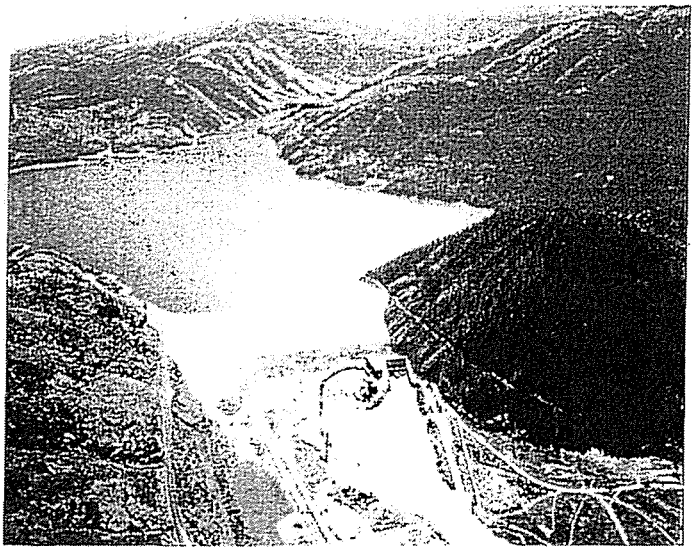
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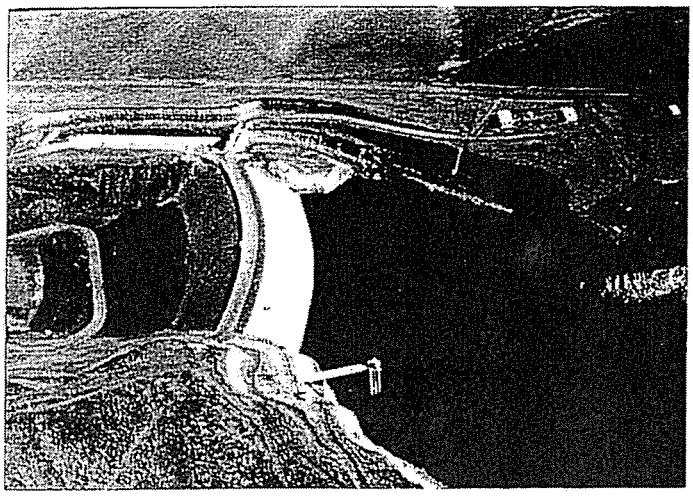
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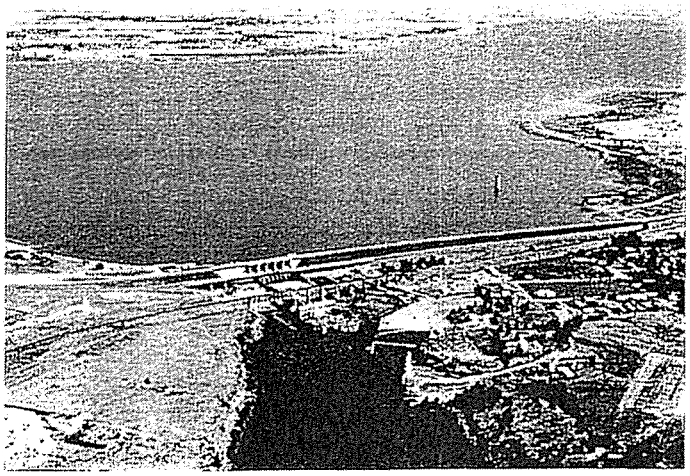
Island Park Dam



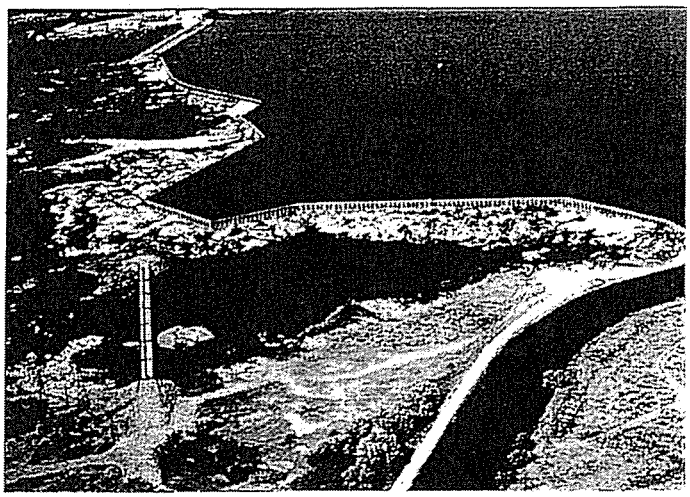
Palisades Dam



Ririe Dam



American Falls Dam



Minidoka Dam

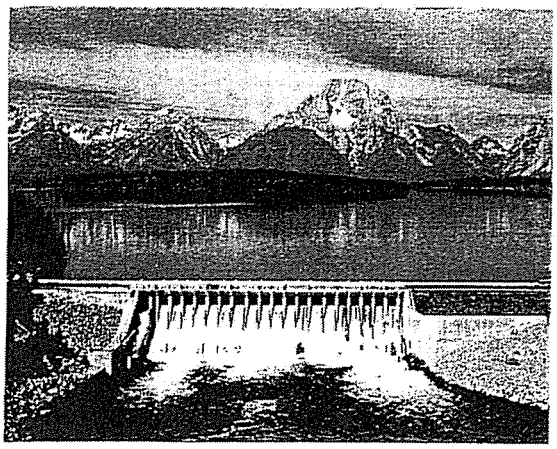
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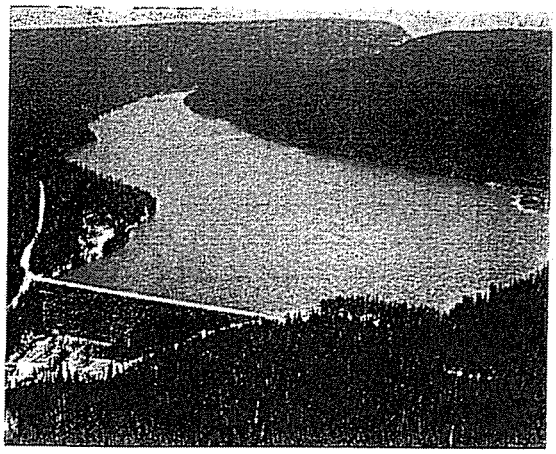
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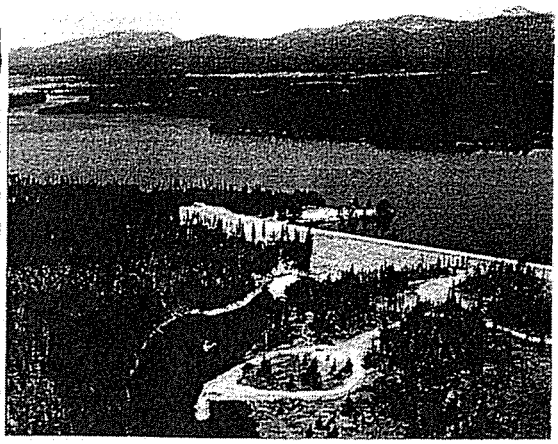
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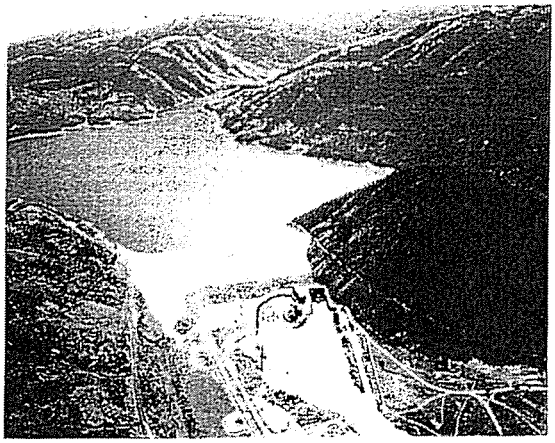
Jackson Lake Dam



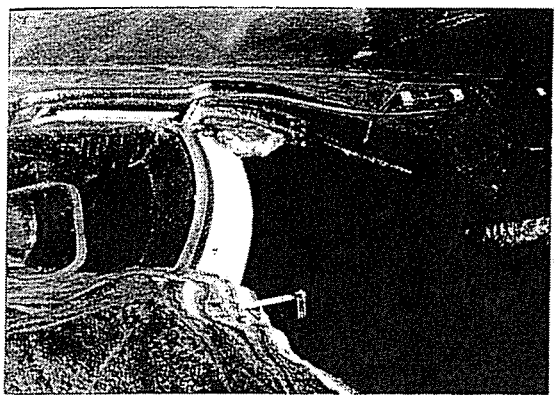
Grassy Lake Dam



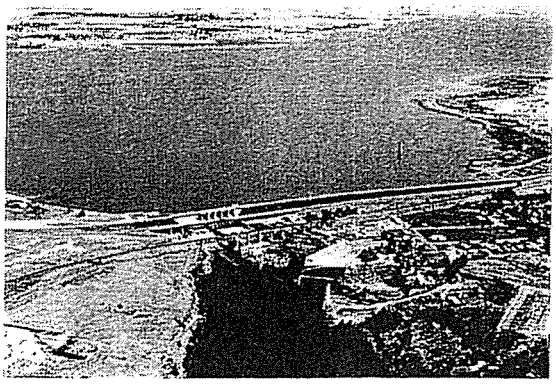
Island Park Dam



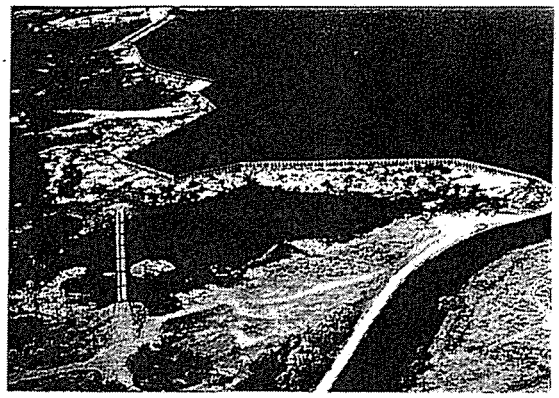
Palisades Dam



Ririe Dam



American Falls Dam



Minidoka Dam

carryover storage is good, higher releases may be needed around the end of the calendar year to create or maintain flood control space.

During the spring runoff, Palisades is operated in combination with Jackson Lake under flood control rules which may require increased releases depending on the forecast. The goal is to fill Palisades when flood potential subsides; after the peak spring runoff. Releases are made throughout the summer and fall to meet downstream irrigation demands. To the extent possible, releases are directed through the powerplant but storage is not specifically released for power production.

Ririe Dam

Ririe Dam and flood control channel were completed by the Corps in 1977 and were turned over to Reclamation for operation. The reservoir is operated primarily for flood control. Uncontracted storage in Ririe Dam is part of the 1990 Fort Hall Indian Water Rights Agreement (see chapter VII) which is in the process of being approved. Lands around Ririe Reservoir are managed by the IDFG with recreation facilities managed by Bonneville County.

Water is stored at Ririe throughout the winter, spring, and early summer. There is no winter minimum flow because of possible ice formation in the flood channel. After spring, the reservoir is maintained as high and as stable as possible for recreation with a release of at least 30 cfs to provide water for natural flow right demands. After Labor Day the reservoir is drawn down to the flood control pool for the winter, releasing as much as 45,000 acre-feet by November 1.

Other Major Dams and Reservoirs

There are four other major dams and reservoirs in the upper Snake River basin. Two are operated by the Bureau of Indian Affairs and two are owned and operated by non-Federal entities.

Milner Dam

Milner Dam is owned and operated by the Twin Falls Canal Company and was constructed for irrigation in 1905. Because of safety concerns, the dam was rebuilt in 1991-1992. Although the reservoir has about 50,000 acre-feet of storage, the primary purpose of the dam is to raise the pool to a level adequate to divert water to the several irrigation canals and pumping plants and for operation of the powerplants. Associated with the dam are two powerplants owned and operated by IPC and operated under FERC licenses, under which IPC is required to pass 200 cfs whenever water is available. The smaller powerplant discharges directly to the stream downstream from the dam. Water for the larger powerplant is diverted from the Twin Falls Canal to penstocks for the powerplant located 1 mile downstream from the dam. Discharge is to the Snake River.

Blackfoot Reservoir and Grays Lake

Blackfoot Reservoir and Grays Lake are owned and operated by the Bureau of Indian Affairs as part of the Fort Hall Indian Project. Blackfoot Reservoir, completed about 1913 and raised to its current capacity by an auxiliary dam, has a total capacity of about 413,000 acre-feet and an active capacity of about 350,000 acre-feet. It is the main source of water for irrigation and municipal and industrial water supply on the Fort Hall Indian Reservation. Grays Lake, constructed in 1924, has a total capacity of about 400,000 acre-feet and a surface area of about 22,000 acres, but provides only 40,000 acre-feet of active storage. A canal diverts water from Grays Lake to Blackfoot Reservoir. Because of the small active storage capacity and large wetland area, Grays Lake is operated primarily for wildlife benefits.

Henrys Lake

Henrys Lake Dam is owned and operated by the North Fork Reservoir Company. The dam was completed at the outlet of a natural lake of unknown capacity in 1923 and has an active storage capacity of about 90,000 acre-feet. Storage in the lake is used to irrigate private lands.

Reclamation Spaceholder Contracts

Reclamation Projects are authorized with the intent of recovering the capital and operating costs from the direct beneficiaries. Over time and with experience in developing large projects, the Congress has changed the procedures and rules to achieve this goal. Currently, the capital and operating costs of a project are allocated among the benefiting functions, e.g., irrigation, flood control, power, fish and wildlife, etc. In some cases, the benefiting entities are widespread and cannot easily be identified or there is a national interest in the benefit, e.g., flood control, anadromous fish enhancement, and migratory bird enhancement. These costs are made nonreimbursable meaning that the people of the United States pay these costs through general taxes. Where costs are assigned to functions that benefit specific entities, the costs are made reimbursable, and repayment contracts to recover the reimbursable costs are signed with the benefiting entities. Capital costs assigned to the irrigation function are to be fully repaid without interest over a specific time period (as low as 10 years in the early 1900's to about 50 years at present depending on the type of contract). Reclamation irrigation repayment contracts are generally spaceholder contracts or water service contracts. Annual operating costs (operation, maintenance, replacement, and power costs) are included in the repayment contracts.

Project capital costs are seldom reallocated, a process that requires the Congress to reauthorize the project. However, annual operating costs are adjusted from time to time not only to reflect changing economic conditions but changes in benefits. Changes in the contracts must be approved by all of the signing entities.

All of the repayment contracts for Reclamation storage in the upper Snake River basin are spaceholder contracts that include an annual payment for the reimbursable cost of constructio and for operation and maintenance. A spaceholder contract means that Reclamation sol each contractor (spaceholder) a share of the reservoir space, not a specific amount of water t be delivered each year. Carryover rights were also established, meaning that spaceholders could retain unused stored water from one year to the next. Under this system a water user's supply of storage water is a function of the space contracted, carry-over storage from previous years, and accrual to storage in the current year. However, the total amount of water due a spaceholder cannot exceed the volume of the contract space. Spaceholder contracts are held i perpetuity but can be sold to another entity with approval of Reclamation under Idaho State wate law.

The Fremont-Madison Irrigation District is the only contracting entity for Island Park Reservoir and Grassy Lake. The District is served primaril by the Henrys Fork and Teton River. Some 64 other contracting entities hold space in one or more of the following reservoirs: Jackson Lake, American Falls Reservoir, and Palisades Reservoir. A total of 31 contractors hold space only one reservoir, 12 contractors hold space in two reservoirs, and 21 contractors hold space in three reservoirs. A list of spaceholders in these three reservoirs and the capacities and contracte space for all of the Federal reservoirs is included as appendix A.

These spaceholder contracts are in marked contrast to conventional repayment and water service contracts often used at other Reclamatio Projects. With water service contracts, Reclamation essentially delivers a specific amou of water or an entitlement and all water that

remains in a reservoir after delivery of the specified entitlements is under Reclamation's control. With spaceholder contracts, Reclamation's control is limited to water in the uncontracted space and the inactive space. If all the active reservoir space has been marketed or contracted, all of the water in the active space of the reservoir is under control of spaceholders. That is the case for the Federal reservoirs upstream from Milner Dam. All of the active space has been marketed except for the following: 500 acre-feet in Palisades Reservoir and 10,000 acre-feet of exclusive flood control in Ririe. Reclamation has recently purchased about 22,400 acre-feet of storage space for salmon flow augmentation. Technically, this latter space can be included in uncontracted total, but the space is assigned to a specific use.

Spaceholder contracts make possible another concept—water banking. Under these contracts, the spaceholders can accumulate water in their contracted space and they may rent that water. To avoid problems with possible forfeiture of use (under State law a water right holder retains the right only if the water is used for a beneficial purpose), the State authorized creation of a water bank and defined the water bank as a beneficial use under State law.

In poor water years, when not all of the spaceholder storage is filled, each spaceholder gets his/her carryover from previous years and an amount of the accrued water supply proportionate to the contracted storage space. During normal and above normal years, the spaceholder storage space usually fills and the supply may exceed the amount used by the spaceholder who may carry over the excess or market it to a rental pool.

Spaceholder contracts are an important part of reservoir operations as the contract language, in part, defines the operating limits. For example, the contracts often stipulate that Reclamation will maximize the storage of water for irrigation use.

Reclamation Reservoir Cost Allocations

Construction Costs

As indicated earlier, the facilities of the Project were essentially for single purpose irrigation facilities; power at Minidoka Dam and American Falls Dam was intended primarily for operation of the dams and pumping water for irrigation. As a result almost all of the cost of these dams and reservoirs were to be repaid by irrigation interests. The capital cost of the Palisades Project was allocated to flood control (47 percent), irrigation (20 percent), power (32 percent), recreation (0.2 percent) and fish and wildlife (0.8 percent). The capital cost of Ririe Dam was allocated to flood control (74.30 percent), irrigation (14.33 percent), and recreation and sport fishery (11.37 percent). Costs assigned to flood control are considered nonreimbursable. All of the capital costs assigned to fish, wildlife, and recreation for these facilities are nonreimbursable. The only reimbursable costs of these facilities are the costs allocated to irrigation and power.

The repayment obligation for construction of the Reclamation facilities (dams, canals, etc.) of the Minidoka and Palisades Projects have for the most part been paid except for the obligation incurred for recent safety of dams work at Jackson Lake Dam. The Fremont-Madison Irrigation District has repaid the construction obligation for Island Park Reservoir and Grassy Lake. At present, most of the original contracting entities for the Minidoka and Palisades Projects have little or no repayment obligation remaining. As a result, annual payments to Reclamation are primarily for operation and maintenance.

Annual Operating Costs

Annual operating costs include operation, maintenance, replacement, and power costs needed to operate and maintain the facility over an extended period. Most of the reservoirs were single purpose at the time of construction and annual costs were to be repaid by irrigation interests. Later, other purposes, including flood control, recreation, and fish and wildlife were recognized and in some cases authorized. At present, all of the reservoirs provide multipurpose benefits. This change is recognized by allocating annual operating costs among several functions.

Allocation of annual operating costs for the older reservoirs uses the Lineweaver allocation method which recognizes that all reservoirs provide substantial benefits to recreation and fish and wildlife (e.g., flatwater boating, water skiing, reservoir fishery, wetlands, etc.). The annual operating costs of Palisades and Ririe Dams and Reservoirs are allocated to project functions following standard Reclamation procedures. Table 3 summarizes annual operating cost allocations. None of the annual costs allocated by the Lineweaver method to recreation and to fish and wildlife are reimbursable.

Table 3.—Allocation of Annual Operating Costs for Reclamation Reservoirs (percent of total cost)

Reservoir	Flood Control	Recreation	Fish and Wildlife	Irrigation	Power
American Falls	33.5	4.0	4.0	58.5	0.0
Grassy Lake	0.0	4.0	4.0	92.0	0.0
Island Park	13.0	4.0	4.0	79.0	0.0
Jackson Lake	29.5	4.0	4.0	62.5	0.0
Minidoka Dam	0.0	4.0	4.0	42.0	50.0
Palisades Dam	27.57	4.0	4.0	27.57	36.86
Ririe Dam	77.2	1.7	0.0	21.1	0.0

Water Rights

Hydraulic mining in the west was an early activity that required diversion of a large amount of water for transport to another place of use. As a result, the prior appropriation doctrine of water rights was developed in the west. Because of the arid conditions, this doctrine was also adapted for irrigation, and the riparian doctrine of water rights that developed in the more wet climate of the east was discarded throughout much of the west as inappropriate.

Under the prior appropriation doctrine, a person could use water from a stream without ownership of abutting land provided that the use did not interfere with an earlier use. Priority of appropriation became the recognized principle, with the courts ultimately determining the priority sequence and the amount of water of each appropriation. A law regulating the appropriation of water and affirming the prior appropriation doctrine was passed in 1881 while Idaho was a Territory. The Idaho State Constitution affirmed that streams belong to the State. Legislation has

established a procedure through which appropriation of water is made by application to the State Engineer (currently the Director of the Idaho Department of Water Resources).

Water rights are administered by the State and are issued by date of appropriation for specific quantities, diversion points and places of use, and purposes. The 1902 Reclamation Act and subsequent Federal legislation affirm that the states are responsible for administering appropriative water rights within their borders. The earliest water rights for irrigation in the Boise and Payette River basins predate any storage development and are for diversion of flow at a specific rate (often called natural flow rights). Under the prior appropriation doctrine, natural flow rights are satisfied in order of priority based on date. When the water supply is limited, a water right holder with an earlier natural flow right is likely to receive a greater supply than a water right holder with a later date.

Development of storage facilities led to water rights for storage of a quantity of water (storage rights). Storage rights, along with natural flow rights, are satisfied in order of priority based on the date of the appropriation, i.e., the earliest rights must be met first. If earlier rights cannot be met, then water cannot be stored. All of the storage in a reservoir may have one priority date, but if a reservoir was increased in size at a later date, there may be a second priority date associated with the increase. As an example, Jackson Lake has storage priorities with three dates, each associated with an increase in the storage capacity of Jackson Lake. In addition, there are some cases where natural flow rights were exchanged for storage rights that may have a priority that predate the construction of the reservoir.

In the case of storage, the relative priority among spaceholders is established in the repayment contracts. In general, spaceholders have equal access to storage accruals, however, unequal access and priorities may be established in the contracts (see "District 01 Water Rental Pool" in chapter VI).

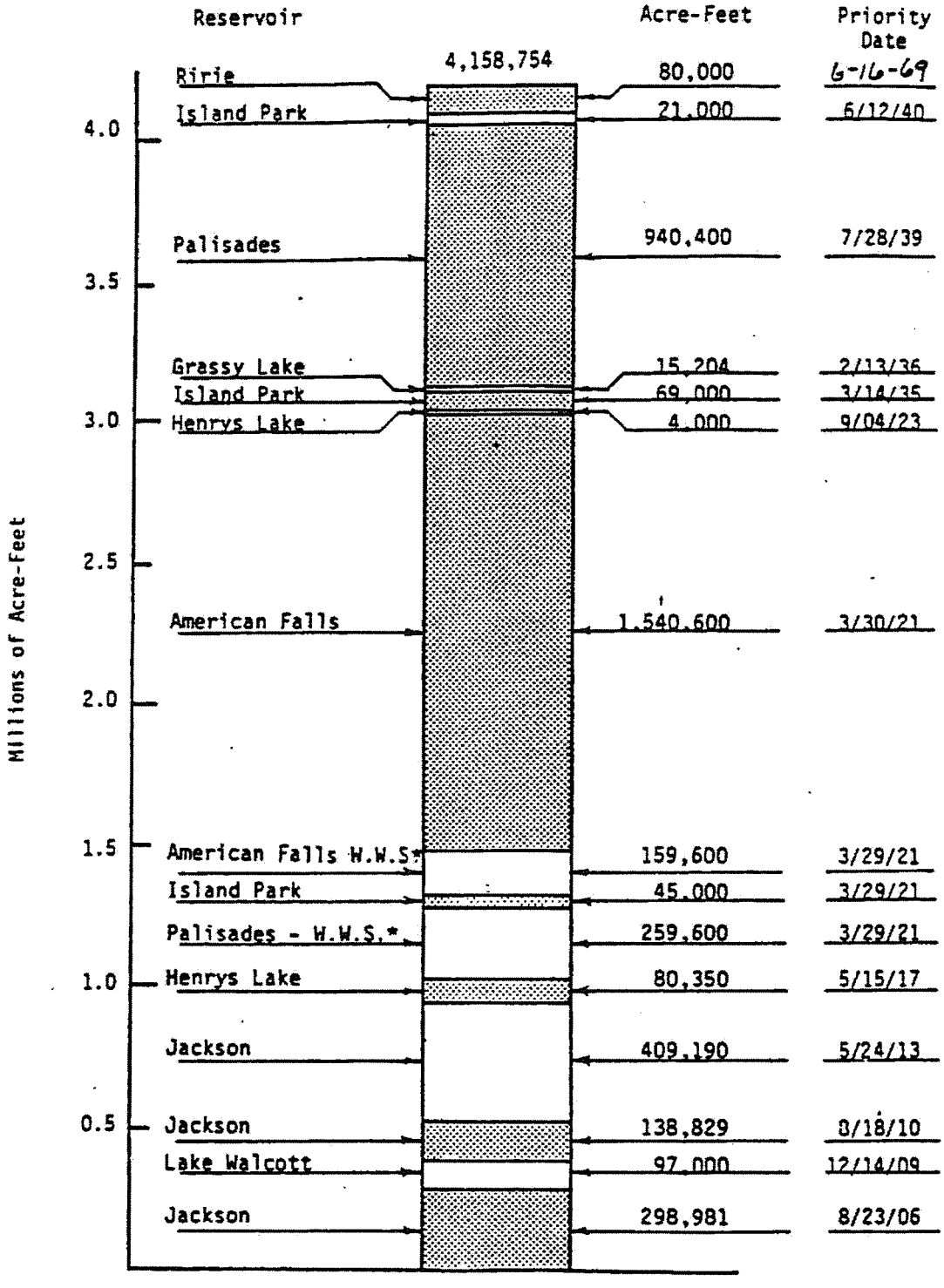
The right to use water for irrigation is an appurtenance to the lands served, whereas water rights for other purposes such as power and municipal and industrial (M&I) water supply are generally not. Water rights for irrigation are often managed collectively by some entity such as an irrigation district.

The total of the natural flow rights above Milner Dam is considerably greater than the estimated natural flow (no storage and no diversions) at Milner Dam. This is one reason that storage development in the upper Snake River basin became necessary to adequately support irrigation that was developed primarily on the basis of natural flows. Resolution of this problem is of concern to the State and to water users and is part of the impetus for the Snake River basin water rights adjudication (se chapter VII).

In the water rights process in Idaho, a permit is issued as a temporary right during development and a license is issued later. When a court takes action to settle water rights, the resulting decision on water rights converts the earlier permits and licenses to decreed water rights.

Reclamation holds title to the storage rights for all Reclamation storage facilities in the Snake River basin above Milner Dam. These rights were acquired in accordance with the laws of Idaho and Wyoming. A compact between the State of Wyoming and the State of Idaho allows water stored in Jackson Lake and Grassy Lake to be used as though the reservoirs were located in Idaho. The earliest storage rights are at Jackson Lake and the latest are at Ririe Reservoir. Some 98 water right claims have been filed by the Minidoka Project in the ongoing Snake River Basin Adjudication. Most of these claims are consistent with presently held water rights. These water rights are for uses or purposes including storage for irrigation, power, flood control,

Figure 3.—Upper Snake River Reservoir Storage Rights



* Winter Water Savings Contracts

recreation, and fish and wildlife and for direct diversion for irrigation and power. In addition, as part of the legislation and planning for the Palisades Project and to make that project feasible, a concept known as "winter water savings" was introduced. In brief, water users ceased diverting water in the winter (thus the name) in exchange for an earlier storage priority in a reservoir. There are "winter water savings " storage priorities in American Falls and Palisades Reservoirs. Figure 3 illustrates the storage rights by priority date for Reclamation storage rights and the storage rights in Henrys Lake.

Changes in water rights, such as diversion point or use, require an application to and approval by the Idaho Department of Water Resources (IDWR). If the change exceeds 50 cfs or 5,000 acre-feet, the change must also be approved by the Idaho State Legislature.

Snake River Compact

The Snake River Compact between Wyoming and Idaho was signed October 10, 1949, and approved by Congress on March 21, 1950. It allocates the waters of the Snake River to each state (96 percent to Idaho, and 4 percent to Wyoming) for storage or direct diversion exclusive of Wyoming water rights established prior to July 1, 1949. The 4 percent has been quantified to be about 200,000 acre-feet per year based on average annual runoff at the Wyoming/Idaho State line.

The Compact allows for future direct diversion or storage development in Wyoming. Idaho is to be compensated with storage by Wyoming if certain "trigger" criteria are exceeded. The Compact allows one-half of the 200,000 acre-feet to be used without restriction. However, use in Wyoming of the remaining 100,000 acre-feet requires replacement storage in the amount of one-third of such use for the benefit of existing Idaho water users. Therefore, 33,000 acre-feet of space in Palisades Reservoir has historically been identified for that purpose. This space, called Wyoming Compact Space, has now been contracted to Wyoming by Reclamation. It is to be used to meet Wyoming's obligations under the Compact. By exchange, Wyoming may use the space to maintain higher lake levels in Jackson Lake or increases releases from Jackson Lake to supplement low fall and winter streamflows.

V. General System Operation

This chapter provides an overview of operation of the upper Snake River/reservoir system. More detailed description by function is provided in chapter VI.

Climatic conditions of the area produce low precipitation in the summer and early fall, and higher precipitation during the late fall, winter, and spring. Much of the winter precipitation accumulates as snowpack. This produces natural riverflows that can peak at very high levels as snow melts in the spring and early summer, decline throughout the summer to a minimum, and remain low during the fall and winter.

Storage reservoirs are constructed and operated to change the flow regime for some purpose. Based on project authorities, the reservoir system of the upper Snake River is operated for two primary purposes—irrigation water supply and flood control. Hydroelectric power generation, recreation, and fish and wildlife functions (such as maintaining trumpeter swan habitat) are secondary or incidental to the primary operating considerations, i.e., generally, water is not specifically released from storage except for irrigation and flood control purposes.

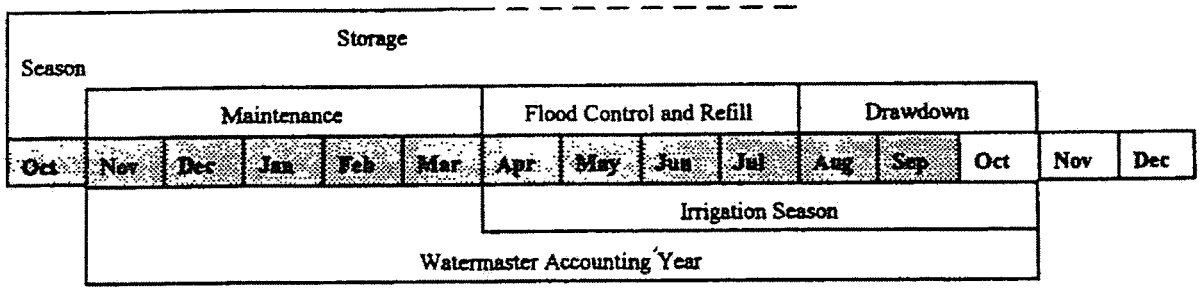
The upper Snake River reservoirs are operated as a unified storage system where water is stored and released in a manner to maximize the capability of the storage reservoirs. This means that water is physically stored in those reservoir that are most difficult to fill and is released from the reservoirs that are most likely to refill in the following year. There are two major operating principles: (1) in general, water is stored as far upstream as possible regardless of storage right priorities and (2) water is released first from the reservoirs that are easiest to refill. A water rights accounting is maintained to assure that, regardless of where water is stored or from where releases are made, the storage and use of water is properly accounted to the appropriate rights and spaceholders. This allows the system to be operated more efficiently than strictly following individual storage right priorities and functions, provides a much greater chance that reservoirs will fill, and allows releases that would otherwise violate water rights.

Water operations are not defined on a calendar year and there are several "seasons" or "years" of reference. For most purposes, a water year is used and is defined as running beginning on October 1 and ending the following September 30, e.g., the 1994 water year began on October 1, 1993 and ended on September 30 of 1994.

Spaceholder contracts for upper Snake River basin specify that the storage season begins on October 1 and extends until there is no more water to be stored and that the irrigation season begins on April 1 and extends to October 31. In keeping with the end of the contract irrigation season, the water accounting system used by the Watermaster runs from November 1 to October 31.

There are three general operating seasons based on climatological pattern and irrigation demand: (1) Maintenance from November through March, (2) Flood Control and Refill from April through July, and (3) Drawdown from August through October. This general pattern coincides with the Watermaster's accounting period. Drawdown for flood control, storage release for irrigation demand, and reservoir refill may occur in the same time frame for different reservoirs because of elevation difference and the demand for irrigation at lower elevations. Also, it is important to recognize that the beginning and ending of the three operating seasons can vary widely with climate and the water supply. The various operating seasons and the accounting period are shown in figure 4.

Figure 4.—Operating Periods and Seasons
(Water year shown by shaded blocks)



Maintenance Period

The primary function of reservoir operation during the Maintenance period of November through March is to carryover and store water to the extent allowed by flood control requirements. By the beginning of November, the reservoirs have been drawn down as the result of meeting summer irrigation needs and/or to meet a maximum elevation that provides the required flood control space. Inflow is stored, if there is more space than needed for flood control, or released as needed to maintain the general winter flood control space. Accrual of water is normally very slow as streamflows are low because of the cold temperatures at the elevation of the reservoirs. Water is released from some reservoirs to meet minimum streamflows for protection or enhancement of fish and other wildlife. After January 1, anticipated spring flooding becomes a factor. Depending on the size of the snowpack the flood control space will be decreased, maintained, or increased.

Flood Control and Refill Period

Spring snowmelt and irrigation demand at lower elevations may begin in April. During the Flood Control and Refill period of April through July, reservoir storage is continuously adjusted on the basis of runoff forecast to provide space for flood control as needed and to assure refill of the reservoirs. Irrigation demands during the early part of this season are usually met from streamflows but may require some release of storage from lower reservoirs. As snowmelt increases, irrigation demands may be met entirely from natural flows, and unstorable flows in excess of irrigation demand may pass Milner Dam. During the latter part of this period, irrigation demands may again be met by a combination of natural streamflow and release of storage. In recent years, some water has also been released downstream to meet requirements for augmentation flows in the lower Snake for ESA-listed salmon (see chapter VI for more detail).

Drawdown Period

During the Drawdown period of August through October, storage is released to meet irrigation demands or to reach a reservoir elevation that provides the required flood control space in November. Irrigation demands must be met in varying degrees from storage releases, and there is constant adjustment of reservoir releases to maintain water as high in the system as possible and to use water from reservoirs with the greatest refill capability. In very poor water years the Drawdown period may begin as early as April.

An important consideration in all of the phases of operation of the reservoirs is travel time. The travel time for water released from Jackson Lake to reach Minidoka Dam is about seven days. As a result, system operators must constantly anticipate irrigation demands and often release water up to 2 days before anticipated use. Ending the irrigation season with water stored as high in the system as possible increases the ability to maintain streamflows throughout the winter. During the flood control season, releases for flood control must also anticipate possible local weather events downstream.

Standing Operating Procedures

Standing Operating Procedures (SOP's) are documents that contain instructions and all of the necessary information for a damtender to correctly operate the dam and reservoir. Reclamation prepares an SOP for each Reclamation dam and reservoir primarily for the use of the damtender and the immediate supervisor. The SOP usually includes (1) an emergency preparedness plan that provides instructions to follow in the event of various emergencies, (2) a directory of personnel including those of emergency services and cooperators for communications purposes, (3) general information on the facility, (4) technical data on structural, mechanical and electrical details, and (5) information on reservoir operations including filling and release of water, inflow forecasting, and specific operating criteria.

These documents are controlled and numbered, which allows additions, corrections, and updates to be tracked carefully. Deviation from the SOP is a serious matter which requires concurrence of upper management.

General Operating Activities

Table 4 shows general operating activities for Reclamation reservoirs located upstream from Milner Dam. Jackson Lake, Palisades Reservoir, American Falls Reservoir and Lake Walcott (Minidoka Dam) are operated in a closely integrated manner.

Ririe Reservoir is operated for flood control and recreation as there are no contracts for storage at present. However, the uncontracted storage is part of the Fort Hall Indian Water Rights Agreement (see chapter VII). The operations of Island Park Reservoir, Grassy Lake, and Henrys Lake are somewhat coordinated among the three and with downstream reservoirs, but not to the degree of coordination among the main stem reservoirs.

Table 4.—Summary of Reservoir Operating Activities

Activity	American Falls Reservoir	Grassy Lake	Island Park Reservoir	Jackson Lake
Refill target	April 1	None	April 1	Mid-May to July 1
Flood control operation	Informal	None	Informal rule curve	Yes. Rule curve with Palisades Reservoir
Minimum flood control space[1]	None	None	None	200,000 acre-feet October 1 to May 1
Average winter release (Dec-Feb 1966-1995)	4,050 cfs	0 cfs	350 cfs	415 cfs
Minimum winter release (unofficial)	300 cfs	None	100 cfs	Smaller of inflow or 280 cfs
Minimum or conservation pool	0 acre-feet	270 acre-feet	380 acre-feet	Large natural lake[2]

[1]Until spring forecasts are available
[2]Larger than the active storage capacity

Table 4.—Summary of Reservoir Operating Activities (Continued)			
Activity	Minidoka (Lake Walcott)	Palisades Reservoir	Ririe Reservoir
Refill target	April 1	Mid-June to early July	None
Flood control operation	None	Yes. Rule curve with Jackson Lake	Yes. Rule curve
Minimum flood control space[1]	None	None	50,000 acre-feet
Average winter release (Dec-Feb 1966-1995)	4,350 cfs	2,260 cfs	0 cfs since 1987
Minimum winter release	300 cfs plus reach gain	550 cfs	0 cfs
Minimum or conservation pool	115,000 acre-feet	201,000 acre-feet	10,000 acre-feet

Typical Reservoir Contents and Riverflows

At any given time, the contents of the upper Snake River reservoirs and the flows in various reaches of the river will vary depending on a large number of factors. These factors, include the amount of precipitation in the previous year as well as in the past few weeks or days, the contents of the reservoirs at the end of the storage season, the temperature, the amount of irrigation demand, etc. The content of reservoirs and the amount of streamflow at any instant provide limited information on the system operation as reservoir contents and riverflows could markedly differ in a few weeks or even a few days. In addition, riverflows may change greatly in a few hours and reservoir contents and riverflows can very greatly with the water supply. However, charts of riverflows and reservoir contents can provide a general overview of the range of operations.

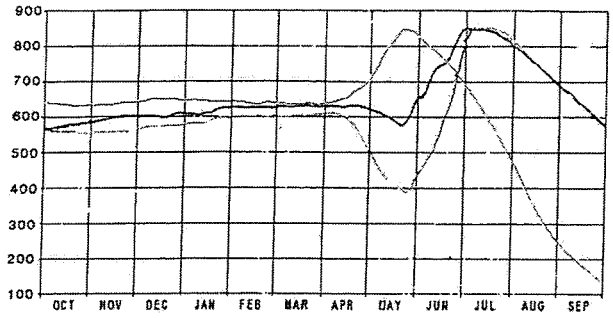
The contents of five reservoirs and the outflow at six dams were selected for a good, average, and poor water supply year. The 1992 water year was selected as a recent, very poor water supply year. However there is no year since 1989 that would show a typical average water supply and a good water supply, and Jackson Lake content was restricted from 1977 to 1989. As a result, the 1970 water year was selected for an average supply, and the 1971 water year was selected to illustrate a good water supply. Figure 5 illustrates typical reservoir content and outflows for good, average, and poor water years.

The reader is cautioned that several significant developments have occurred since the early 1970's. American Falls Dam was under reconstruction from 1976 to 1978 and Ririe Dam was not completed until 1977. In addition, significant conservation measures in irrigation have been implemented since the early 1970's. None of these changes are reflected in the average water year (1970) and good water year (1971) data. The most significant change—conservation effects during a poor water supply—are reflected in the poor water year (1992) data.

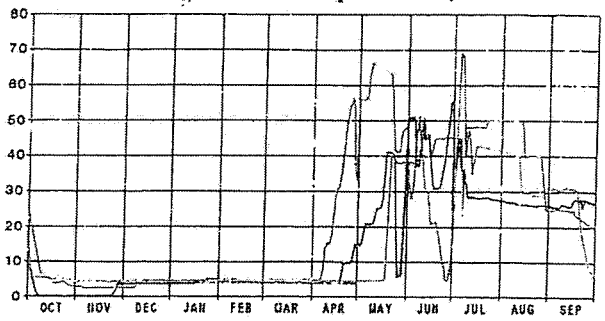
The reader is also cautioned that riverflow may be composed of many elements. During the irrigation season, these are primarily (1) natural flows to meet demands for natural flow rights, and (2) storage releases to meet spaceholder demands for a full or supplemental water supply. Early in the spring, riverflow may also include releases from storage for flood control operation. In the summer and fall, part of the flow may be releases from storage to reach the minimum flood control level for fall and winter operation.

Figure 5.—Typical Content and Outflow of Upper Snake River Reservoirs

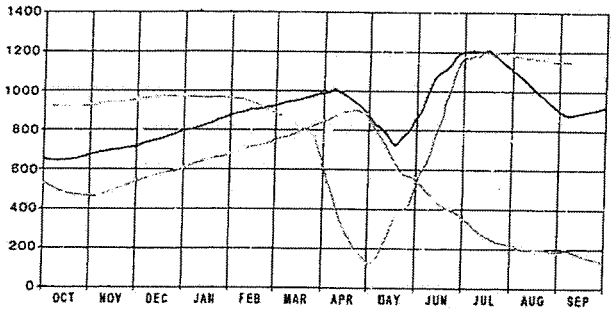
Contents of Jackson Lake
(1,000 acre-feet)



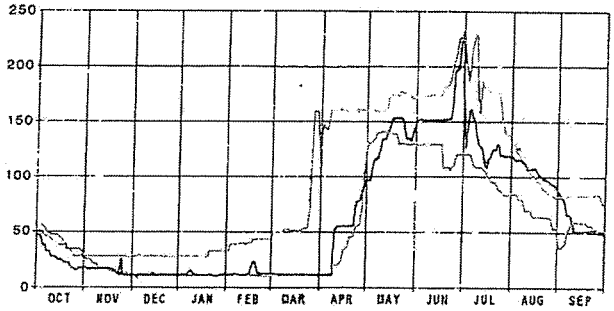
Outflow of Jackson Lake Dam
(100 cubic feet per second)



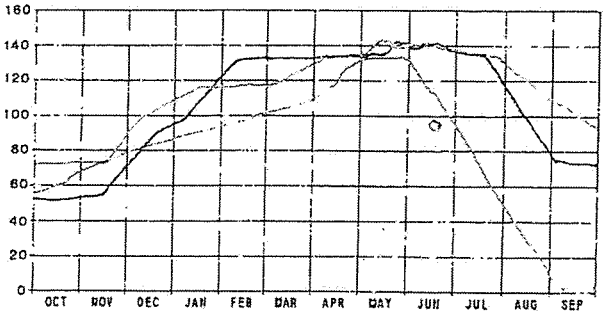
Contents of Palisades Reservoir
(1,000 acre-feet)



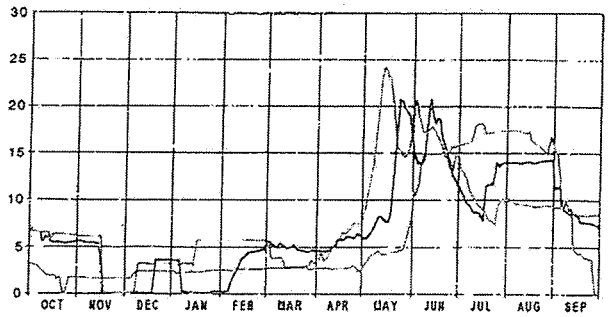
Outflow of Palisades Dam
(100 cubic feet per second)



Contents of Island Park Reservoir
(1,000 acre-feet)



Outflow of Island Park Dam
(100 cubic feet per second)



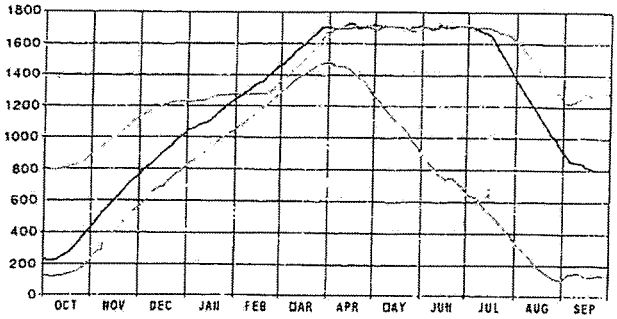
1971 (Good water supply)

1970 (Average water supply)

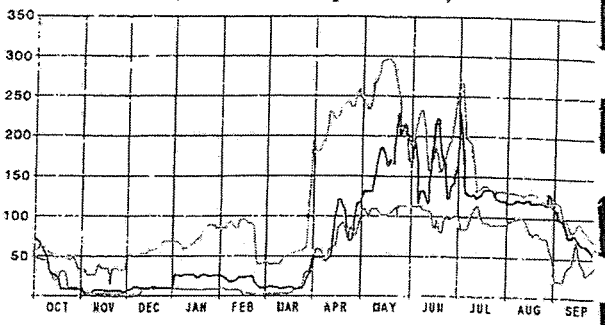
1992 (Low water supply)

Figure 5.—Typical Content and Outflow of Upper Snake River Reservoirs (continued)

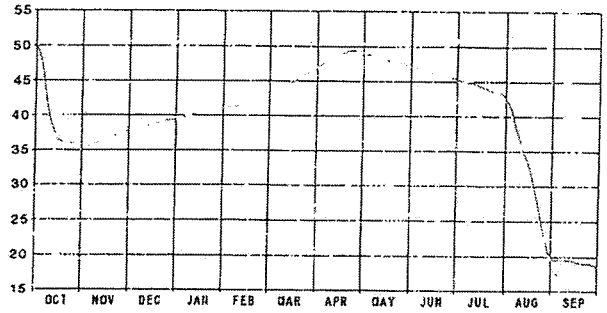
Contents of American Falls Reservoir
(1,000 acre-feet)



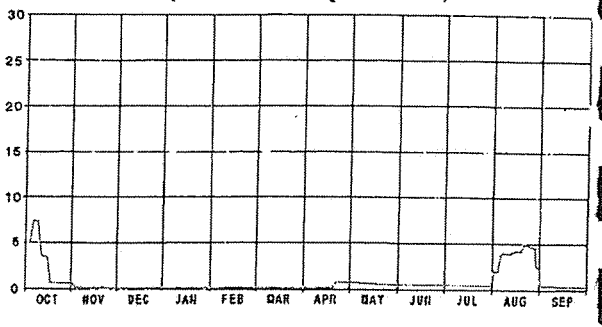
Outflow of American Falls Dam
(100 cubic feet per second)



Contents of Ririe Reservoir
(1,000 acre-feet)

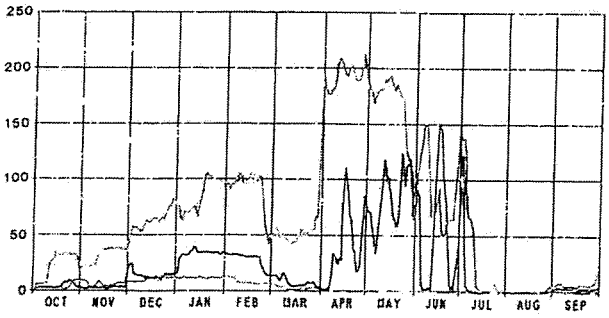


Outflow of Ririe Dam
(100 cubic feet per second)



(Note: No data available before 1978; Ririe Dam and Reservoir were completed in 1977)

Outflow of Milner Dam
(100 cubic feet per second)



1971 (Good water supply)
1970 (Average water supply)
1992 (Low water supply)

VI. Detailed Operation By Function

Early Reclamation storage facilities were developed for a single purpose—irrigation—or for dual purposes—irrigation and power. As additional storage was added, flood control became a potential operating function and was authorized. The passage of laws that required consideration of other functions at existing facilities and new facilities also helped change the character of Reclamation project development in the upper Snake River basin. Passage of a variety of Federal and State laws that require greater consideration of environmental and other factors combined with a general change toward more consideration for fish and wildlife protection has helped mold the operation of the present system.

The upper Snake system has evolved into a true multipurpose operating system; however, irrigation and flood control remain the dominant operating functions. Water rights administered by the State, project authorizations defined by the Congress, and storage contracts with the water users define the operating boundaries. It is important to recognize that although storage space and the use of water are dedicated to specific purposes, the way the water is moved among reservoirs can accommodate other purposes. To the extent possible, reservoir releases are passed through hydroelectric powerplants for the generation of electricity. Within Federal and State statutes and contract law and with the consent of water users, reservoir and river operations are implemented to protect fish and wildlife populations and to provide recreation benefits.

There is a marked contrast in the operation of the Snake River at Milner Dam. Except for salmon flow augmentation water, Reclamation does not release storable water that can be controlled above Milner Dam. In addition, Reclamation has no storage on the main stem downstream from Milner Dam. Below Milner, IPC uses riverflows to generate electricity at numerous powerplants. Another contrast is that there is careful accounting of irrigation water upstream from Milner, and almost no accounting of irrigation water downstsream.

Flood Control

Two types of flooding can occur above Milner Dam—spring snowmelt and winter rain on snow. At higher elevations, such as above Palisades, the major threat of flooding is from the spring snowmelt. At lower elevations, such as the Willow Creek basin upstream from Idaho Falls, there is a major threat from floods caused by winter rain on snow.

Jackson Lake, Palisades Reservoir, and Ririe Reservoir provide the major flood control above Milner Dam. Jackson Lake and Palisades Reservoir are operated as a system to limit the maximum flow at the Heise stream gauge (about 48 miles below Palisades Dam) to 20,000 cfs. Ririe Reservoir is operated to limit Willow Creek flows to a maximum of 1,200 cfs. Island Park Reservoir is operated informally for flood control. Other reservoirs above Milner are operated for irrigation and incidentally provide space for flood control. In addition, there are channel restrictions of 20,000 cfs at Burley, Idaho. (A list of stream gauges is included as appendix B.)

Rain on Snow

A rain-on-snow on frozen ground event occurs when a saturated basin is subjected to cold, snowfall, and warm rain, in that order. An extremely damaging flood occurred in February 1962 in the Willow Creek basin above Idaho Falls. Ririe Dam was built to prevent a recurrence of this type of flood, as well as to control spring snowmelt floods.

It is generally not possible to anticipate a rain-on-snow event far enough in advance to provide an appropriate amount of flood control space. Therefore, reservoir pools are lowered to a

predetermined elevation in the fall and maintained throughout the winter months to provide adequate storage space for possible rain-on-snow events. The reservoir space provided by this action is often referred to as the winter minimum flood control space and is based on studies of historical runoff.

Spring Snowmelt

After January, space is maintained in the reservoirs (i.e., the water surface is held at a lower elevation) according to the amount of inflow anticipated. This requires forecasts of runoff at Heise and Ririe Dam. As forecasts of spring runoff become available, the reservoir pool is adjusted to provide the appropriate amount of flood control space based on criteria for that reservoir—the larger the runoff forecast, the more space required.

The present statistical technique used for forecasting runoff above Milner Dam is a step-wise multiple regression analysis. Forecasts are based on a comparison of the current basin conditions (including observed precipitation and runoff and snowpack moisture) with historical conditions and the resulting runoff. Forecasts are made which assume subsequent precipitation amounts below normal, at normal, and above normal. Reclamation and the Corps independently make runoff forecasts and coordinate to produce one operating forecast. (A sample of a Reclamation forecast for Heise is included as appendix C)

Reservoir operators try to balance flood control and refill needs, since providing too much flood control space jeopardizes reservoir refill, and providing too high a refill probability jeopardizes flood control. Ordinarily, it is possible to maintain a high probability of controlling flooding while also maintaining a high probability of reservoir refill. A large forecast error, however, can occasionally result in flows in excess of the goals or a reservoir failing to refill. Large errors are generally caused only when a low-probability condition occurs that, with hindsight, would have required operating entirely for either flood control or refill. Examples of low probability conditions include exceptionally large or small amounts of precipitation over a long period, exceptionally large amounts of precipitation over a short period, lengthy periods when temperatures are above or below normal, and rapid or extreme shifts in temperature. Forecasts are made as needed, but at least once a month, beginning on January 1 and extending to the end of the spring runoff.

Flood control rule curves are used to determine the amount of storage space required to adequately control runoff. Formal flood control rule curves have been developed for Palisades Reservoir (combined operation with Jackson Lake) and Ririe Reservoir, while informal flood control rule curves have been developed for Island Park Reservoir. A formal flood control curve is jointly developed by the Corps and Reclamation according to Congressional directives, and the Corps has ultimate authority to implement a formal flood curve operation. An informal flood control curve is developed by Reclamation to serve as a guideline in providing flood control benefits below a Reclamation reservoir. Generally, an informal curve will provide a higher chance of reservoir refill than a formal curve.

These rule curves are included as appendix D, and indicate how much space must be maintained by date based on the forecast of runoff. The formal rule curves must be followed and operations agreed to by the Corps which has authority under the Flood Control Act of 1949 to direct some Reclamation reservoir operation to reduce flooding. In actual operation, there is a high level of cooperation and mutual concern for both flood control and reservoir refill.

Irrigation

Most of the Reclamation storage above Milner Dam is used as a supplemental water supply for irrigation; only 210,000 acres depends on Reclamation for a full water supply. As a result,

most irrigators are using a combination of wa'er supplies that includes storage, natural flows, and ground water. To provide a sufficient amount of water in the river for out-of-stream diversion without spilling at Milner Dam requires a high degree of coordination among irrigators, storage operators, and the State Watermaster.

Irrigation and flood control operations overlap during much of the reservoir filling season. Spaceholder contracts specify that the storage season begins on October 1 and ends when no more water is available for storage. That point is reached when the riverflow equals or falls below the total amount of natural flow demand for irrigation water. The end of the storage season depends on irrigation demand and the amount and rapidity of snowmelt, varies from April 6 to July 24, and occurs most often in June.

Henrys Lake and the two northern Reclamation reservoirs—Island Park and Grassy Lake—serve only the Fremont-Madison Irrigation District. Jackson Lake, American Falls, and Palisades serve the southern part of the basin. Minidoka has some storage that is used for diversion and powerhead and to enhance storage in American Falls, Island Park, and Palisades Reservoirs. At present, Ririe has no storage contracts for irrigation and is used exclusively for flood control and recreation (but see chapter VII, "The 1990 Fort Hall Indian Water Rights Agreement").

Throughout the irrigation season, water is released from the reservoirs as needed to meet irrigation demands. Reservoir releases in the segment of the Snake River from Palisades Dam downstream to the Blackfoot gauge are determined by diversion demands of some 50 canals, the need to maintain a sufficient flow in the river at Blackfoot, and the desire to move stored water from Palisades Reservoir to American Falls Reservoir so that an adequate amount of water will be available to complete the irrigation season. Frequent consultations with the Watermaster (see "Watermaster" in this section) are necessary to determine the flow requirements and the amount of stored water that needs to be released.

Irrigation demands in the reach from American Falls Dam to Milner Dam are met by releasing water from American Falls Dam through the IPC powerplant. Through most of the irrigation season, the water surface at Lake Walcott is maintained at or near maximum elevation to ensure water deliveries to the Minidoka Irrigation District and the Burley Irrigation District and to provide maximum hydraulic head for hydropower generation at Minidoka Powerplant.

Irrigation demand is determined by weather, crop consumptive use requirements, and cropping patterns. In daily operations, individual irrigators request water from local "ditch riders" who report needs to irrigation district managers. The irrigation districts accumulate the totals and request water from the District 01 Watermaster or Reclamation's Burley office. The Watermaster then requests that water be released from the reservoirs to satisfy the accumulated requests. Operating personnel in Reclamation's Burley office determine how much water to release from each reservoir and the timing of the releases and provide specific instructions to each damtender.

Reclamation coordinates and works with water users throughout the basin including the Committee of Nine and some 64 irrigation districts and canal companies that contract for storage space in the Reclamation facilities. Reclamation personnel in the Burley office work with the Watermaster of Water District 01 in Idaho Falls to meet daily demands for irrigation and instream flows. The Watermaster of Water District 01 is responsible for the natural flow determination and accounting, and Reclamation is responsible for the storage water accounting and allocation. The Watermaster and Reclamation's Burley office operating personnel work very closely to account for all water use and to meet the demands.

Committee of Nine

The Committee of Nine was created in 1919 by the Governor of Idaho to address and help solve water problems in the Snake River basin above Milner. That year, a serious water shortage developed. Upstream diverters of natural flow contested with downstream owners of storage over the flows in the river. As a result, the Committee of Nine was tasked to devise a plan for distribution of water in the Snake River.

The Committee is comprised of representatives elected by canal companies and irrigation districts in that area. Reclamation's Snake River Area Manager and the District 01 Watermaster are advisors to the Committee. Officially recognized by the State of Idaho, the Committee is also recognized in all Minidoka and Palisades Project reservoir spaceholder contracts as an advisory body. The Committee of Nine provides a forum for discussion, consultation, and advice on reservoir and river operation and administration. Reclamation considers the advice of the Committee in making reservoir operation decisions. In addition, the Committee is a decisionmaking body in its function as the local committee for the District 01 Water Rental Pool (also know as the upper Snake River Rental Pool).

District 01 Water Rental Pool

Spaceholder contracts and Idaho State law allow operation of rental pools. These pools allow spaceholders to offer water for rent to other entities that are in short supply.

Water rental pools (as they are now called) operate under State of Idaho law and at the direction and under the rules of the Idaho Water Resources Board (IWRB). Prior to 1991, the rental pools were often called water banks, but that term is now used as the official umbrella name for all water rental pools in the State. The water rental pool concept has been unofficially in existence since 1937 in the upper Snake. In 1979, the State Legislature authorized the establishment of water banks and rental pools statewide as a means to share water. Reclamation's Snake River Area Manager is a member of the Committee of Nine water rental pool subcommittee. Local water rental pool rules and leasing prices are determined by the local water rental pool organization and then subsequently approved or denied by the IWRB. In Water District 01, the Committee of Nine is the local water user committee and proposes rules for approval by the IWRB. The Watermaster administers the rental pool under guidance of the committee. Reclamation as the storage facility owner and contractor is also involved and must approve the rules and rates for Federal storage as well.

Spaceholders who offer water for rent before July 1 receive a proportionate share of proceeds from any such water that sells. Spaceholders who offer water for rent after July 1 receive proceeds from any sales on a "first come" basis after all water offered before July 1 is sold.

District 01 Water Rental Pool procedures stipulate a priority basis for acquiring water from the rental pool. The first priority is for irrigators with storage space in Reclamation reservoirs and the second priority is for irrigators who use the water in the Reclamation project area. The third priority is for other beneficial uses.

In order to protect spaceholders who do not sell storage water, a "last-to-fill" rule was adopted. This rule says that any water sold for use below Milner Dam will be the last to fill the next year. This was imposed to prevent spaceholders who have good overall water supplies from profiting at the expense of overall refill the following year (each spaceholder accrues water proportionately to his owned space). If water is sold through the rental pool, the reservoir space drafted must be refilled the next year. Without the "last-to-fill" rule, all spaceholders would have to contribute to the refill of the rented water.

The price for rented water is set by the Committee of Nine. In 1997, irrigation water for use above Milner Dam sold for $2.95 an acre-foot which included $0.75 for District 01 administration and $0.20 for the IWRB surcharge. Non-irrigation water for use below Milner Dam includes the same administration and surcharge fees and sold for a base price of $7.00 an acre-foot plus per acre-foot charges of $0.75 for District 01 administration, $0.70 for the Water Resources Council, and $2.05 to be held to secure water for Reclamation through 1999 for a total of $10.50 per acre-foot. If this last-to-fill water is filled in the following year the contingency fee will be refunded to the buyer.

Table 5 summarizes District 01 Water Rental Pool contributions and sales for the period 1979-1997. In most years, there was much more water consigned than sold. Prior to 1991, most of the non-irrigation purchases were made by IPC for power generation. Since 1991, Reclamation has purchased most of the non-irrigation water for salmon flow.

Table 5.—District 01 Water Rental Pool Activity, 1979-1997 (Acre-Feet)

Year	Consigned	Total Purchases[1]	Irrigation Purchases	Not Sold
1979	88,870	73,960	23,960	14,910
1980	72,190	14,575	14,575	57,615
1981	170,107	149,039	24,039	21,068
1982	290,426	203,515	3,515	86,911
1983	540,606	353,084	3,084	187,522
1984	809,400	277,433	2,433	531,967
1985	497,302	362,169	12,169	135,133
1986	895,642	159,735	9,735	735,907
1987	365,006	192,506	42,506	172,500
1988	235,325	159,215	109,215	76,110
1989	416,994	115,736	15,736	301,258
1990	306,463	124,525	68,000	181,938
1991	205,113	184,677	85,677	20,436
1992	9,954	9,954	9,954	0
1993	408,240	287,974	38,974	120,266
1994	432,171	432,171	75,889	0
1995	605,658	303,944	37,828	301,714
1996	637,134	303,369	20,055	333,765
1997	0[2]	0[2]	0[2]	0[2]

[1]Prior to 1991, purchases other than for irrigation were for power, beginning in 1991, Reclamation purchased this water for lower Snake River flow augmentation to enhance salmon migration.
[2]Not available

Watermaster

The State of Idaho issues and administers water rights in the State. The Watermaster of District 01 is elected each year by the water users, is a State Government employee and the State representative for administering water rights throughout the year, and is currently also the Manager of the Eastern Office of the IDWR. He supervises an office of about 15 part-time and full-time employees in Idaho Falls. The Watermaster tracks and reports water use, and notifies water right holders when they do not have a right to use water, e.g., the water supply is insufficient to provide water for their water right. This is a difficult task requiring monitoring of a great deal of water data and extensive computations especially since many water right holders have both natural flow and storage rights. During the course of a year, the natural river runoff declines to the point that flow becomes insufficient to supply all natural flow rights. Holders of later date priority then must switch to storage rights and the Watermaster must also track the storage used. The Watermaster also provides day-to-day operation of the rental pool on behalf of the Committee of Nine.

Water Accounting

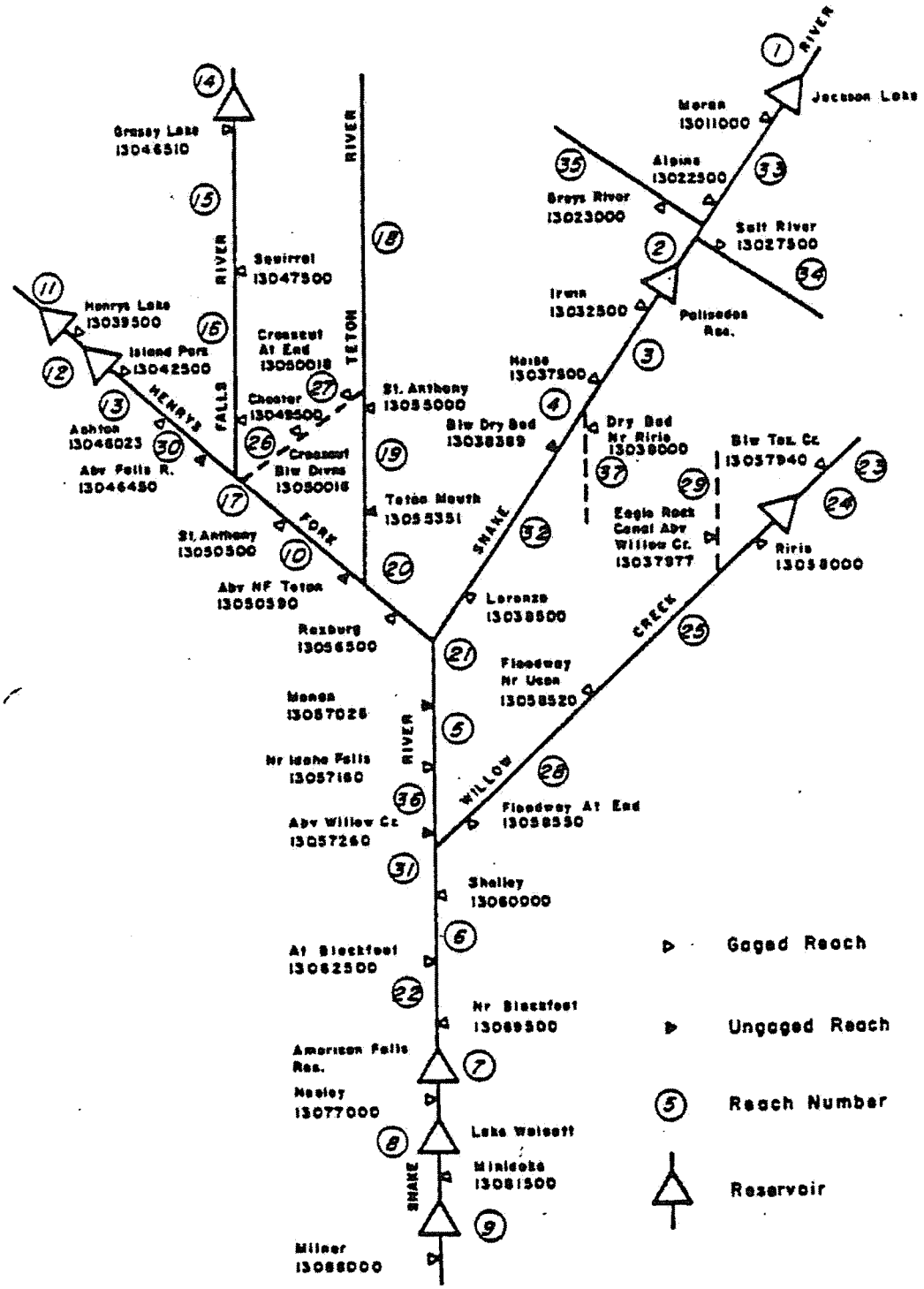
Water data collection and accounting is administered by Water District 01 pursuant to an agreement with the IDWR and in cooperation with Reclamation. The majority of the data is collected by automated data collection platforms that are part of a satellite based telemetry system, referred to as HYDROMET, operated by Reclamation for the collection of hydrologic and meteorologic data on a real-time basis. All important river gauges and the majority of the canal diversions are monitored by the HYDROMET system. Data from canal diversions which are not on this system are obtained by telephone from the canal managers and water district river riders.

The major role of Water District 01 activities under the direction of the Watermaster is to account for the diversions of natural flows, ensure that water right holders are complying with their rights, both in quantity and priority, and determine the amount of stored water used by each spaceholder. On a daily basis, the Watermaster computes the amount of natural flows available in the system and the total diversions by calculating reach gains or losses in 37 reaches of the Snake River and tributaries upstream of Milner Dam (figure 6). These reaches are segments of river lying between two stream gauging stations. Gains are due to inflow from tributaries, springs, and irrigation return flows. Losses are caused by surface flow entering the ground water, evaporation and transpiration of riparian vegetation, and out-of-stream diversions. From this, and the diversion data, the Watermaster determines which water rights are being filled on each day and accounts, on a daily basis, for the amount of stored water that is being used by each of the diverters and from which reservoir account it is being taken. This provides the basis for determining each spaceholder's water storage account of stored water accumulated, used, and carried over. To the extent possible, the debiting for stored water use takes into consideration (1) the need to lower Jackson Lake by October 1 to provide 200,000 acre-feet of flood control space and (2) the location of the diversion demands and the refill potential of American Falls Reservoir, Palisades Reservoir, and Jackson Lake. The accounting year for Water District 01 is November 1 through October 31. A final accounting is made after the end of the accounting period and documented in the Watermaster's annual report.

Power

There are Federal powerplants and non-Federal powerplants located at Federal Dams and there are non-Federal powerplants at several non-Federal dams. Power generation is secondary or

Figure 6.—Upper Snake System for Water Right Accounting



incidental to flood control and irrigation water supply at Federal dams and no water is released from Reclamation facilities specifically for power generation except for water held under spaceholder contracts (IPC is the only electric utility that has a spaceholder contract and that contract amount is 44,275 acre-feet in American Falls Reservoir).

Federal Powerplants

Power generation was included as an authorized function at Minidoka and Palisades Dams. Currently there are Federal power generation facilities at Minidoka Dam and Palisades Dam. Some of the power generated at the Reclamation facilities is used directly for facility operation and irrigation pumping and the remainder is marketed in the Federal Southern Idaho Power System administered by the Bonneville Power Administration (BPA). Minidoka Powerplant, the oldest powerplant in the region is currently being rehabilitated and expanded to a capacity of 27,000 kW. Palisades Powerplant has recently undergone major rehabilitation with an increase in capacity to 176,600 kW.

Idaho Power Company

In the Snake River basin above Milner Dam, IPC owns and operates powerplants at American Falls Dam and Milner Dam; a third IPC powerplant uses water from the Milner pool and is located on the Twin Falls Canal just downstream from Milner Dam.

IPC powerplants at Milner are operated as run-of-the river plants, i.e., available reservoir inflow is passed through the powerplants up to the capacity of the powerplants and riverflows are not controlled for power generation. The only control that IPC can use to regulate river flows is to release water from the 44,275 acre-feet of its contract space in American Falls Reservoir. IPC would normally release this water only when it could be released through the American Falls Powerplant (i.e., Reclamation releases are less than the powerplant capacity) and this water would also produce power at the Milner powerplants.

The American Falls Powerplant, owned and operated by IPC, recently underwent a rewind/uprate to a capacity of 112,400 kW. At American Falls, Reclamation directs the IPC powerplant operator to release the water necessary for flood control or irrigation operations. If the required release is in excess of powerplant capacity (about 13,500 cfs), Reclamation uses the low level outlet gates to supplement powerplant flow. At Milner Dam, IPC releases water to the extent possible through the small powerplant which discharges water to the stream immediately downstream from the dam. About 200 cfs are released directly to the river for minimum streamflow maintenance. When the flow entering Milner pool exceeds irrigation diversion requirements and exceeds the capacity of the small powerplant, flow is directed to the larger powerplant. The larger powerplant takes flows from Twin Falls Canal and discharges flows to the river about 1 mile downstream from the dam.

IPC has provided help in shaping salmon augmentation flows at its downstream dams (see ESA section).

Other Powerplants

In addition to the Federal powerplants and the IPC powerplants, there are other powerplants owned by public agencies and private utilities. All are run-of-the-river powerplants, i.e., flow of the river up to the capacity of the powerplant is passed through the generating units.

In 1991, approval was granted by the FERC for the Fall River Rural Electric Cooperative (FRREC) to construct powerplant with a capacity of 4,800 kW at Island Park Dam. Power generation began in June of 1994. The powerplant operates between a minimum of 190 cfs and a maximum of 960 cfs and utilizes

only water that is released to meet irrigation demands or during flood control operations. During late 1995, FRREC also secured approval to modify the spillway with an adjustable lip to allow water that was previously spilled during irrigation surcharge to be passed through the powerplant to provide additional power generation. The FRREC also has a license for a powerplant with a capacity of 1,900 kW located on the Teton River near Felt. This powerplant was leased to Bonneville Pacific Corporation which filed for bankruptcy in the early 1990's.

Marysville Hydro Associates owns and operates a powerplant with a capacity of 9,100 kW located on the Falls River near Marysville. Utah Power and Light Company owns and operates two powerplants on the Henrys Fork. Its powerplant near Ashton has a capacity of about 5,000 kW and its powerplant near St. Anthony has a capacity of 500 kW. The city of Idaho Falls has three powerplants with a total capacity of about 24,000 kW located upstream from American Falls Reservoir. Lower Valley Power and Light Incorporated owns and operates a 1,500-kW powerplant on Strawberry Creek, a tributary of the Salt River which flows into Palisades Reservoir.

Powerplant Summary

There are two federally owned and operated powerplants and 12 non-federally owned and operated powerplants located upstream from Milner Dam. The total nameplate capacity of these facilities is about 423,000 kW. The nameplate rating of the two Reclamation powerplants is nearly half of the total. IPC is the major non-Federal power producer and owns and operates one powerplant located at a Reclamation dam in addition to two powerplants associated with Milner Dam. FRREC is the only other electric utility that owns and operates a powerplant at a Reclamation dam. Powerplants at Federal Dams and at Milner Dam are summarized in table 6.

Table 6.—Powerplants Located at Milner and Reclamation Dams in the Upper Snake River Basin

Site	Nameplate Rating	Owner/Operator
American Falls Dam	112,400 kW	Idaho Power Company
Island Park Dam	4,800 kW	Fall River Rural Electric Cooperative
Milner Dam	At dam: 830 kW On canal: 58,620 kW	Idaho Power Company
Minidoka Dam	[1]27,700 kW	Bureau of Reclamation
Palisades Dam	176,600 kW	Bureau of Reclamation

[1]When new powerplant is completed in 1997.

Fish and Wildlife

Authorities under which the Reclamation dams and reservoirs were constructed do not generally include fish and wildlife enhancement except for Palisades Reservoir. Existing provisions for fish and wildlife enhancement do not include managing the water supply for that purpose, i.e., fish and wildlife enhancement is generally limited to managing land surfaces and providing protective measures.

Storage contracts in general limit water operations to those that provide benefit to contract holders. Operations that would diminish the water supply are prohibited without the approval of the contractors. State water law limits appropriation of water to beneficial uses and defines those uses. Furthermore, appropriation of water and change of use are strictly regulated by the State. Nonetheless, there remains sufficient flexibility to address some fish and wildlife enhancement concerns and to provide some improvement..

Wyoming Contract

In 1991, the State of Wyoming entered into a contract with Reclamation for the purchase of 33,000 acre-feet of joint-use space in Palisades Reservoir. The water that accrues to this space is allowed to be "shifted" upstream to Jackson Lake. Under the contract provisions, Wyoming has the option of requesting that the water be held in the Jackson Lake to benefit lake trout spawning or released between October and March 31 to increase flows in the Snake River to improve habitat for the fine-spotted Snake River cutthroat trout population.

Releases From Palisades Dam

In 1988, Trout Unlimited brought a court challenge against Reclamation for releasing winter flows of less than 1,000 cfs from Palisades Dam. In most winters, Reclamation provides a minimum release of about 1,200 cfs, but had decreased the release due to drought conditions. The court ultimately decided that Reclamation could reduce flows without writing an environmental impact statement. After the court decision, Reclamation funded IDFG to assess the flows needed to sustain and protect the blue ribbon trout fishery. Field studies, conducted between 1990 to 1992, emphasized evaluation of flows needed for overwintering juvenile trout and found that flows of at least 1,500 cfs are needed to better protect juvenile trout. Flow above that level could provide significant additional fish habitat improvements, but, in many years, that level of release could significantly reduce the likelihood of Palisades refill. This study defined the biological flow needs of the main stem and provides Reclamation with a basis for considering flow levels to benefit the fishery in water years when greater winter releases may be possible.

Trumpeter Swans on the Henrys Fork

Trumpeter swans have been eradicated from all of their historic wintering areas in the United States except for the area around the tri-state junction of Montana, Wyoming, and Idaho. About 40 percent of the population winters on the Henrys Fork downstream from Island Park Dam. Open water during the winter is vital for the survival of the birds as the swans feed on underwater vegetation. This wintering area is characterized by very cold temperatures but the water remains open near springs and when warmer reservoir water is released. In the 1987-1988 drought, fall and winter releases from Island Park were reduced to 100 cfs in accordance with previous operating agreements. Low flows combined with cold temperatures caused the river to ice over, and emergency releases were made several times to create open water. Even with this effort, more than 50 swans (about 10 percent of the population wintering on the Henrys Fork) died of starvation.

This problem was approached from two directions. First, an instream flow study was conducted to determine flow requirements to maintain depth and velocity for successful swan

foraging. Second, research into methods to aid in expanding the winter range of the Rocky Mountain population of trumpeter swans has been initiated. The USFWS will continue trapping and moving trumpeter swans to other areas in an effort to establish new wintering areas. This program has been very successful with about 20-25 percent of the swans returning to the area to which they were moved.

Minidoka Wildlife Refuge

The surface of Lake Walcott and much of the surrounding land constitutes the Minidoka Wildlife Refuge which was created in 1909 and is operated by the USFWS. The Minidoka Wildlife Refuge was created in 1909. Reclamation notifies the USFWS when the pool is going to be lowered for winter operation. Raising the pool in the spring and maintaining a constant pool level throughout the irrigation season is consistent with migratory wildfowl needs and use of the refuge.

Tex Creek

The Tex Creek Wildlife Management Area continues to be a successful multi-agency effort. Originally an area purchased and managed as part of Teton Dam mitigation, it has expanded with additional State and Federal lands and is managed by the IDFG for wildlife. Elk, moose, deer, and other animals winter in the area which is also important for sharptail grouse.

Recreation

The upper Snake River basin provides recreation opportunities ranging from high mountain to desert settings. Together, the seven Reclamation reservoirs host approximately 1.4 million days of use annually. Primary reservoir activities include boat fishing, water skiing, camping, and picnicking.

Flowing water recreation use is an extremely important component of the recreation mix, providing opportunities for floating, canoeing, fishing, picnicking and other uses (use figures are unavailable). The river reaches between Jackson Lake Dam and Palisades Reservoir and between American Falls Dam and Lake Walcott are being analyzed for inclusion in the National Wild and Scenic Rivers system. Other stretches are also regionally and nationally recognized for exceptional whitewater and blue ribbon trout fishing opportunities. The growth in private and licensed guided river trips has become economically important to surrounding communities.

The reach of the river from the head of Jackson Lake to Palisades Reservoir is operated to the extent possible to accommodate local recreation interests including boating on Jackson Lake and downstream whitewater rafting and stream fishing. In most years, this involves passing inflow plus release of at least 200,000 acre-feet of water to evacuate the flood control space in Jackson Lake. Various recreation interests meet with Reclamation in the spring of each year to provide information on desired flow levels. Reclamation uses this information along with available water supply data to establish a flow regime for the summer and fall.

Municipal and Industrial Water Supply

Most of the municipal and industrial water supply in the upper Snake River basin is pumped from ground water and has no significant effect on reservoir operations.

Endangered Species Act (ESA)

In recent years, Reclamation has modified water operations in the Snake River basin above Brownlee Reservoir to help protect and recover species that have been listed under the ESA. By April 1992, Snake River sockeye salmon and spring/summer and fall chinook salmon stocks were listed by the National Marine Fisheries Service (NMFS) under the ESA. In January 1993, five species of aquatic snails that inhabit the

middle Snake River, were also listed (four endangered and one threatened) by the USFWS. Reclamation, BPA, and the Corps (the operating agencies), have participated in ESA Section 7 consultations with NMFS and USFWS on the effects that operation of the Federal Columbia River Power System (FCRPS) may have on the listed salmon and snails. The upper Snake River has been tied to these consultations because of requirements to release reservoir storage to improve salmon migration conditions in the lower Snake River and Columbia River reaches. Since 1991, Reclamation has provided salmon flow augmentation storage releases from the Payette, Boise, and upper Snake River basins. Table 7 summarizes information on the source and volume of storage that has been provided annually from above Brownlee Dam. Table 8 summarizes similar information for that portion of the water released from the upper Snake River basin (above Milner Dam).

Table 7.—Flow Augmentation Provided from the Snake River Basin above Brownlee Dam

Year	Volume (acre-feet)			
	Natural Flow	Reclamation Noncontracted and Powerhead	Rental Pools	Total
1991	-	40,000	160,000	200,000
1992	-	90,000	-	90,000
1993	-	324,000	100,000	424,000
1994	-	383,000	45,000	428,000
1995	-	141,000	286,000	427,000
1996	16,000	155,000	251,000	422,000
1977	18,000	156,000	253,000	427,000

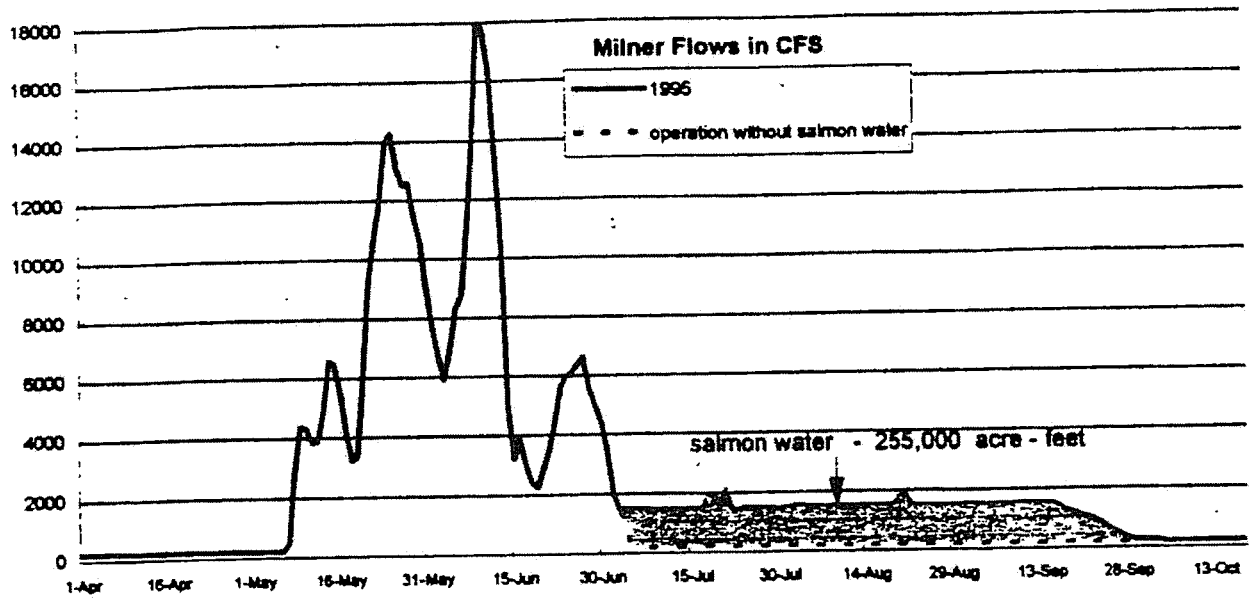
Table 8.—Flow Augmentation Provided from the Snake River Basin above Milner Dam

Year	Volume (acre-feet)			
	Reclamation Noncontracted	Reserved Powerhead	Water Rental	Total
1991	-	-	99,000	99,000
1992	-	-	-	-
1993	100,000	106,000	65,000	271,000
1994	33,200	252,800	44,300	330,300
1995	22,400	-	232,800	255,200
1996	22,400	-	194,700	217,100
1997	22,900	-	193,300	216,200

Under ESA Section 7 requirements, Reclamation consults with NMFS and the USFWS on the effects of the salmon water releases on listed snails and salmon. The 1995 Biological Opinion, issued by NMFS and USFWS, directs Reclamation to provide 427,000 acre-feet of water for salmon flow augmentation each year through 1998 and to concurrently use a release regime that will not jeopardize listed snail species in the middle reach of the Snake River. This requires that Reclamation consult with NMFS and USFWS each year once water supply/sources are firm.

IPC has in the past agreed to release some of the 427,000 acre-feet from Brownlee Reservoir in a pattern to provide a greater instantaneous flow for salmon in the lower Snake River and Columbia River than could otherwise be furnished by directly passing the water from upstream Reclamation reservoirs. In return, Reclamation has seasonally scheduled its upstream releases to backfill Brownlee in such a way as to benefit hydropower generation at various IPC powerplant facilities. At the same time, Reclamation must coordinate with the USFWS to assure that upper Snake River water releases for salmon avoid damaging ESA listed snail colonies downstream of Milner Dam. This requires that Reclamation's salmon water release regimes be tailored to reduce flow fluctuations in middle Snake reaches to afford better protection to snail colonies. Flows are measured and controlled at Milner Dam to stabilize and minimize flow swings during the salmon water release period. A slow down-ramping regime is provided at the end of the release to reduce the chances of snail stranding. This is illustrated in figure 7 which shows the 1,500-cfs flow and down ramping past Milner Dam during the 1995 upper Snake River salmon water release period.

Figure 7.—1995 Salmon Water Release at Milner Dam
(Release made between July 2 and September 29, 1995)



VII. Other Issues

All of the water resources of the Snake River above Milner are currently being used in some way, and all of the active space in Reclamation reservoirs has been contracted or assigned to specific uses. Water sustains crops, maintains riparian vegetation, provides habitat for fish and wildlife, sustains human life, and provides opportunities for recreation. Some water is diverted out of stream under natural flow rights; some is stored and later released to be diverted out of stream; some is run through powerplants, and some remains in the river.

Irrigation, power, fishery, wildlife, recreation, ecological and other interests have concerns and most want more water. But more water is not possible; the only possibility is change in the use of the current water supply. It is important to recognize that many uses of water are mutually exclusive, i.e., an increase in one use requires a decrease in some other use. As an example, an increase of instream flows requires out-of-stream uses to be decreased, storage reservoir elevations to be lowered, or both.

In addition to requests for more water, there are requests for different operations. Any change in river/reservoir operation will have negative effects on some uses and positive effects on other uses. Releasing water for a shorter period at a greater rate may benefit one type of recreation while diminishing another type of recreation or diminishing recreation at another site.

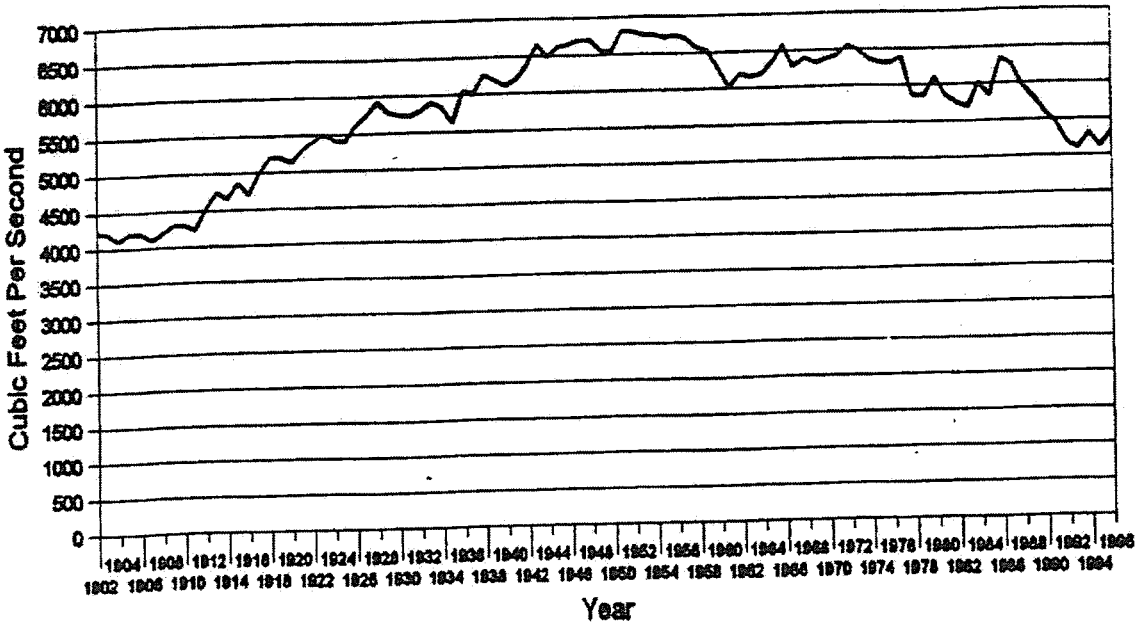
Snake Plain Aquifer

The Snake Plain Aquifer, located north of the Snake River from about Bliss to Island Park Dam, is one of the largest aquifers in the continental United States. The water level of the Snake Plain Aquifer reached an all time high in the early 1950's because of aquifer recharge due to surface irrigation applications and a wet climatic period.

Following the early 1950's, the ground-water levels have shown a net decline reaching an all time low in 1994. This decline is caused primarily by (1) increased ground-water pumping for irrigation and (2) increased water conservation by upstream irrigators. These factors combined with the 7-year drought from 1987 to 1994 have caused a dramatic decline of the ground-water level in recent years. Conservation efforts of reservoir spaceholders contributed to reducing irrigation shortages over a series of years, but the reduced application of water also appears to have reduced the flows at Thousand Springs. The decline in ground-water levels has prompted a water rights call by the A&B Irrigation District, located near Rupert, Idaho, on the IDWR to deliver water based on the district's water right priority date. This call could result in restrictions on ground-water pumping located throughout the plain for water rights junior to the A&B water rights.

The condition of the Snake Plain Aquifer is critica to Snake River flows below Milner as most of the inflow to the river in the reach between Milner and King Hill, Idaho is due to the discharge of the aquifer at Thousands Springs. The springflow has been recorded by the USGS since 1902. The volume of springflow is related to the Snake Plain Aquifer level although there is a lag between recharge changes and springflow changes. Figure 8 shows the flow increasing and peaking in 1951 and then generally declining. The volume of spring flow is currently about the same volume as recorded in 1921.

Figure 8.—Annual Mean Discharge of Thousand Springs Between Milner Dam and King Hill (cfs)



Snake River Basin Water Rights Adjudication

A general adjudication of water rights in the Snake River basin was filed on December 19, 1987, and is ongoing in the 5th District Court of the State of Idaho for the County of Twin Falls, Case Number 39576, (The State of Idaho, ex rel. v. The United States; the State of Idaho; and all claimants to the use of water from the Snake River Basin Water System). Reclamation claims use of water in the Snake River basin for several Reclamation projects. The adjudication of water rights includes Federal reserved water rights associated with the Nez Perce Tribe and the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation. The adjudication is ongoing, without an identifiable date for a conclusion.

Included in the adjudication are all water rights (surface and ground water) claimed by individuals and entities in the Snake River basin. There are more than 62,000 separate claimants, including landowners, irrigation districts, canal companies, State and Federal agencies, and municipalities. Previous court decisions, Federal treaties, Federal contracts, and Acts of Congress have bequeathed a legacy of uncertainty, confusion, and a multitiered system of irrigation delivery priorities. Tribal claims for instream flows (fish habitat, channel, and riparian maintenance) with a time immemorial priority date are for greater than 36 million acre-feet of water, an amount greater than the average annual flow of the Snake River at Lewiston, Idaho.

The 1990 Fort Hall Indian Water Rights Agreement

The 1990 Fort Hall Indian Water Rights Agreement was signed on July 10, 1990, in settlement of litigation involving claims made by the United States on behalf of the Shoshone-Bannock Tribes to water rights in the upper Snake River basin and its tributaries. The Agreement is by and between the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, the State of

Idaho, the United States, and certain Idaho water users.

In general the agreement does the following:

- The date of natural flow rights of Shoshone-Bannock Tribes is revised to become the earliest date on the Snake River.
- The Shoshone-Bannock Tribes retain their storage space.
- Other water users may join an entity that represents the water users (Mitigation, Inc.) and be compensated for losses sustained by the change in water right priority dates.
- Uncontracted space in Ririe and Palisades Reservoir is contracted to Mitigation, Inc. without a requirement to pay the investment costs.

A "Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin" was based on the Agreement and was signed by Judge Hurlbutt on August 2, 1995. The Fort Hall Water Users Association appealed a ruling regarding the 1990 Fort Hall Indian Water Rights Agreement to the Idaho State Supreme Court, and this appeal was heard on December 6, 1995. Until this appeal is resolved, the Agreement and the Partial Decree are not final. In addition, there may be questions whether the Mitigation Inc. contract for the water accruing to Ririe and Palisades space should be viewed as in full force and effect.

If the Agreement stands as written, the Partial Decree will be the controlling document in the allocation of water rights of the Shoshone-Bannock Tribes. One condition of the Agreement is that is shall be effective only when the Reclamation has entered into a storage contract with the IWRB or designee of the Committee of Nine in accordance with Article 12.3. Accordingly, the United States has agreed to contract with Mitigation, Inc. for the 80,500 acre-feet of noncontracted storage space in Ririe Reservoir and the 18,980 acre-feet of noncontracted storage space in Palisades Reservoir. This space is estimated to provide an average of approximately 45,000 acre-feet of water per year.

Unauthorized Use

Unauthorized use is defined as the use of Reclamation project water in ways, in amounts, or in locations that are not authorized by Federal law or Reclamation contract. Unauthorized use is commonly called water spreading. Unauthorized use includes (1) applying project water to lands outside the boundaries defined by the project's authorizing legislation or a contract, (2) applying project water to lands that have not been classified by Reclamation as eligible to receive water or to lands classified by Reclamation as nonirrigable, (3) any change of use, such as from irrigation to municipal and industrial use without the prior written approval of Reclamation, (4) applying project water without the necessary state water right, or (5) irrigating more acreage than allowed by contract or law.

Meetings were recently held in August and September of 1995 to discuss internally how Reclamation will address unauthorized use. A directive is anticipated from the Commissioner of Reclamation containing the principle that Reclamation will carry out a program to resolve cases of substantial unauthorized use of project water in a cost-effective manner. Implementation of the program will be the responsibility of each Regional Director. Each Regional Director will (1) prepare a plan for identifying all cases of substantial unauthorized use in the region; (2) take interim actions to avoid additional unauthorized uses and address known cases of unauthorized use; (3) prepare a report identifying all cases of substantial unauthorized water use in the region; (4) prepare a plan for resolving these cases; and (5) prepare a long-term plan to provide reasonable assurance that water use conforms to law and contract.

Water Acquisition for ESA Considerations

In accordance with the Reasonable and Prudent Alternative found in the March 2, 1995 NMFS Biological Opinion on FCRPS operations, Reclamation is required to annually provide 427,000 acre-feet of water from the Snake River basin for salmon flow augmentation in the lower Snake River and Columbia River. Reclamation is obligated to take such actions as are necessary to ensure, by 1998, a high likelihood of providing that amount of water each year. Accordingly, Reclamation has initiated a program to acquire reservoir storage space and natural flow rights throughout the drainage above Lower Granite Dam so that a reliable water supply can be obtained to meet the 427,000 acre-feet requirement. To date, Reclamation has purchased about 22,500 acre-feet of storage space in Jackson Lake and Palisades and American Falls Reservoirs. Under this program, Reclamation will purchase natural flow and storage space rights only from those willing to sell, at a fair market value, and in accordance with State water rights. This water, along with annual water rentals, will be combined to meet the salmon flow augmentation requirement of 427,000 acre-feet.

Title Transfer

As part of the second phase of the Administration's National Performance Review, Reclamation is undertaking a program to transfer title of facilities that could be efficiently and effectively managed by non-Federal entities and are not identified as having national importance. This effort is a recognition of Reclamation's commitment to a Federal Government that works better and costs less. The transfer of title will divest Reclamation of the responsibility for operation, maintenance, management, regulation, and liability for the project. The transfer of title to a project will, in effect, sever Reclamation's ties with that project.

A set of criteria and procedures are being developed to assure that transfers will safeguard national interests and will benefit the nation.

Resource Management Plans

Reclamation is conducting a multi-year program to prepare resource management plans (RMP) for all major facilities. These plans are intended to address the management of water and land surfaces including protection of archeological, historical, and other resources. Reservoir operations are generally excluded, but adjustments in reservoir operations that do not diminish benefits to the spaceholders or major project functions can be considered.

This program is guided by Federal law (Public Law 102-575) and policies aimed at ensuring that Federal lands are managed to serve a wide range of public purposes. These coordinated management plans are prepared to clearly set goals, objectives, policies, and priorities related to competing uses, guide decision-making, and resolve conflicts.

Reclamation's resource management policy is to ensure and encourage resource protection, conservation, and multiple use. Management practices and principles, in accordance with existing Federal laws, regulations, and policies, are to be applied to protect fish, wildlife, and other natural and cultural resources. The policy also provides for public health and safety, public access, and a wide variety of outdoor recreational opportunities to accommodate the increasing public demand to utilize Reclamation land and water areas.

An RMP for American Falls was completed in 1995. As funding allows, RMP's will be developed for other facilities in the upper Snake River basin; however, none are scheduled through fiscal year 1998.

Snake River Resources Review

Reclamation is conducting a comprehensive review of the multipurpose operations and related resources in the Snake River basin above Brownlee Dam. The goal of the review, which will take place over the next 4 years, is to develop a set of management tools/models that can integrate the operation of the 10 Reclamation projects and indicate resource tradeoffs with various system scenarios. The review will enhance, refine, and confirm Reclamation's ability to make sound resource decisions in the Snake River basin. The management tools to be developed will improve Reclamation's ability to analyze operations for traditional uses, such as irrigation, flood control, and power generation, while considering other requests such as releasing water for recovery of endangered salmon in the lower Snake and Columbia Rivers, protecting in-basin ESA listed species, recharging aquifers, providing water for municipal and industrial use, improving water quality, improving recreation opportunities, protecting cultural resources and Indian trust assets, and protecting and enhancing fish and wildlife habitat.

Coordination with other Federal and State agencies and Tribal governments that are gathering data or conducting studies within the basin is an important component. This review will serve to consolidate basin information so it can be shared and used more efficiently. Appropriate information will be linked together in a form than can be used to analyze the Snake River/reservoir system. The general public, water users and other State, local and Federal agencies are invited to participate in the review.

Reservoir Conservation Pools

Establishing a conservation (minimum) reservoir pool is intended to maintain valuable reservoir resources such as good water quality, reservoir fish populations, wildlife habitat, and/or recreation uses that would be lost if a reservoir were completely drained. These resource assets often evolve over a period of time but are secondary to the original purposes for which a reservoir was constructed. Virtually all reservoirs above Milner Dam offer these kinds of resource values which could be enhanced by establishment of conservation pools. None of these reservoirs have an official conservation pool; however, there are de facto minimum pools at Minidoka (Lake Walcott), Palisades Reservoir, and Jackson Lake. The upper Snake River system was authorized and is operated principally for flood control and irrigation purposes. In dry years, storage supplies are more heavily used to meet irrigation demands, and other uses may suffer accordingly.

The designs of most contemporary dam and reservoir projects now incorporate conservation pools. In the upper Snake, there is a need to review the options available for retroactively establishing conservation pool operations to better maintain reservoir based biological communities while meeting the contractual obligations. Information compiled through the Snake River Resources Review and subsequent modeling may help define seasonal reservoir pool elevations needed to enhance fish, wildlife, water quality, and recreation values. There may be opportunities in the future to modify system operations to include conservation pools. Establishment of official minimum pools could benefit recreation and fish and wildlife at Jackson Lake and Island Park, Palisades, American Falls, and Ririe Reservoirs.

Conservation pools would compete directly with irrigation water supplies, possibly some flood control operations and, resource values in other reservoirs.. Establishment of conservation pools would require active participation and negotiation by all interests.

Instream Flow Management

High quality trout fisheries are found below Jackson Lake, Palisades, and Island Park Dams. These valuable tailwater fisheries are sustained by year-round reservoir releases. There is controversy and disagreement on the adequacy of

those releases, and there have been incidents of fish losses below Palisades and Island Park Dams associated with drought conditions and related water management decisions. Low flows below these projects during the late fall and winter may limit trout populations by limiting available instream habitat during this period. The potential of other upper Snake fisheries may not be realized because optimal winter reservoir releases are not routinely provided. The minimum flows that Reclamation administratively provides below the various dams in the upper Snake are covered in chapter V.

It is normally not possible for Reclamation to operate the upper Snake River/reservoir system to provide optimal trout flows while meeting contractual obligations to irrigation water users. In addition, increasing minimum flows could conflict with the establishment of reservoir conservation pools. However, on a case-by-case basis, there may be potential for various interests to reach solutions that are mutually beneficial and which could improve instream flow conditions. For instance, Reclamation's salmon water acquisition initiative could result in positive and negative effects on resident fish, water quality in the middle Snake, and power generation. The Nature Conservancy is seeking to establish a winter flow release at Henrys Lake through purchase of reservoir storage rights and a water exchange in the upper Snake River system.

Water Quality

Numerous investigations have demonstrated that water quality in the upper and middle Snake River has deteriorated from nutrient-laden organic and inorganic material inputs, sediment, altered streamflows, and periodic droughts. Several segments of the middle Snake have been designated as "water quality limited." Benefits to recreational contact and cold water biota are impaired by poor water quality that violates State water quality standards. The Idaho Department of Health and Welfare, Division of Environmental Quality, has recently released a draft nutrient management plan for the middle Snake (downstream from Milner Dam) which outlines many management actions that need to be taken to improve conditions. This report indicates that middle Snake water quality may be directly influenced by the quantity of water which flows past Milner Dam. Future studies will better define the relationship between flow and water quality conditions. Water quality benefits could be expected if flow augmentation could be provided from upstream storage sources, but such a solution would be difficult since the waters have already been appropriated for other uses.

VIII. Glossary

Active Capacity or Storage—Amount of storage space that can be filled and released for specific purposes.

Carey Act (1894)—Donated lands to states for reclamation purposes. Tracts sold by states were limited to 160 acres to be used for irrigated farming.

Conservation Pool—A reservoir pool elevation or volume of water that is to be considered a minimum. Conservation pools are usually established to maintain fish and wildlife resources, water quality, or recreation capability.

Consumptive Use—Use that permanently removes the water from the system.

Cost Allocation—A method of distributing the construction costs and the annual operating costs of Federal reservoirs among the benefitted functions. This is a first step to identifying the amount of annual payment needed to recover the Federal costs for construction and operation of a project.

Dead Storage—Water that lies below the outlet of a dam and cannot be released by gravity flow.

Desert Land Act of 1877—Authorized the sale of 640-acre tracts of arid lands in four States and eight territories to persons who would irrigate them within 3 years. Changed to 320-acre tracts in 1890.

Federal Water Project Recreation Act of 1965 (Public Law 89-72)—Provides for recreation and fish and wildlife enhancement at water resource developments.

Flood Control Act of 1944—Set forth statutory procedures for future coordination of plans with the Corps, Reclamation, and the states. Gave Congress the responsibility for coordinating work of the Corps and Reclamation. Caused Reclamation to discontinue using the authority of the Secretary of the Interior to authorize large projects. Virtually all reclamation projects were subsequently authorized by Congress.

Homestead Act (1862)—Provided free farmland to settlers who would live on and cultivate the land.

Inactive Capacity or Storage—Amount of storage space that is not normally released from a reservoir but is maintained for a specific purpose such as hydraulic head for power generation or a conservation pool.

Irrigation Season—Defined in spaceholder contracts as April 1 to October 31.

Minimum Flood Control Space—The space maintained in reservoirs during the winter months to be able to hold the rapid runoff of rain-on-snow events.

Minimum Reservoir Pool—The lowest reservoir elevation or pool volume reached with normal operations.

Non-reimbursable Costs—These are costs identified through a cost allocation where the beneficiary is generally the nation, e.g., anadromous fish protection and enhancement and migratory bird protection and enhancement.

Operational Head—Hydraulic head (elevation of water) needed to operate the facilities, especially the flow of water to canals and powerplants.

Power Head—Hydraulic head (elevation of water) for operation of hydroelectric generators.

Prior Appropriation Doctrine—The water rights system used throughout the western United States. Under this doctrine, water diverted for a beneficial use is based on the principle of "first in time is first in right."

Public Law 102-575, Title XXVIII—Extends some of the authorities on recreation and fish and wildlife enhancement at water resource developments.

Reach Gain/Loss—Amount of water that enters (or leaves) a river reach between two points, i.e., the amount of flow at a downstream point minus the flow at an upstream point equals the reach gain (loss).

Reclamation Act of 1902—Established a Reclamation Fund and authorized the Secretary of the Interior to use the fund to make examinations and surveys and to locate and construct irrigation works in the 16 western states (later 17 western states). Requires the Secretary to comply with State water law.

Reclamation Act of 1939—Authorized the Secretary of the Interior to plan and construct projects for multiple purposes in addition to irrigation. These included navigation, flood control, water power, municipal water supply, and other miscellaneous purposes.

Reimbursable Costs—These are costs allocated to a function that are required to be repaid by the beneficiary. The amount of reimbursability depends on the function and is governed by various public laws. As an example, costs allocated to an irrigation function are to be repaid without interest while costs assigned to power are to be repaid with interest.

Riparian Doctrine—A system of water rights developed whereby only landowners with property abutting the stream could divert water.

River Basin—The geographic area drained by a river.

River Rider—An field employee of the water district.

Snake River Basin Adjudication—An ongoing legal proceeding to identify all of the water rights in the basin.

Storage Season—Begins on October 1 and extends to the date that no more water is available for storage.

Spaceholder Contract—A type of repayment contract in which storage space is purchased in contrast to purchasing a specific amount of water. The amount of water that accumulates in that storage space belongs to the purchaser.

Upper Snake River—The reach of the Snake River extending from Milner Dam to the headwaters. The middle Snake River is usually described as the reach from Milner Dam downstream to Brownlee or Hells Canyon Dam. The lower Snake River is the reach from Hells Canyon Dam to the confluence with the Columbia River.

Water District 01—One of the State administration districts for the Snake River. Extends from Milner Dam upstream to the Wyoming border.

Waterbank—All of the water rental pools (see Water Rental Pool) and all of the natural flow water rights market. Also used to indicated the IWRB marketing process of that water.

Water Rental Pool—State authorized mechanism to allow more efficient use of water. Spaceholders are allowed to consign water to the water rental pool which sells the water. Water District 01 rental pool is managed by the Committee of Nine.

Water Service Contracts—A type of repayment contract where the buyer contracts to receive a specific amount of water each year.

Water Rights—A type of property right administered by the state for use of state waters.

Water Year —Begins on October 1 and extends to September 30 the following year. Water years are designated the same as the calendar year they end in, i.e, water year 1995 began on October 1, 1994 and ended on September 30, 1995.

Withdrawn Lands—Federal lands that are taken from the public domain for specific uses.

Appendix A

Spaceholder Contracts

Current Spaceholder Contracts[1] (November 1995) (acre-feet)				
Spaceholder	**American Falls**	**Jackson Lake**	**Palisades**	**Total**
Lower Valley Organizations with American Falls Space				
A&B Irrigation District	46,826		90,800	137,626
American Falls Reservoir District[2]	445,577	13,042		458,619
American Falls Reservoir District No. 2	393,550			393,550
Burley Irrigation District	155,395		39,200	194,595
Hillsdale Irrigation District	40,482			40,482
Idaho Power Company (nonirrigation)	44,275			44,275
Milner Irrigation District	44,951		44,500	89,451
Minidoka Irrigation District	82,216	186,030	35,000	303,246
North Side Canal Company, Ltd.[3]	116,471	312,007	116,600	545,078
Upper Valley Organizations				
Aberdeen-Springfield Canal Company[3]	29,771	57,661	143,278	230,710
Andrus, Ray	187	110		297
Artesian Irrigation, Inc.	2,794			2,794
Blackfoot Irrigating Company	12,558	7,370	4,050	23,978
Burgess Canal & Irrigating Company	9,343	10,603	31,400	51,346
Butte & Market Lake Canal Company	4,591	2,695	44,000	51,286
Clement Brothers, a partnership	70	196		266
Corbett Slough Ditch Company	3,342	1,961	6,300	11,603
Dilts Irrigation Company, Ltd.	871	511	1,200	2,582
Enterprise Canal Company, Ltd.	8,779	11,252	19,600	39,631
Enterprise Irrigation District	10,024	5,883		15,907
Falls Irrigation District	22,925		40,900	63,825
Harrison Canal & Irrigation District	11,832	11,943	23,500	47,275
Idaho Irrigation District	22,541	13,230	58,800	94,571
Lenroot Canal Company	3,805	5,234	7,850	16,889
Michaud Div, Fort Hall Indian Reservation	46,931		83,900	130,831
New Sweden Irrigation District	27,290	22,516	37,000	86,806
Osgood Canal Company, Ltd.	3,930	7,771		11,701
Peoples Canal & Irrigation Company	21,070	20,365	35,000	76,435
Poplar Irrigation District	662	1,589	1,550	3,801

Current Spaceholder Contracts[1] (November 1995) (acre-feet)				
Spaceholder	**American Falls**	**Jackson Lake**	**Palisades**	**Total**
Progressive Irrigation District	12,284	7,209	28,500	47,993
Reid Canal Company	2,507	1,472	3,150	7,129
Rudy Canal Company, Ltd.	2,606	3,530	15,700	21,836
Snake River Valley Irrigation District	25,942	30,225	35,300	91,467
Trego Ditch Company	1,293	758	3,200	5,251
Woodville Canal Company	5,949	3,491	6,000	15,440
Organizations Without American Falls Space				
Butler Island Canal Company, Ltd.			250	250
City of Pocatello			50,000	50,000
Clark & Edwards Canal or Irrigation Company			800	800
Craig-Mattson Canal Company			1,440	1,400
Danskin Ditch Company			2,350	2,350
F.M.C. Corporation			5,000	5,000
Farmers Friend Canal Company, Ltd.		2,000	9,400	11,400
Island Irrigation Company			4,700	4,700
J.R. Simplot Company			2,500	2,500
Labelle Irrigation Company			800	800
Liberty Park Irrigation Company			2,350	2,350
Long Island Irrigation Company			5,000	5,000
Lower Slough Canal Company, Ltd.		1,040	1,600	2,640
Mitigation, Inc.[4]			18,980	18,980
New Lava Side Ditch Company			11,750	11,750
North Rigby Irrigation & Canal Company			1,200	1,200
Owners Mutual Irrigation District		200		200
Palisades Water Users, Inc.			53,630	53,630
Parks & Lewisville Canal Irrigation Company			5,500	5,500
Parsons Ditch Company, Ltd.			994	994
Rigby Canal & Irrigation Company			6,300	6,300
Riverside Ditch Company			1,500	1,500
Sunnydell Irrigation District		4,000	6,300	10,300

Current Spaceholder Contracts[1] (November 1995) (acre-feet)				
Spaceholder	American Falls	Jackson Lake	Palisades	Total
Texas Slough Irrigation Canal Company			2,350	2,350
Twin Falls Canal Company[3]		97,183		97,183
Watson Slough Irrigation Company, Ltd & Watson Slough Ditch Company, Ltd			2,056	2,056
Wearyrick Ditch Company			600	600
West Labelle Irrigation Company			1,000	1,000
West Side Mutual Canal Company			2,350	2,350
Wyoming, State of			33,000	33,000
Contract Space Totals	1,663,640	843,077	1,189,978	3,696,695
Uncontracted Space Totals[5]	8,951	3,923	10,022	22,896
TOTAL ACTIVE CAPACITY[1]	1,672,590	847,000	1,200,000	3,719,590

[1] Lake Walcott, Minidoka Dam impoundment, Island Park Reservoir, Grassy Lake, and Ririe Reservoir are not accounted in this table. Minidoka Dam is operated primarily for irrigation diversions and power. Winter power releases may be curtailed by Reclamation and stored in its active storage capacity of 95,200 acre-feet to make additional water available for storage purposes in American Falls, Island Park, and Palisades Reservoirs in any year when these reservoirs fail to fill. The first 45,000 acre-feet of such curtailed saved water is credited to Island Park Reservoir, contingent upon spaceholders paying for power replacement.
Fremont-Madison Irrigation District holds all 142,400 acre-feet of the active storage capacity of Island Park Reservoir (127,200 acre-feet) and Grassy Lake (15,200 acre-feet) which are not accounted in this table and make up the Upper Snake River Storage Division of the Minidoka Project.
Mitigation, Inc. holds 80,500 acre-feet in Ririe Reservoir in the 1994 contract (see footnote 4)
[2] American Falls Reservoir District holds: 22,492 acre-feet in American Falls Reservoir and 13,042 acre-feet in Jackson Lake for Aberdeen-Springfield Canal Company; 274,338 acre-feet in American Falls for North Side Canal Company; and 148,747 acre-feet in American Falls for Twin Falls Canal Company.
[3] Also has space through American Falls Reservoir District.
[4]Held in a 1994 contract which becomes operative upon the announcement by the Secretary of the Interior that the 1990 Fort Hall Indian Water Rights Agreement is in effect. Mitigation, Inc. also holds 80,500 acre-feet in Ririe Reservoir in the 1994 contract.
[5]Totals for American Falls and Total Space do not add due to rounding.

Reservoir Space in Bureau of Reclamation Reservoirs Above Milner Dam (Acre-Feet)

Reservoir	Total Capacity	Active Capacity				Inactive	Flood Surcharge[1]	Dead
		Total	Contracted[2]	Formally Assigned To Other Uses	Formally Assigned to Flow Augmentation			
STATE OF WYOMING								
Grassy Lake	15,500	15,200	15,200				740	300
Jackson Lake	847,000	847,000	843,077		[3]3,923		94,740	([4])
STATE OF IDAHO								
American Falls	1,672,590	1,672,590	1,663,640		[5]8,951			
Island Park	127,600	127,200	127,200			[6]400	42,000	
Minidoka (Walcott)	210,200	95,200	95,200			[7]115,000	10,000	
Palisades	1,401,000	1,200,000	1,189,978		[8]10,022	[9]157,000	16,000	44,000
Ririe	100,500	90,500	80,500	[10]10,000		[11]6,000		4,000
TOTALS	4,374,390	4,047,690	4,014,795	10,000	22,896	278,400	163,480	48,300

1. Above the spillway and not storable.
2. Except for Minidoka, all contracts are spaceholder (share of reservoir capacity) repayment contracts. Minidoka storage is included in the original Minidoka Project and addressed in conventional repayment contracts.
3. Purchased by Reclamation for salmon augmentation flow.
4. Dead storage is a natural lake, the volume of which has not been determined but is estimated at about 2 million acre-feet.
5. Purchased by Reclamation for salmon augmentation flow. American Falls numbers do not add due to rounding.
6. Reserved for sediment control.
7. Provides head for north side and south side Minidoka canals and Minidoka Power Plant.
8. All but 500 acre-feet repurchased by Reclamation for salmon flow augmentation.
9. Reserved for power head.
10. Exclusive flood control.
11. Reserved for sediment control.

Appendix C

Sample Runoff Forecast

The natural runoff of the Snake River at Heise is forecasted on a monthly basis beginning January 1 and ending June 1 by the Pacific Northwest Regional Office in Boise. The forecast correlates precipitation stations and snow courses in the area with the expected runoff at Heise. The statistical method used is the step-wise multiple regression which results in the following equation (coefficients as of 1978):

$$Y_{Heise} = 3.196\ X_1 + 11.072\ X_2 + 12.771\ X_3 + 24.823\ X_4 - 1553.$$

Where:

Y_{Heise} = October-July natural runoff at Heise (1000 acre-feet)

X_1 = Antecedent October-November natural runoff at Heise (1000 acre-feet)

X_2 = October through March precipitation. Afton + Bondurant + Jackson, Wyoming + Moran X_2 + Palisades + Snake River (inches)

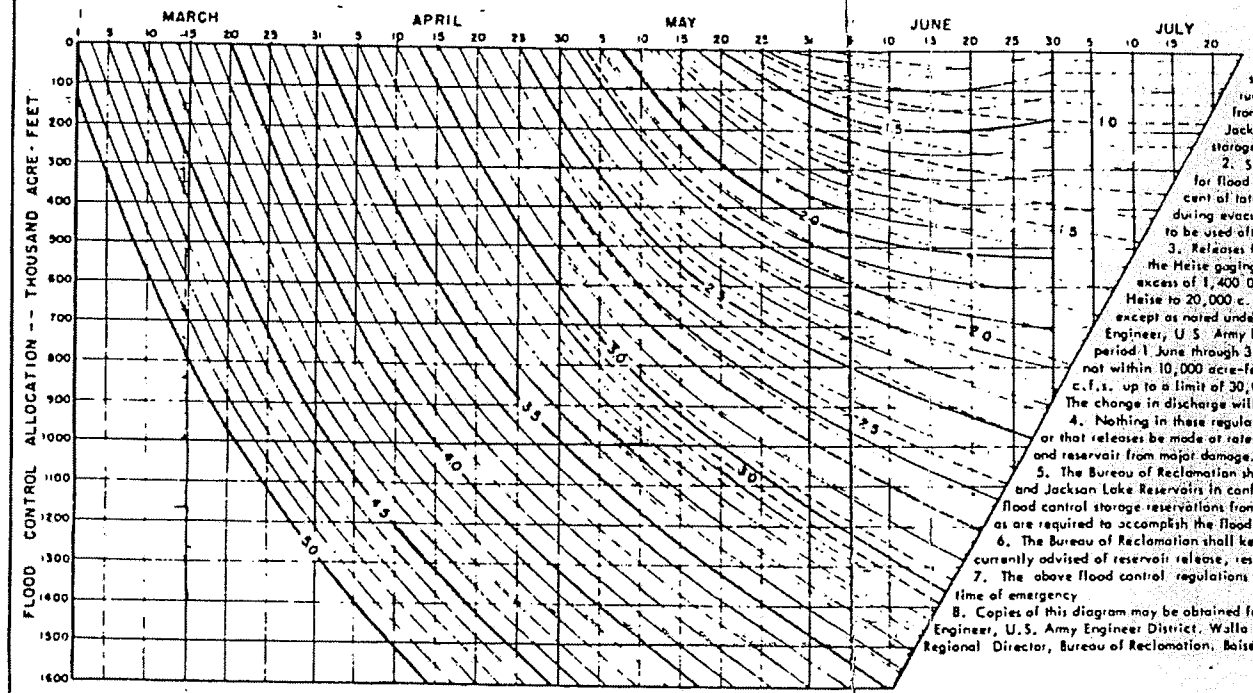
X_3 = April 1 snow water content. East Rim Divide + Huckleberry Divide + Lewis Lake Divide + Poison Meadows X_2 + Salt River Summit X_2 + Thumb Divide + Togusofee Pass (inches)

X_4 = April-May + 2/3 June precipitation. Same stations and weights as in X_2 (inches)

The precipitation and snow courses used will be part of the Hydromet reporting network. The runoff that occurs after October 1 is subtracted from the October-July forecast to obtain a residual forecast. The coefficients in the equation change slightly on an annual basis as each new year of data is entered in the regressions.

Appendix D

Flood Control Rule Curves



NOTES

1. The minimum flood control storage reservation [illegible] season is as indicated by the diagram. Parameter values [illegible] run-off of Snake River at Heise in millions of acre-feet [illegible] from any given date to 31 July. A minimum of 200,000 [illegible] Jackson Lake will be held vacant until 1 May except [illegible] storage should begin earlier to insure filling [illegible].

2. Storage space in Palisades Reservoir and Jackson Lake [illegible] for flood control purposes in accordance with this diagram. [illegible] cent of total storage space will be made available in Palisades Reservoir [illegible] during evacuation and until natural inflow to Palisades first exceeds [illegible] to be used after natural inflow exceeds 20,000 c.f.s.

3. Releases from Palisades Reservoir shall be restricted to 50,000 [illegible] the Heise gaging station except: (A) when the forecasted run-off [illegible] excess of 1,400,000 acre-feet in Palisades and Jackson Lake combined [illegible] Heise to 20,000 c.f.s., releases in excess of 20,000 c.f.s. will be made [illegible] except as noted under Item 7 or as may be agreed upon by the Bureau of Reclamation and the District Engineer, U.S. Army Engineer District), during extremely large floods and (B) when the [illegible] period 1 June through 31 July exceeds 2,500,000 acre-feet, and, when after 1 July the [illegible] not within 10,000 acre-feet of the space required by this diagram, the release may be increased above 50,000 c.f.s. up to a limit of 30,000 c.f.s. to the extent of 1,000 c.f.s. for each 5,000 acre-feet of deficient storage. The change in discharge will be made in such manner as to minimize the adverse [illegible] effects.

4. Nothing in these regulations shall be construed to require dangerously rapid changes in magnitudes of releases, or that releases be made at rates or in a manner that would be inconsistent with requirements for protecting the dam and reservoir from major damage.

5. The Bureau of Reclamation shall procure current basic hydrologic data necessary for forecasting inflows to Palisades and Jackson Lake Reservoirs in conformance with procedures mutually agreed to, make current determinations of required flood control storage reservations from the diagram and make current calculations of permissible releases from the reservoirs as are required to accomplish the flood control objectives.

6. The Bureau of Reclamation shall keep the District Engineer, U.S. Army Engineer District, in charge of the locality currently advised of reservoir release, reservoir storage and such other operating data as the District Engineer may request.

7. The above flood control regulations are subject to temporary modification by the District Engineer, if found necessary in time of emergency.

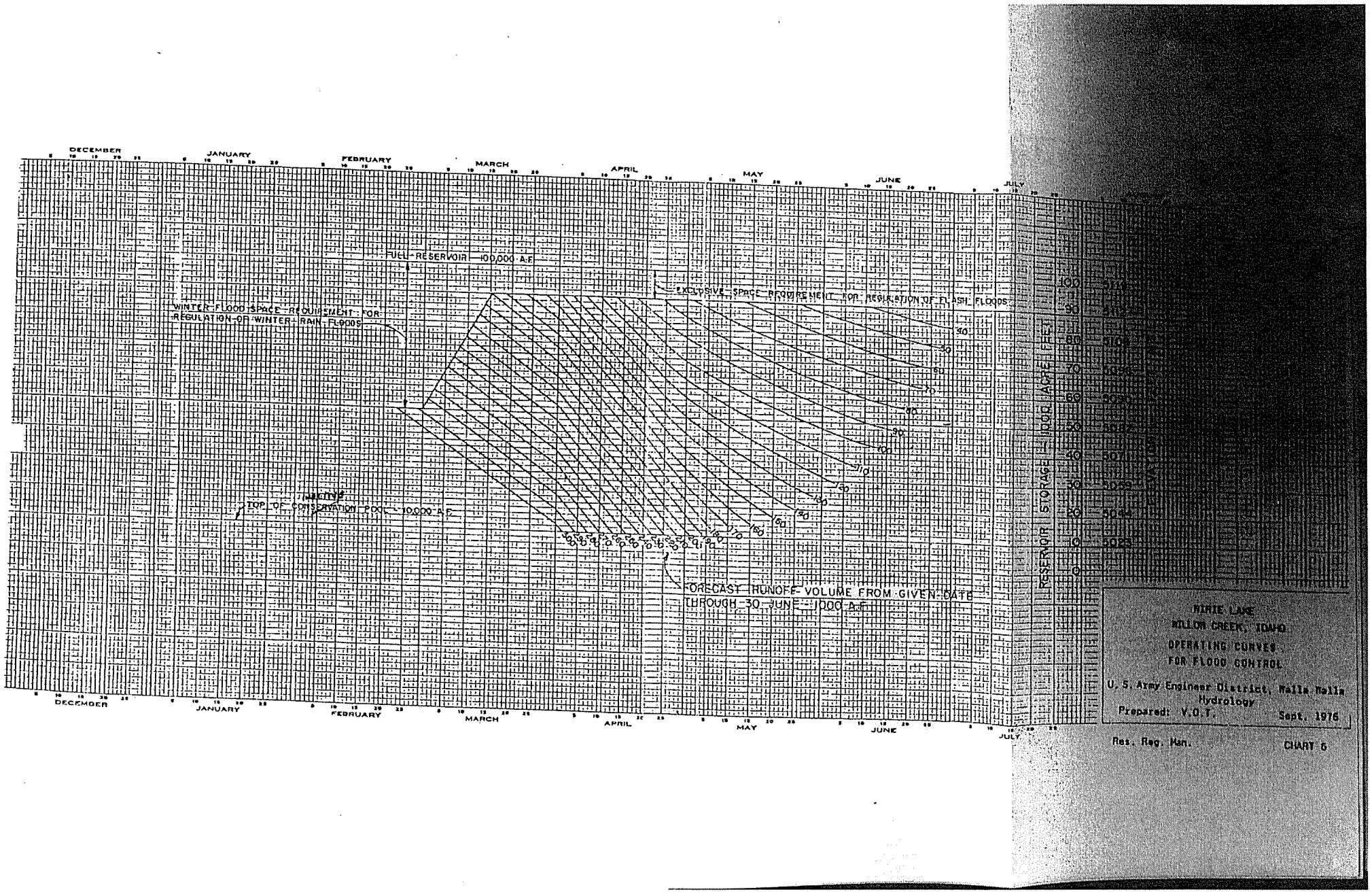
8. Copies of this diagram may be obtained from the offices of the District Engineer, U.S. Army Engineer District, Walla Walla, Washington, and the Regional Director, Bureau of Reclamation, Boise, Idaho.

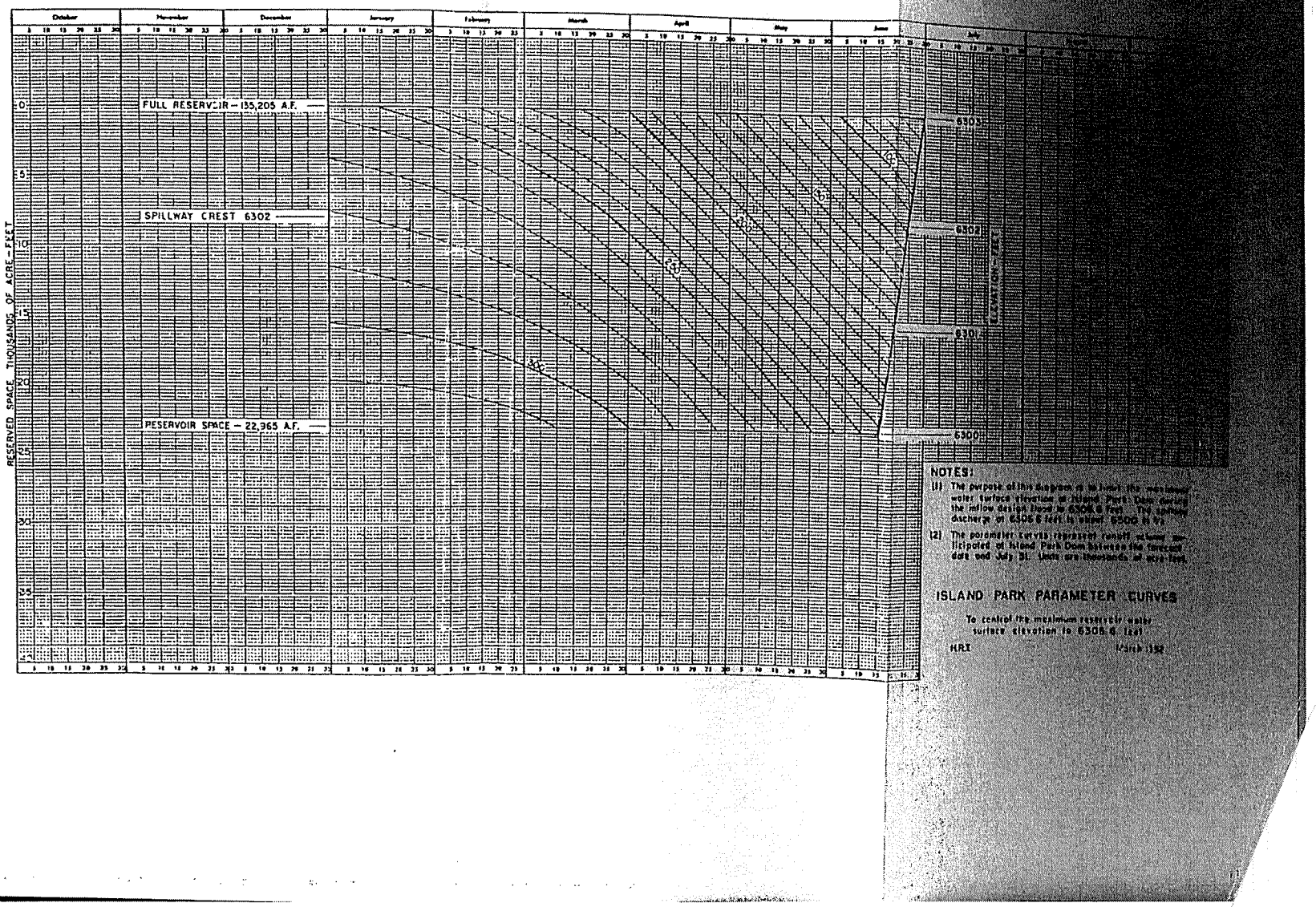
PALISADES DAM AND RESERVOIR
Snake River, Idaho
FLOOD CONTROL STORAGE RESERVATION DIAGRAM
Prepared Pursuant to Flood Control Regulations for Palisades Dam and Reservoir, 33 CFR 208.1

APPROVED _____
Commissioner, Bureau of Reclamation

APPROVED _____
Major General, Chief of Engineers

Effective Date May 12, 1958 File No SN-902-1.01


DECEMBER
JANUARY
FEBRUARY
MARCH
APRIL
MAY
JUNE
JULY
FULL RESERVOIR 100,000 A.F.
WINTER FLOODSPACE REQUIREMENT FOR REGULATION OF WINTER RAIN FLOODS
EXCLUSIVE SPACE REQUIREMENT FOR REGULATION OF FLASH FLOODS
INACTIVE
TOP OF CONSERVATION POOL 10,000 A.F.
FORECAST RUNOFF VOLUME FROM GIVEN DATE THROUGH 30 JUNE 1000 A.F.
RESERVOIR STORAGE 1000 ACRE FEET
100
90
80
70
60
50
40
30
20
10
0
5114
5103
5092
5081
5070
5059
5048
5037
5025
MAMIE LAKE
MULLAN CREEK, IDAHO
OPERATING CURVES
FOR FLOOD CONTROL
U. S. Army Engineer District, Walla Walla
Hydrology
Prepared: V.O.T. Sept. 1976
Res. Reg. Man. CHART 6


October
November
December
January
February
March
April
May
June
July
August
FULL RESERVOIR – 135,205 A.F.
SPILLWAY CREST 6302
RESERVOIR SPACE – 22,965 A.F.
RESERVED SPACE, THOUSANDS OF ACRE-FEET
ELEVATION - FEET
6303
6302
6301
6300
NOTES:
(1) The purpose of this diagram is to limit the maximum water surface elevation at Island Park Dam during the inflow design flood to 6308.6 feet. The spillway discharge at 6308.6 feet is about 8500 cfs.
(2) The parameter curves represent runoff volume anticipated at Island Park Dam between the forecast date and July 31. Units are thousands of acre-feet.
ISLAND PARK PARAMETER CURVES
To control the maximum reservoir water surface elevation to 6308.6 feet
HRI
Exhibit 192