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DEPARTMENT OF
WATER RESOURCES

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION TO
LEASE WATER FOR HYDROELECTRIC
GENERATION IN THE NAME OF THE
CITY OF POCATELLO

POST-HEARING BRIEF OF
PALISADES WATER USERS, INC.

Palisades Water Users, Inc. ("PWUI"), by and through its counsel of record, Holden, Kidwell, Hahn & Crapo, PLLC, hereby submits this Post-Hearing Brief as requested by Director David R. Tuthill, Jr. (the "Director") of the Idaho Department of Water Resources ("IDWR" or "Department") at the conclusion of the hearing on this matter held in Jerome, Idaho, on July 31, 2008. For the reasons set forth below, the Director should deny the Application for Leasing of Water submitted by the City of Pocatello.

I. PROCEDURAL BACKGROUND

The City of Pocatello ("City" or "Pocatello") filed an Application for Leasing of Water for Hydroelectric Generation (the "Application") with IDWR on June 19, 2008. As contained in the Application and attached "Water Lease" document, Pocatello sought authorization from IDWR to

lease up to 20,000 acre-feet ("AF") of water available to it under its Palisades storage contract to Idaho Power Company ("Idaho Power").

Pocatello is a signatory to Contract Number 14-06-100-1825, in which Pocatello entered into a contract with the United States of America to secure 50,000 AF of storage space in Palisades Reservoir. The actual water right which authorizes the storage of water in Palisades Reservoir is Water Right No. 1-2068, which is held by the United States of America acting through the Bureau of Reclamation. The City, along with many other entities, including PWUI, are contract and equitable title holders for the use of up to 1.2 million AF of storage water held in Palisades Reservoir and stored pursuant to Water Right No. 1-2068.

The proposed "Water Lease" between the City and Idaho Power included a provision wherein Idaho Power would pay the exorbitant sum of thirty-five dollars (\$35.00) per acre foot of storage water. Pocatello asserted that it had a right to enter into such a lease pursuant to Idaho Code §§ 42-108A and 108B without the approval of the Committee of Nine Water District 01 and without complying with the Water District 1 Rental Pool Procedures.

After the Application was received by IDWR, notice of the proposed lease was advertised pursuant to Idaho law on July 10th and July 17th, 2008. Timely protests were filed by PWUI, New Sweden Irrigation District, Idaho Irrigation District, the Committee of Nine, and the Idaho Ground Water Appropriators, Inc. ("IGWA").¹ Thereafter, a hearing on the Application was held on July 31, 2008, in Jerome, Idaho. At the hearing, the following individuals testified: Mayor Roger Chase of Pocatello, Lyle Swank (Watermaster of Water District 01 and Eastern Region Supervisor of IDWR), Tim Deeg (President of IGWA), and Wendy Murphy (Secretary of PWUI and Bookkeeper for Water

¹ Collectively, these entities will be hereafter referred to as the "Protestants."

District 01). Neither Idaho Power nor the United States, through the Bureau of Reclamation, presented any witnesses or evidence at the hearing.

II. PWUI BACKGROUND.

PWUI is a corporation, organized and existing under and by virtue of the laws of the State of Idaho. PWUI was organized by the filing of Articles of Incorporation with the Secretary of the State of Idaho on July 3, 1958, for the purpose of creating a legal entity qualified under federal reclamation law to contract with the United States of America acting through its Department of the Interior, Bureau of Reclamation, for storage space in the Palisades Reservoir, a Federal Reclamation project consisting of a dam and reservoir located in eastern Bonneville County, Idaho, on the South Fork of the Snake River near the border of the states of Idaho and Wyoming.

PWUI entered into a contract, No. 14-06-100-1881, entitled "UNITED STATES DEPARTMENT OF THE INTERIOR Bureau of Reclamation Minidoka and Palisades Projects Idaho Contract PALISADES WATER USERS, INCORPORATED Concerning Storage Capacity in Palisades Reservoir and Related Matters" on the 26th day of March, 1960, under the terms of which PWUI acquired storage space in Palisades Reservoir equal to 4.1442% of the active storage space in the reservoir which had an estimated active storage capacity of 1,200,000 acre feet.² The Company's share of such storage space was to be treated under the contract as 49,730 acre feet of the active capacity. In exchange therefore, PWUI was to pay to the United States, over a period of forty (40) years, the sum of \$385,407.50 (\$7.75 per acre foot of capacity) as its proportionate share of construction charges, together with its proportionate share of annual operation and maintenance charges.

² A copy of this contract was accepted into evidence at the hearing, and is attached hereto as "Exhibit A."

On March 16, 1973, the Company accepted an assignment of a similar contract previously entered into with the United States by Shattuck Irrigation Company, an Idaho corporation, No. 14-06-W-31, on December 12, 1952, amended February 13, 1963, under the terms of which Shattuck Irrigation Company had acquired 0.325% of the active storage capacity of Palisades Reservoir, which was agreed to be 3,900 acre feet of such active storage capacity, with all future repayment obligations for construction charges, together with annual operation and maintenance obligations allocated to such storage space. PWUI is now the contract holder of 53,630 acre feet of active storage space in Palisades Reservoir.

The above-referenced construction charges payable in forty (40) annual installments under said contracts have now been paid in full by the Company. The Company has issued, and there are presently 53,630 shares of the common capital stock of the Company outstanding on its books. In accordance with the Bylaws of the Company, "[E]ach share of such stock represents, measured at Palisades Reservoir, the same proportionate share of water to which the corporation is at any given time entitled by virtue of its contract rights as said share of stock bears to the total issued and outstanding shares of stock of the corporation" (Bylaws of Palisades Water Users, Inc., adopted January 17, 1981, Article 3, Section 2).

III. RENTAL POOL BACKGROUND.³

The Idaho Water Resource Board (the "Board") has the authority to operate the Idaho Water Supply Bank pursuant to Idaho Code § 42-1762. The Idaho Water Supply Bank is essentially a water exchange market operated by the Board to assist in marketing the water rights of natural flow and

³ This background is taken primarily from notes prepared by Kent W. Foster, former counsel for PWUI, and various documents recounting the history of the rental pool available at the following IDWR websites: http://www.idwr.idaho.gov/waterboard/water%20bank/history_of_bank.htm and <http://www.idwr.idaho.gov/waterboard/water%20bank/Documents/BankOverviewFAQ.pdf>.

water stored in Idaho reservoirs. The Idaho Water Supply Bank includes two distinctly different categories of exchange markets: (1) the Board's Water Supply Bank and (2) Rental Pools.

The primary difference between the Board's Water Supply Bank and various local rental pools is the entity which oversees and manages these mechanisms. The Board's Water Supply Bank is operated by the Director of IDWR pursuant to the Water Supply Bank Rules found at IDAPA 37.02.03. These rules also allow the Water Resource Board to appoint a local rental pool committee to operate a local rental pool,⁴ and such committee thereafter has authority to promulgate procedures for the rental pool, which must be approved by the Board.

Another important difference between the Water Supply Bank and local rental pools is explained by IDWR as follows:

Board's Bank v. Rental Pools: The Board's Bank manages the lease and rental of natural flow water rights (ground water and surface water) and privately held storage rights throughout the state of Idaho, while the rental pools manage the rental of stored water at specific storage locations (e.g. there are rental pools on the upper Snake, Boise, and Payette rivers).⁵

There are presently six existing rental pools, five of which are operated by local committees appointed by the Water Resource Board, as set forth in the following chart:⁶

4 IDAPA 37.02.03.40

5 See <http://www.idwr.idaho.gov/waterboard/water%20bank/Documents/BankOverviewFAQ.pdf> at *4 (bolding in original).

6 Id. at *2.

The first local rental pool was the Upper Snake River Rental Pool, which was established in 1979. The Committee of Nine of Water District 01 was the first local operating committee appointed by the Idaho Water Resource Board. The Committee of Nine adopted a set of procedures to facilitate the rental of stored water and established the first formal water rental process in the State of Idaho. It is this very rental process and established procedures which Pocatello and Idaho Power seek to circumvent with the Application.

IV. ISSUES.

In IDWR's notice of hearing in this matter, IDWR listed the following issues, which PWUI will address below:

1. What is the applicability of the provisions of section 42-108B, Idaho Code, given the requirements of the Water District 1 Rental Pool authorized by sections 42-1763 and 42-1765, Idaho Code?
2. What are the contractual obligations of the City of Pocatello and the U.S. Bureau of Reclamation under the City's federal storage contract and what is the effect, if any, of the contractual limitations of the City's proposed lease of water pursuant to state law?
3. If the lease is approved, could other water rights senior or junior to the leased water right be injured?

Additionally, before the hearing, Pocatello filed a Pre-trial Brief and requested the Director to dismiss the protests that had been filed in this matter. The Director declined, but requested that the parties address the arguments made by Pocatello in its briefing. The arguments contained in that briefing generally address the above three issues, and therefore, are addressed below.

Existing Rental Pools

- Water District 01 – Upper Snake River (1979).
Local Committee – Committee of Nine
- Water District 63 – Boise River drainage (1988).
Local Committee – Water district advisory board
- Water District 65 – Payette River drainage (1990).
Local Committee – Water district advisory board
- Water District 65K – Payette River, Lake Fork Creek.
Local Committee – Water district advisory board
- Shoshone-Bannock Rental Pool – Provides for the rental of water accruing to Federal Contract storage rights in American Falls and Palisades reservoirs
- Water district 74 – Lemhi River.
Local committee given authority to lease/rent natural flow water rights to satisfy IWRB's minimum flow water right.

Prior to 1979 there were no formally established mechanisms for transacting storage rentals within Water District 01. Historically the Watermaster would arrange storage rentals on an as needed basis. The Bureau of Reclamation's position was that no space holder could profit through the rental of storage water and consequently there were few incentives for space holders to make unused storage available to others.⁷

In 1979, the Idaho Legislature formalized the program of annual leases of storage water entitlements. The legislation set into law a 1976 policy recommendation of the state water plan that called for the creation of a "water supply Bank . . . for the purpose of acquiring water rights or water entitlements from willing sellers for reallocation by sale or lease to other new or existing uses."

⁷ See Paragraph 15 of PWUI's and Pocatello's storage contracts.

V. ARGUMENT.

- A. Idaho Code §§ 42-108A and 42-108B are inapplicable in this matter, as these statutes only pertain to areas of the state which do not have established rental pools.**

The above history regarding the formation and implementation of the Water Supply Bank and local rental pools makes it rather clear that the procedures established by the Committee of Nine as the advisory board to the Water District 01 Rental Pool govern this matter, not the provisions of Idaho Code §§ 42-108A and 42-108B. Otherwise the Director would in effect be improperly granted the power and authority to usurp the Board's rules and regulations that govern the operation of the water supply bank, which is contrary to Idaho Code § 42-1763.

In 1979, the Idaho Legislature placed responsibility for the water supply bank with the Board and provided in Idaho Code § 42-1765 that the Board may "appoint local committees" to "facilitate the rental of stored water. The Committee shall have the authority to market stored water between consenting owners and consenting renters under rules and regulations adopted by the Board."⁸ Idaho Code §§ 42-108A and 42-108B were not added until 1981.

Idaho Code § 42-108B provides "generally for the leasing of water under established water rights" by those people "who shall desire to lease the water pursuant to section 42-108A, Idaho Code." Essentially, Pocatello has argued that this statute trumps the procedures established by Water District 01 pursuant to Idaho law, even though the plain language of the statute does not contain such a statement, nor was it in place in 1979 when the water bank legislation was enacted. It therefore appears that Pocatello is arguing that the statutes—the enabling water bank statutes and Idaho Code §§ 42-108A and 42-108B—are somehow in conflict with each other, or that the Water

⁸ Idaho Code § 42-1765.

District 01 Rental Pool Procedures are somehow separate and distinct from Idaho Code § 42-108B, even though they relate to the same subject matter of leasing water.

The Idaho Supreme Court has held that “[s]tatutes relating to the same subject matter, although in apparent conflict, are to be construed in harmony, if reasonably possible.”⁹ As set forth above, there are a number of rental pools throughout the state, but the entire state is not covered by these rental pools, and therefore, Idaho Code §§ 42-108A and 42-108B could reasonably be interpreted to apply only to those areas. This conclusion is further supported by the fact that a number of provisions of Chapter 42, Title 17 specifically defer to procedures adopted by the local committee and approved by the Water Board. Idaho Code §§ 42-108A and 108B should not render those rules and regulations meaningless.

Additionally, the Idaho Supreme Court has held that “[w]here two statutes appear to apply to the same case or subject matter, the specific statute will control over the more general statute.”¹⁰ With the 1979 legislative enactments, the Legislature intended for the local committee to be a key advisor for both the Water Board and the Director in establishing local procedures specific to certain parts of the state. For example, Idaho Code § 42-1765 provides that the Director “may approve a general lease which the local rental committee may utilize to meet the approval requirements enumerated in Section 42-1763, Idaho Code.” Thus, under the rationale articulated by the Idaho Supreme Court, the more specific procedures for a local rental pool should trump the more generalized statutes, Idaho Code §§ 42-108A and 42-108B.

⁹ *State v. Barnes*, 133 Idaho 378, 987 P.2d 290, 292 (1999); see also *Cox v. Mueller*, 125 Idaho 734, 736, 874 P.2d 545, 547 (1994); *State v. Maland*, 124 Idaho 537, 540, 861 P.2d 107, 110 (Ct.App. 1993).

¹⁰ *Westway Const., Inc. v. Idaho Transp. Dept.* 139 Idaho 107, 115, 73 P.3d 721, 729 (2003); See also *Gooding County v. Wybenga*, 137 Idaho 201, 46 P.3d 18 (2002).

We note additionally that the pattern of proceeding through the rental pool rather than 42-108A and 108B has previously been followed by the Idaho Legislature. In the context of the Nez Perce Agreement, the Legislature enacted legislation requiring that storage rentals for flow augmentation from areas of the state with a rental pool must be made through that rental pool. To quote directly from the statute:

Therefore, the legislature authorizes the U.S. bureau of reclamation to lease storage and natural flow rights through the state water supply bank and local rental pools under the limited conditions of this section. Any rentals of water for flow augmentation under any other provision of law, including section 42-108A, Idaho Code, shall be subject to the limitations and conditions of this section and the Snake River Water Rights Agreement of 2004.

...
Any water made available under this section shall be obtained from willing lessors. *Any water rented under this section from sources located within a basin having a local rental committee established pursuant to section 42-1765, Idaho Code, or section 42-1765A, Idaho Code, shall be rented pursuant to this section only through the local rental committee.*¹¹

We see no distinction in the above provisions and the proposed Application from Pocatello and Idaho Power. Any lease of storage water from the Upper Snake system to be delivered below Milner Dam, as a matter of law and policy, must proceed through the Water District 01 Rental Pool.

In short, it is more reasonable to conclude that the Legislature's passage of Idaho Code §§ 42-108A and 42-108B was to address those situations in the state where there was no established rental pool. This is not the case in the Upper Snake, indeed, the Upper Snake rental pool was the first one established, and has functioned smoothly for nearly three decades. The authority to market stored water between consenting owners and consenting renters as established under Idaho Code § 42-1765 rests with the local committee. Pocatello's Application seeks to circumvent the water

¹¹ Idaho Code § 42-1736B(1),3(a) (italics added).

supply bank using Idaho Code §§ 42-108A and 42-108B, which is contrary to established Idaho law, procedure, and precedent. As such, the Application should be denied.

B. Pocatello's contract with the United States allows for the leasing of a spaceholder's storage water, but Pocatello's contract—as well as other spaceholder contracts—does not permit profiteering.

As noted above, the United States did not participate at the hearing, and only provided a letter to the Director stating its belief that the Bureau of Reclamation's contract with Pocatello was not germane to the issues to be decided at the hearing. PWUI disagrees.

Paragraph 15 of the Pocatello's Contract, in its entirety, reads as follows:

Rental of Water; Sale of Space

15. (a) The City may rent stored water which has accrued to its credit in any reservoir of the system, but such rentals shall be for terms not exceeding twenty years and at rates to be approved in advance by the Secretary and the Advisory Committee. Rates shall not exceed the annual costs under the Company's obligations to the United States which are properly apportionable to such water, plus an amount sufficient to cover other annual costs of the Company which are properly apportionable thereto.

(b) No sale of storage rights in the reservoir system, created or defined by this contract, shall be made except on terms and conditions approved by the Secretary.

There is no evidence in the record that the above provisions have been met. The general intent of this contractual provision—which is contained in all spaceholder contracts of which PWUI is aware—is to prevent profiteering from storage water made possible by the United States. If the Director were to allow the Application, Pocatello could receive up to seven hundred thousand dollars (\$700,000.00) for leasing less than half of its available space. While it may be true that Reclamation has relaxed its oversight as to rental prices (as Mayor Chase of Pocatello stated at the hearing), it seems that collection of such a large amount of cash by Pocatello would violate the terms of its contract.

Further, the Nez Perce Agreement discussed above authorizes the leasing of up to 427,000 AF of storage water for flow augmentation. Wisely, the Legislature enacted legislation requiring that storage rentals for this purpose from areas of the state with a rental pool must be made through that rental pool.¹² In the event the Director approved this Application, the door will be opened to allow Idaho Power to compete directly with the Bureau for the lease of water for flow augmentation, which could jeopardize the provisions of the Nez Perce Agreement. Assuming that the Bureau pays the same \$35 per AF and leases 100,000 AF—less than 25% of the total obligation—the total amount paid by Idaho Power would be three million five-hundred thousand dollars (\$3,500,000.00). We cannot help but think that the Bureau is not in favor of such precedent, nor that this type of bidding war is in the local public interest.

- C. A lease of storage water for use below Milner Dam without complying with the Water District 01 Rental Pool Procedures will cause injury to the water rights of PWUI and the other Protestants because it will affect the refill of the Upper Snake System, will affect the local economy, and conflict with the local public interest.**

Idaho Code § 42-1763 provides that the terms and conditions of any rental of water must be approved by the director. To grant approval under this statute the Director must first find that the proposed lease will not “reduce the quantity of water available under other existing water rights,” “conflict with the local public interest,” or “adversely affect the local economy of the water shed or local area...” The Application is both in conflict with the local public interest and will adversely affect the local economy.

The State Water Plan, found in the notes of Idaho Code § 42-1736B, contains the plan prepared by the Idaho Water Resource Board for the optimum use of Idaho’s water. Policy 32 of that

¹² Idaho Code §42-1763B(3)(a)

plan states that it is Idaho's best interests to have a zero flow at Milner. The proposed Application would violate this policy established by the Water Resource Board unless a lease of water to flow past Milner is approved by the Water District 01 Advisory Committee--the Committee of Nine--which was appointed by none other than the Water Resource Board who established the zero flow at Milner policy. Such leases are allowed under the current procedures, but only when other priorities are met--in other words, when there is plenty of water to satisfy needs in the Upper Snake system.

In addition, to permit water to be leased below Milner to the highest bidder in disregard of the Rental Pool Procedures will unquestionably result in a new use and loss of water from the Upper Snake Storage System. This will affect carry-over storage and the subsequent year's fill allocation to the detriment of PWUI and other storage right holders. This was established in detail by the testimony of Lyle Swank, Water District 01 Water Master and Rental Pool Manager, and Wendy Murphy, secretary for PWUI and Bookkeeper for Water District 01.

Further, many members of PWUI and the other Protestants have gone to the rental pool to acquire water during our all-too frequent drought years. Under the current Rental Pool Procedures the price of rental water is determined based upon the whether or not the storage system fills. Because of water intentionally released past Milner, along with water inappropriately released by the Bureau of Reclamation as flood control as recently as 2006, the system has only filled once this century. Consequently the price of rental water, when it is available for the uses for which the storage was allocated, is more than twice the price than if the system did fill. Even if the City of Pocatello lease were subject to the long standing "last to fill" procedures of the rental pool

procedures, the impacts would still be felt by PWUI and others because it would likely to affect the final fill of the system and injure other water right holders.

Further, approval of the Application would result in difficulties to ground water users, many of whom are members of PWUI. IGWA has relied upon storage leases to satisfy mitigation obligations ordered by the Director. There will be irreparable injury and harm to IGWA and its ground water user members by diminishing the storage water supplies available to lease for mitigation purposes and potentially imposing an increased obligation to supply carryover water to the Surface Water Coalition under the 2005 Orders and subsequent Orders issued by the Director. Furthermore, supplies of storage water available to rent will be at an increased price. The importance of these leases was established by IGWA President Tim Deeg, and the Director took judicial notice of the economic impact to Idaho as provided in the Surface Water Coalition Call case if ground water users were curtailed.

Lastly, we note that while Pocatello offered testimony that the proposed lease would be beneficial to Idaho Power, Idaho Power did not present any testimony at the hearing. There was no testimony as to how the increased power would benefit Idaho residents, if Idaho Power had plans to continue leasing in subsequent years, if Idaho Power was going to sell its power out-of-state,¹³ why it did not go through the rental pool to lease water, why it needed additional water when 2000 cfs of flow was then going past Milner¹⁴ for flow augmentation with the incidental benefit of running through Idaho Power's facilities, etc. We cannot help but speculate that the Application is for a

¹³ We note that in testimony provided by economist John Church in the Surface Water Coalition Call, Idaho Power frequently sells its power out of state. See Affidavit of John Church at 7. Of course, demand for power in summer is often higher than in the spring or fall, so it is possible that the additional power would benefit Idaho residents and be in the local public interest, but no such explanation or testimony was provided by Idaho Power.

¹⁴ This is based on statements made by Mayor Chase at the hearing.

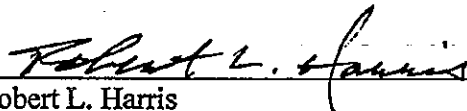
separate purpose of setting precedent that would allow Idaho Power to lease Upper Snake storage without limitation and thus render meaningless the rental pool procedures established to protect Upper Snake storage for irrigation purposes and use above Milner.

Even if the City can circumvent the Rental Pool Rules under Idaho Code §§ 42-108A and 42-108B, the evidence is clear that other water users and water right holders will be injured. As such, the Application must be denied.

VI. CONCLUSION.

For the reasons set forth above, the Application must be denied.

Dated this 8th day of August, 2008.



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of August, 2008, I served a true and correct copy of the foregoing by delivering it to the following individuals by the method indicated below, addressed as stated.

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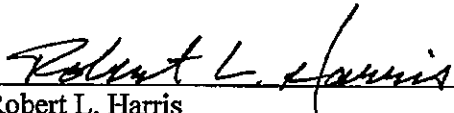

Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

EXHIBIT A

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT WITH
PALISADES WATER USERS, INCORPORATED
CONCERNING STORAGE CAPACITY IN PALISADES RESERVOIR,
AND RELATED MATTERS

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Reclamation

FORM D

Contract No.
14-06-100-1861

Minidoka and Palisades Projects
Idaho

Contract With
PALISADES WATER USERS, INCORPORATED
Concerning Storage Capacity in Palisades Reservoir,
And Related Matters

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Reclamation

Contract No.
14-06-100-1881

Minidoka and Palisades Projects
Idaho

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Concerning Storage Capacity in Palisades Reservoir,
And Related Matters

THIS CONTRACT, Made this 4th day of April 1960, pursuant to the Federal Reclamation Laws, between THE UNITED STATES OF AMERICA (hereinafter called the United States), acting through the Secretary of the Interior, and PALISADES WATER USERS, INCORPORATED (hereinafter called the Company), a corporation organized and existing under the laws of the State of Idaho and having its principal place of business at Idaho Falls, Idaho,

WITNESSETH, That:

2. WHEREAS, the United States, under the Federal Reclamation Laws, has heretofore constructed and is now operating Jackson Lake, Island Park, American Falls, and Lake Walcott reservoirs, among others, and is now constructing Palisades Dam and Reservoir Project (herein called the Palisades Project);

3. WHEREAS, the Company, desiring to cooperate with the United States and the various other water users organizations that enter into like contracts in the water conservation program that will be made

possible with the construction of Palisades Reservoir and its operation in conjunction with other Federal reservoirs on the Snake River, as herein proposed, has heretofore made application to contract for the use for its benefit of storage capacity in Palisades Reservoir; and

4. WHEREAS, the United States and the Company, serving an upper valley area, have not heretofore entered into any contracts with respect to storage rights in Federal reservoirs on the Snake River above Milner Dam;

NOW, THEREFORE, in consideration of the mutual and dependent covenants hereinafter stated, it is hereby agreed between the parties hereto as follows:

Definitions

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

"Secretary" shall mean the Secretary of the Interior or his duly authorized representative.

"Federal Reclamation Laws" shall mean the act of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplemental thereto, including the act of September 30, 1950 (Public Law 864, 81st Congress, 2d Session).

"Advisory Committee" shall mean the committee defined by article 31 of this contract or its duly authorized representative.

"Irrigation season" shall mean a period of each year beginning April 1 and ending October 31 of that year.

"Storage season" shall mean, with respect to the reservoir involved, the period beginning October 1 of one year and ending during the next year when, as to the particular reservoir, no more water is available for storage.

"Reservoir system" shall mean the existing and authorized Federal Reclamation reservoirs on the Snake River and its tributaries down to and including Lake Walcott.

"Upper valley" shall mean the irrigated areas of the Snake River Basin that are served by canals diverting from the Snake River and its tributaries above American Falls Dam.

"Lower valley" shall mean the irrigated areas of the Snake River Basin that are served by canals diverting from the Snake River and its tributaries between American Falls Dam and Milner Dam.

"Watermaster" shall mean the officer of the State of Idaho charged by law with the distribution of Snake River water in the lower and upper valleys, or such other officer properly authorized by law and designated by mutual agreement of the Secretary and the Advisory Committee.

Provisions Relating to Storage Capacity in
Palisades Reservoir
(Articles 6 through 11)

United States to Construct Works

6. (a) Within the limits of the authorization therefor, the United States is now constructing and will complete and operate and maintain Palisades Dam on the Snake River in the vicinity of Irwin, Idaho, to provide a reservoir of an active capacity of about 1,200,000 acre-feet, and related facilities, substantially in accordance with the plans set forth in House Document No. 720, 81st Congress.

(b) When the dam and reservoir are ready for the storage and delivery of water for irrigation purposes, the Secretary shall so announce, including a statement of the active capacity that will be available for irrigation storage.

Capacity to be Available to the Company

7. The authorized dam will provide a reservoir with an estimated active storage capacity of 1,200,000 acre-feet and, based on that estimated capacity, the use and benefit of four and one thousand four hundred forty-two ten thousandths percent (4.1442%) of that capacity is allocated hereby to the Company. Beginning with the first full irrigation season after the Secretary has announced that the reservoir is ready for storage and delivery of water for irrigation purposes, the United States will make available to the Company the stored water accruing to that percentage of the active capacity of that reservoir, within the limits and on terms and conditions provided in this contract. That

percentage shall, so long as the reservoir has an active capacity of 1,200,000 acre-feet, be treated as the equivalent of 49,730 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.

Construction Charge Obligation

8. (a) The Company shall pay to the United States for the use of space as provided in article 7, as the construction charge obligation, the sum of four hundred forty-seven thousand five hundred seventy dollars (\$447,570), this being determined at the rate of nine dollars (\$9.00) per acre-foot of capacity and on the assumption that the reimbursable construction costs of the Palisades Project finally allocated to joint facilities equal or exceed the sum of twenty-three million two hundred one thousand one hundred dollars (\$23,201,100). If the reimbursable joint facility construction costs, as finally determined, are less than twenty-three million two hundred one thousand one hundred dollars (\$23,201,100), and, as a result, the amount of joint facility costs allocated to irrigation is less than the amount expected so to be allocated according to the Secretary's report of July 1, 1949^{1/}, the amount of the reduction shall be proportioned between irrigation construction costs assigned to be repaid by the water users and those

^{1/} Of the estimated joint facility construction costs, \$21,724,400 were allocated to irrigation under the report approved and adopted by the Secretary on July 1, 1949 (H. Doc. No. 720, 81st Cong.).

assigned for repayment from power revenues on the basis of the amounts of estimated irrigation construction costs so assigned in the Secretary's report of July 1, 1949. The amount of reduction, if any, when determined by the Secretary, shall be distributed equally as a credit against the construction charge obligation of all space the costs of which are allocated to irrigation. The total amount of credit and the portion thereof to which the Company is entitled shall be announced in writing by the Secretary promptly after final construction costs are determined and the allocations thereof are made. In no event, however, shall the credit be such as to reduce the Company's total construction charge obligation to less than three hundred eighty-five thousand four hundred seven dollars and fifty cents (\$385,407.50), this being at the rate of seven dollars and seventy-five cents (\$7.75) per acre-foot of capacity as initially stated in article 7.

(b) The construction charge obligation under this article shall be repaid by the Company to the United States in forty (40) successive annual instalments to be as nearly equal as is practicable. The due date of the initial instalment, established in relation to the date announced by the Secretary as the date that the dam is substantially complete and ready for storage, will be as follows: (i) if, on the announced date, the provisions of (d) of article 21 are still in effect, the first instalment shall be payable on or before December 31 of the third full calendar year after that date, the project for repayment purposes being treated as incomplete during the first two years; and (ii) if, on the announced date, the provisions of (d) of article 21 are no

longer in effect, the first instalment shall be payable on or before December 31 of the first full calendar year after that date. In the event there is, under the operation of (a) of this article, a reduction in the Company's total obligation after the payment of instalments has started, the amount of credit available shall be distributed evenly over the remaining unaccrued instalments as of the time the amount of the credit is announced.

Operation and Maintenance Obligation - Palisades

9. (a) The Company, beginning as provided in (b) of this article and continuing during the period of operation and maintenance of the Palisades Dam and Reservoir by the United States, shall pay to the United States in advance four and fourteen one hundredths percent (4.14%) of the costs of operating and maintaining that dam and reservoir, including whatever costs may be incurred in the delivery of water therefrom, which are apportionable to the irrigation storage rights therein. There shall be determined from time to time by the Secretary, after consultation with the Advisory Committee, the basis for distributing among the various purposes which by law are to be served by the dam and reservoir the costs of operation and maintenance thereof and the basis for assigning those costs for repayment. In determining the total costs annually apportioned to the irrigation storage rights there shall be deducted from the total annual cost of operation and maintenance of the dam and reservoir, those costs which are determined to be properly chargeable to other purposes served by the reservoir and for which other provision for repayment, in

whole or in part, is made pursuant to law. The costs apportionable to the irrigation storage rights shall be distributed annually to all storage space that is made available for irrigation purposes.

(b) Beginning with January 1 of the year in which the use and benefit of Palisades space is first available to the Company as provided in article 7, payment of the Company's share of Palisades Dam and Reservoir operation and maintenance costs shall be made for each calendar year on the basis of annual estimates by the Secretary. The notice of these annual estimates, hereinafter referred to as the operation and maintenance charge notice, shall contain a statement of the estimated cost of operation and maintenance of the dam and reservoir to be incurred in the calendar year involved and the amount of the Company's share of those estimated costs. The operation and maintenance charge notice shall be furnished to the Company on or before February 1 of the calendar year for which the notice is issued, but, when requested by the Company, a preliminary estimate shall be given at such earlier date as is agreed on in writing. The Company shall pay the amount stated in the notice on or before April 1 of the year for which it is issued or such other date as may be agreed on in writing.

(c) Whenever, in the opinion of the Secretary, funds so advanced will be inadequate to meet the Company's share of the costs of operating and maintaining the dam and reservoir, he may give a supplemental operation and maintenance charge notice, stating therein the amount of the Company's share of the additional funds required, and the

Company shall advance that additional amount on or before the date specified in the supplemental notice. If funds advanced by the Company under this article exceed the Company's share of the actual costs of operation and maintenance of the dam and reservoir for the year for which advanced, the surplus shall be credited on the operation and maintenance charge to become due for succeeding years.

Nature and Extent of Palisades Storage Right

10. (a) Beginning with the storage season indicated in article 7, the Company shall be entitled to have the following storage rights in Palisades Reservoir:

- (1) The right to have stored to its credit during each storage season, four and one thousand four hundred forty-two ten thousandths percent (4.1442%) of all water stored in Palisades Reservoir during that season under the Palisades storage right.
- (2) The right to have held over from one irrigation season to the next, stored water to which it is entitled.

The total amount of stored water to the Company's credit at any time shall not, however, exceed the total amount of space in the reservoir available to the Company under this contract, and the Company's storage rights in Palisades Reservoir are hereby made subject to the provisions of (c) of this article.

(b). Stored water available under the rights in Palisades Reservoir created by this contract shall be available for delivery to the Company during any irrigation season within these limitations:

(1) Except in cases of emergency, deliveries shall be limited to periods when the Company's natural flow rights are not sufficient to meet the Company's irrigation water requirements.

(2) Deliveries shall be limited at any time to the amount which can be delivered by means of the Company's proportionate share of the outlet capacity, taking into account the requirement of passing through the reservoir water belonging to prior rights and the physical limitations of the existing outlet works.

(c) Under the provisions of the act of September 30, 1950, the active capacity of Palisades Reservoir will be used jointly for irrigation and flood control storage in accordance with the operating plan set forth in House Document No. 720, 81st Congress, and attached hereto as Exhibit A, as that plan is implemented by rules and regulations issued pursuant to section 7 of the act of December 22, 1944

(58 Stat. 890). All the Company's storage rights are subject to the operation of the reservoir in accordance with this subarticle. In the event Palisades Reservoir fails to fill during any storage season by reason of such flood control operations, the amount of shortage so attributable shall be prorated equally over all space allocated to storage of water for irrigation, municipal, or other miscellaneous purposes and shall be charged against all stored water including that, if any, carried over from prior irrigation seasons.

Saving of Winter Water; Special Storage Right

11. (a) Beginning with the date announced by the Secretary as the time when Palisades Reservoir will be ready for operation as provided in article 6, certain water users organizations have contracted with the United States to make, for a period of 150 consecutive days during the period from November 1 through April 30 of each storage season, no diversion of water from the Snake River or any of its tributaries by means of its existing diversion works or by any other means.

(b) The total savings of water during each storage season as the result of curtailment of winter diversions by the water users organizations diverting from the Snake River who have contracted with the United States to curtail or cease diversions is agreed to be 143,000 acre-feet, of which 135,000 acre-feet are attributable to curtailments by those diverting above American Falls Dam and 8,000 acre-feet below that point. The Company, not partaking in the winter water savings program, shall be entitled to no storage in Palisades Reservoir by reason of the program set out in this article.

(c) The right to store water pursuant to this article shall be prior in time over the storage rights held by the United States for American Falls Reservoir (the latter having a priority dated March 30, 1921), or any storage rights held by the United States or the Company that are junior to the American Falls rights. The Company hereby consents to the granting of special storage rights with a like priority to all water users organizations and all water users who, directly or indirectly, contract to curtail storage season diversions substantially as provided in (a) of this article within these maxima as to total special storage rights:

- (1) For water users organizations and water users diverting above American Falls Dam — 135,000 acre-feet.
- (2) For water users organizations and water users diverting between American Falls Dam and Milner Dam — 8,000 acre-feet, exclusive of the special storage rights described in (d) of this article.

(d) The Company also hereby consents to permitting the North Side Canal Company, Limited and the Twin Falls Canal Company to store, in either American Falls or Palisades Reservoir, during the months of November through March of any storage season under a priority like that provided in (c) above, water that would otherwise accrue to them within these rights:

The rights of the North Side Canal Company, Limited and of the Twin Falls Canal Company, respectively, to divert at Milner Dam for domestic and livestock uses during those months as follows:

North Side Canal Company,
Limited 126,000 acre-feet

Twin Falls Canal Company 150,000 acre-feet

within this limitation:

If, taking account of all storable water whether stored or not, Palisades and American Falls reservoirs fail to fill during any storage season, any water diverted during that storage season by the North Side Canal Company, Limited in excess of 126,000 acre-feet (but not to exceed the amount of deficiency in fill), and by the Twin Falls Canal Company in excess of 150,000 acre-feet (but not to exceed the amount of deficiency in fill), will be charged as of the end of that storage season against the allotment of American Falls storage to these respective companies.

This limitation in the case of the North Side Canal Company, Limited shall become operative from the date Palisades Reservoir is ready for operation, but in the case of the Twin Falls Canal Company need not be made operative until the first year in which that company exercises the special storage provision to which consent is here given.

Provisions Relating to Exchange and Redefinition of
Existing American Falls and Jackson Lake Storage
Rights; Winter Power Operations at the Minidoka
Powerplant

(Articles 12 through 13)

Consent to American Falls-Jackson Lake Exchange and
Redefinition of Storage Rights

12. Certain upper valley water users organizations owning storage rights in American Falls Reservoir have agreed or will agree in connection with the acquisition of Palisades Reservoir rights to accept in exchange for a portion of their American Falls rights certain storage rights in Jackson Lake Reservoir below elevation 6752 feet above sea level (U.S.G.S. datum), the provisions for such exchange being substantially as set out in the revised document entitled "Basic Provisions Incorporated or to be Incorporated in Contracts With Upper Valley and Lower Valley Water Users Organizations to Govern the Permanent Exchange of Certain American Falls and Jackson Lake Storage Rights", attached hereto as Exhibit B, and these and other water users organizations have agreed or will agree to permit the United States to operate all space in Jackson Lake Reservoir on a holdover basis. The Company hereby consents to such exchange and to such holdover operating arrangements.

Winter Power Operation; Minidoka Powerplant

13. (a) The United States, in its operation of American Falls and Minidoka dams during the storage season of each year is required to pass through enough water to satisfy existing diversion rights in the stretch of river down to and including Milner Dam and certain power rights below Milner Dam, and has the privilege under an existing

decree to use at Minidoka Dam 2,700 cubic feet per second of water for the development of power. While the United States must operate the American Falls and Minidoka dams so as not to interfere with these third-party rights, it will be the objective of the United States in the operation of both its American Falls and Minidoka powerplants to curtail the release of additional water from American Falls Reservoir for power production at those powerplants during the storage season of any year whenever operation of those powerplants to the full extent of their respective water rights for power production would result in loss of irrigation water otherwise storable in the reservoir system. Accordingly, except as it is determined by the Secretary that additional water may be passed through American Falls and Minidoka dams without the loss of water that could be stored for irrigation in the reservoir system, the United States will, during each storage season beginning October 1, 1952, and continuing so long as the provisions of (c) of this article remain operative, limit the release of water through those dams as follows:

To the amount of water required to provide flows below Minidoka Dam sufficient to meet existing diversion rights in the reach of the river through Milner Dam and the power rights required to be recognized under the provisions of the contract of June 15, 1923, between the United States and the Idaho Power Company (Symbol and No. Ilr-733); as those diversion and power rights may be modified from time to time.

To the extent that it is practicable to do so, the Advisory Committee will be informed in advance of any plans for the release of water in excess of the foregoing limitations; and that Committee will be furnished written reports as of the close of the storage season of each year showing, among other things, the releases actually made and the minimum releases required to be made.

(b) Curtailment of releases as provided in (a) of this article will result in there being, in some years, additional water available for storage for irrigation purposes in American Falls, Island Park, and Palisades reservoirs. In any storage season when these reservoirs fail to fill, the saved water attributable to such curtailment shall be credited, first, to Island Park Reservoir to the extent of 45,000 acre-feet without regard to the priority of the storage permits held for that reservoir, and thereafter to American Falls, Island Park, and Palisades reservoirs in the order of priority of their respective storage permits, the crediting to Island Park Reservoir and to any storage right in any other reservoir (except the lower valley exchanged space in American Falls Reservoir) being contingent on the owners of these rights obligating themselves for their share of the annual payments for power replacement in keeping with the provisions of (e) of this article.

(c) For the purposes of this contract and without relinquishment of any part of the power rights herein described, it is assumed that but for curtailment of operations as provided in (a) of

this article, units 1 through 6 of the Minidoka powerplant would be operated during the storage season of each year to the maximum extent practicable within the limits of the power rights therefor (2,700 second-feet as decreed by the District Court of the Fourth Judicial District of Idaho on June 20, 1913, in the case of Twin Falls Canal Company v. Charles N. Foster et al.) and that in consequence of operations under this article there may be losses in the production of power and energy at that plant. To offset such losses, the United States will, as nearly concurrently as practicable, make replacement by the delivery of power and energy into the Minidoka power system at the Minidoka powerplant from other interconnected Federal powerplants being operated under the Federal Reclamation Laws. Payment for such replacement power and energy shall be made by the Company and all other contractors having reservoir rights benefiting from the water savings resulting from operations under the provisions of (a) of this article in annual amounts determined as follows:

- (i) Prior to the date when either the American Falls powerplant or Palisades dam powerplant is first in service, the payment for any year shall be the product, in dollars, of the then controlling average annual replacement requirement, in kilowatt-hours, times four mills (\$0.004).
- (ii) Beginning with the date when either the American Falls powerplant or Palisades dam powerplant is first in service, the payment for any year shall

be the product, in dollars, of the then controlling average annual replacement requirement, in kilowatt-hours, times the price per kilowatt-hour, figured at 100 percent load factor, under the then existing rate schedule for the sale of firm power and energy from the plant or plants involved.

In determining replacement requirements under this article, no account is intended to be taken, by way of offset or otherwise, of the effect of any reservoir system storage operations on the seventh unit of the Minidoka powerplant.

(d) The replacement requirements for the year ending September 30, 1953, shall be 5,699,000 kilowatt-hours, being the average annual replacement requirement for the period beginning October 1, 1931, and ending September 30, 1951. The average annual replacement requirement under either (i) or (ii) of (c) above for the year ending September 30, 1954, shall be the average of the annual replacement requirements for each year of the 20-year period ending September 30, 1953, and for each 12-month period after September 30, 1954, shall be the average of the annual replacement requirements of each year of the 20-year period ending on September 30 of the prior year. In deriving this average there shall be used, as annual net power production losses for each year, the annual figures for the years through September 30, 1951, as shown in Table 1 of the document entitled

"Criteria and Method for Determination of Certain Minidoka Powerplant^{2/} Production Losses From Restrictions on Use of Water Rights", and for each year thereafter, a net power production loss calculated on the basis of the comparison of (1) the total energy that could have been produced by units 1 through 6 of the Minidoka powerplant based on the water flows actually recorded at the U.S.G.S. Minidoka gaging station (hereinafter called the Minidoka gage), corrected as hereinafter provided, and (2) the energy which theoretically could have been generated at those units with the flows at the Minidoka gage without a curtailment in winter power operation as provided in this article and exclusive of irrigation storage releases. Using conclusions reached as to flows and heads, the power loss calculations will be made by utilizing the power production curves shown in drawing No. 17-100-139 incorporated by reference in the document identified above, but increases in energy in any year by reason of taking American Falls storage into account as provided in subparagraph (iii) of this subarticle (d) shall be accounted for as compensating offset up to but not exceeding energy losses accruing in that year by reason of curtailment in power operations under this article.

^{2/} Duplicate originals of this document shall be filed with the watermaster of District No. 36, the officer of the United States in charge of the Minidoka Project, and the Burley Irrigation District.

To correct flows under (1) above, all storage releases except American Falls shall be excluded and the measure of American Falls storage passing the Minidoka gage shall be the increase in storage at that gage over that computed at the Blackfoot gaging station as shown in the annual report entitled "Water Distribution and Hydrometric Work, District 36, Snake River, Idaho", the latter further corrected for any American Falls storage that may have been present by reason of having been stored temporarily upstream and that portion of Palisades storage which was diverted above the Minidoka gage. In measuring American Falls storage, it shall be assumed that storage is released from downstream reservoirs first. The flow at the Minidoka gage without storage shall be taken to be the normal flow at that gage as shown by that same report. In determining water flows, with and without curtailment of power operations as provided by this article, these assumptions shall be used with respect to units 1 through 6 of the Minidoka powerplant:

- (i) There is a right for power production to maintain a flow of 2,700 second-feet at Minidoka Dam during the storage season of each year in accordance with the decree entered June 20, 1913, supra, if that flow, disregarding the storage of saved water in the reservoir system under the provisions of this article, would be available at Minidoka Dam.
- (ii) There is a right to use, within the hydraulic capacity of these units, whatever natural flow passes Minidoka Dam during each irrigation season.

(iii) Although there is no right to have water stored under American Falls Reservoir rights released for power production, during the period that such storage is being released for irrigation there will be more energy produced by these units than is attributable to the natural flow rights therefor, which shall be taken into account as a compensating offset as provided above in this subarticle (d).

To determine controlling power heads, the effective power head for any period shall be derived on the basis of recorded forebay and tailwater elevations for that period.

The foregoing criteria for determinations of annual net power production losses may be changed from time to time but only if the changes are made in writing with the approval of the Secretary, the Advisory Committee, and the boards of directors of both the Burley and Minidoka irrigation districts. Determinations as to net power production losses for each year and the average annual replacement requirement under this article shall be made by a committee of three comprising the state watermaster of District No. 36, a representative to be selected jointly by the Burley and Minidoka irrigation districts and the North Side Canal Company, Limited, and the officer of the United States in charge of the Minidoka project, but, should that committee fail to make a determination for any year by January 1 of the year for which the determination is required, it may be made by the Secretary.

(e) The annual payment determined as provided in this article shall be apportioned among the benefiting reservoirs as follows: (i) prior to the first full storage season during which Palisades Reservoir is in operation, eighty-eight percent (88%) to American Falls Reservoir and twelve percent (12%) to Island Park Reservoir; and (ii) beginning with the first full storage season of Palisades operation, seventy-eight percent (78%) to American Falls, twelve percent (12%) to Island Park, and ten percent (10%) to Palisades. The amount apportioned to each reservoir shall be accounted for as part of the operation and maintenance costs for which provisions for payment for the Company's share is made elsewhere in this contract. The amount apportioned to American Falls Reservoir shall be distributed equally over all space available for irrigation storage, excluding the lower valley exchanged space but including in lieu thereof the upper valley exchanged space in Jackson Lake Reservoir.

(f) If the owners of any storage rights to benefit from the operation of this article fail to obligate themselves for their share of the annual payments for power replacement hereunder, the saved water creditable to such rights and the power replacement costs chargeable thereto shall be redistributed according to a formula to be agreed on in writing between the Advisory Committee and the Secretary. Such formula shall, however, be as nearly consistent as practicable with the formula that would control but for such redistribution.

Provisions of General Application to All
Rights Established or Defined by This
Contract

(Articles 14 through 40)

Temporary Storage and Exchange of Water; Release of Jackson
Lake and Palisades Water for Power Production

14. (a) It is the purpose of the United States and the water users having storage rights in the reservoir system (including the Company) to have the reservoir system so operated as to effect the greatest practicable conservation of water. In keeping with this purpose, the endeavor will be to hold stored water in reservoir system space that is farthest upstream. Water in storage in any of the reservoirs of the system may, however, when the watermaster and the Advisory Committee determine this to be in the interest of water conservation, be held temporarily in unoccupied space in any other reservoir in the system. And the Company hereby consents to the making, with the approval of the watermaster, of annual exchanges of stored water among the various reservoirs of the system. No such temporary holding of water or such annual exchanges shall, however, deprive any entity of water accruing to space held for its benefit.

(b) During any storage season, the United States, after consultation with the Advisory Committee may release stored water from Palisades Reservoir for the maintenance of power production at Palisades dam powerplant and may store such water in American Falls Reservoir. The release of such water will be confined, however, in storage seasons when it appears that American Falls, Palisades, and Jackson Lake reservoirs will fail to

fill, to water required for the maintenance of a minimum firm power production (estimated to be about 11,000,000 kilowatt-hours per month at an average production of 15,000 kilowatts) and which can be stored in American Falls Reservoir; and no such release shall be made that will preclude the later delivery of water, by exchange or otherwise, to the upper valley entities entitled thereto.

Rental of Water; Sale of Space

15. (a) The Company may rent stored water which has accrued to its credit in any reservoir of the system, but such rentals shall be for only one year at a time and at rates to be approved in advance by the Secretary and the Advisory Committee. Rates shall not exceed the annual costs under the Company's obligations to the United States which are properly apportionable to such water, plus an amount sufficient to cover other annual costs of the Company which are properly apportionable thereto.

(b) No sale of storage rights in the reservoir system, created or defined by this contract, shall be made except on terms and conditions approved by the Secretary.

Points of Delivery of Water; Measurement and Losses

16. (a) Stored water to which the Company is entitled under this contract will be delivered and measured at the outlets of the reservoir in which the water is actually stored, without regard to whether it is water accruing to storage rights in that reservoir. The Company will bear all losses chargeable to such water between the outlets of the delivering reservoir and the Company's points of diversion from the river.

(b) In addition to other specific provisions as to the distribution of losses chargeable to stored water, there shall be charged against stored water held under this contract to the credit of the Company in any reservoir of the system at the end of any irrigation season one and one-half percent (1½%) to offset evaporation losses. Such charge shall be made as of not later than the end of the ensuing storage season.

Ordering of Water

17. (a) The ordering of stored water shall be effected by the Company by notifying the watermaster, giving notice a reasonable period in advance, of the amount of water, within the limits of its water entitlements, to be diverted during each day of the irrigation season. The watermaster will be responsible for determining from day to day the amount of stored water required to be released from the various reservoirs of the system to comply with the requirements of the Company and all other entities entitled to the delivery of stored water only in response to orders from the watermaster. The watermaster shall be responsible for determining what portion of the Company's diversions is chargeable to stored water being held in the reservoir system for the Company, and diversions by the Company in excess of entitlements shall be charged against stored water subsequently accruing to the Company's credit under this contract or any other contract with respect to storage in the reservoir system.

(b) Actions by the watermaster under the provisions of this article shall be as agent of the Company.

Complaints Regarding Water Supply

18. The United States and its officers, agents and employees in charge of reservoirs in the reservoir system and the watermaster will use their best efforts and best judgment to deliver to the Company its proportionate share of the water to which it is entitled under this contract. Should the Company feel aggrieved because of an alleged mistake or inaccuracy in the delivery of water or in the division of stored water among the parties entitled to such water from the reservoir system, the Company shall immediately report such alleged mistake or inaccuracy to the watermaster and to the official of the United States in charge of the reservoir involved. If the watermaster finds that the Company's proportionate share of stored water is not being delivered, he will correct the error as early as possible. No liability, however, shall accrue against the United States, its officers, agents or employees, or the watermaster for damage, direct or indirect, arising by reason of shortages in the quantity of water available through the reservoir system by reason of drought, inaccuracy in distribution, hostile diversions by third parties, prior or superior claims, accident to or failure of the facilities comprising the reservoir system, whether or not attributable to negligence of officers, agents or employees of the United States, or other similar causes of whatsoever kind. Nor shall the Company's obligations to the United States under this contract be reduced by reason of such shortages or interruptions.

Payment of Costs in Delivery and Distribution of Stored Water

19. (a) The Company shall pay, in addition to its proportionate share of the costs of operation and maintenance of the Palisades Reservoir as provided under article 9 of this contract, its proportionate share of all costs of the delivery and distribution of water beyond the outlet works of the delivering reservoirs. These costs shall include, with respect to costs incurred by the United States, all costs and expense of whatever nature or kind in connection with, growing out of, or resulting from the distribution of stored water, the protection of stored water between the reservoir and the points of diversion from the river including the prevention of diversion of such water by parties not entitled thereto.

Whatever costs of this character are incurred by the United States shall be distributed among the Company and all others on whose behalf such costs have been incurred on the basis that the operation and maintenance costs of the reservoir from which the water was delivered are distributed among the various rights. Unless otherwise agreed in writing by the Secretary and the Advisory Committee, such costs shall be paid annually and for billing purposes shall be included as part of the operation and maintenance costs under article 9 of this contract.

(b) The Company shall also pay its proportionate share of the costs incurred by the watermaster in the delivery and distribution of water in accordance with the provisions of article 17 to the extent that those represent costs incurred other than by the activities of the United States in the delivery and distribution of water. The costs will be apportioned and paid in accordance with the provisions of the laws of the State of Idaho.

Computation of Costs

20. The costs which enter into the cost of operation and maintenance of the various reservoirs and the costs of delivery and distribution of water, portions of which costs are to be paid by the Company, 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, cost of surveys and investigations, labor, property, material and equipment, engineering, legal, superintendence, administration, overhead, general expenses, inspection, special services, and damage claims of all kinds whether or not involving the negligence of officers, agents or employees of the United States, but shall be exclusive of amounts which the law does not require to be repaid and which the Secretary determines as a matter of policy are to be treated as nonreimbursable.

Title to and Operation of Powerplant; Power Revenues

21. (a) Title to Palisades dam powerplant 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.

(b) All revenues derived from the sale or other use or disposal of power and energy developed at the Palisades dam powerplant shall be and remain the property of the United States.

(c) The United States, in its operations of the Palisades dam powerplant, will be governed by the provisions of article 14 and these criteria, among others: That the plant shall be operated so as to hold

to a practicable minimum the loss of water that would otherwise be available for storage in the reservoir system for irrigation purposes; and that, until such time as a reregulating reservoir has been put into operation, wide fluctuations in the release of water to meet peak power loads will, during irrigation seasons, be confined to periods when this can be done without substantial variation from the flows that would otherwise be present in the river below the dam.

(d) Notwithstanding provisions to the contrary in this contract, the Company consents to the operation of the Palisades dam powerplant, during a five-year period (but not beyond the end of the national defense emergency as declared by Proclamation of the President No. 2914 dated December 16, 1950, 3 CFR 1950 Supp., p. 271), beginning with the date when the first unit of that plant is first placed in service, in the following manner:

In addition to normal operation at other times within the limits provided by this contract, the plant may be operated to produce an average of 60,000 kilowatts (217,440,000 kilowatt-hours) during the period October through February of each storage season when the flow of the river at the dam is equal to or greater than that for those months of the median year during the period 1928 through 1947 whenever such operation is required in the judgment of the Defense Electric Power Administrator, or his successors in functions, to help meet certified defense loads served from power systems with which the plant is interconnected, directly or indirectly.

Title to Storage Works; Miscellaneous Revenues

22. (a) Title to Palisades Dam and Reservoir 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.

(b) Having regard for the allocations of investment and repayment responsibilities, miscellaneous revenues realized in connection with the operation and maintenance of Palisades Dam and Reservoir and related costs shall be distributed annually as follows:

Twenty percent (20%) to be distributed among the Company and other parties having storage rights in the reservoir on the same basis that operation and maintenance costs are distributed.

Eighty percent (80%) to remain the property of the United States.

Priority of Certain Existing and Future Water Rights

23. (a) In connection with Island Park Reservoir, located on the North Fork (Henrys Fork) of Snake River, the United States holds water license No. R-590, with a priority date of March 14, 1935, and license No. R-686, with a priority date of June 12, 1940. Notwithstanding the later priority of license No. R-686, the Company hereby agrees that all storage rights held by the United States in connection with Island Park Reservoir may be treated as having the same priority as rights under license No. R-590.

(b) In connection with Idaho Permit No. 15134, a direct diversion permit with a priority date of March 30, 1921, held in connection with American Falls Reservoir, the United States may contract with American Falls Reservoir District No. 2 to recognize the right of that district to have water license No. 15134 exercised substantially as follows:

American Falls Reservoir District No. 2 to have the right to divert as natural flow during each irrigation season under water license No. 15134, having a March 30, 1921 priority, as follows: From May 1 of each irrigation season continuing during that season so long as there is natural flow available for that priority, the first 1,700 cubic feet per second of flow to be available one-half ($1/2$) to American Falls Reservoir District No. 2 and one-half ($1/2$) to American Falls Reservoir, except that in any year in which American Falls Reservoir is full to capacity on April 30 or fills after that date, taking into account any water that may be temporarily stored to its credit in upstream reservoirs, all water diverted by American Falls Reservoir District No. 2 within the maximum of 1,700 cubic feet per second during the year prior to the initial storage draft on American Falls Reservoir after the reservoir finally fills in that year shall be considered as natural flow under water license No. 15134. Nothing herein shall prevent American Falls Reservoir District No. 2 from diverting water under said license prior to May 1

of a given irrigation season but all such diversions shall be charged as storage in the event the reservoir is not full on April 30 of that season or does not fill after April 30 of that season.

Water available at American Falls Reservoir for the March 30, 1921 priority under water license No. 15134, other than that to be available to American Falls Reservoir District No. 2 as above provided, to be available for storage in American Falls Reservoir.

And the Company agrees that it will not oppose an adjudication of a natural flow right of the waters of the Snake River for the benefit of American Falls Reservoir District No. 2 consistent with the foregoing criteria. The contract by the United States with American Falls Reservoir District No. 2 shall be on the condition, however, that that district assume its proportionate share of the obligation for the cost of replacement power under the provisions of article 13. When such contract has become operative, the United States shall make application to the State of Idaho for amendment of water permit No. 15134 and the issuance thereunder with a priority date of March 30, 1921, requiring that the remainder of the right under the permit, 6,300 second-feet, to the extent such right remains outstanding, be used for storage in American Falls Reservoir, such right, however, if issued to the United States not to carry voting privileges in water users meetings under the laws of the State of Idaho. Such application shall, however, leave unaffected water license No. R-269 having a priority dated March 30, 1921.

(c) If the United States, under the Federal Reclamation Laws, hereafter constructs storage facilities on the Snake River or its tributaries above Milner Dam in addition to those now constructed or authorized to be constructed to provide water for irrigation purposes, the Company hereby agrees that, notwithstanding the establishment of a storage right for such additional facilities with a priority subsequent to that assigned to Palisades Dam and Reservoir, the United States may hereafter contract with water users organizations which then have storage rights in Palisades Reservoir, to operate not to exceed 300,000 acre-feet of such capacity for the storage of water for irrigation for the benefit of such organizations as though that capacity had a storage right of identical priority with that held for Palisades Dam and Reservoir.

Protection of Water Rights

24. In case any dispute arises as to the character, extent, priority or validity of any of the storage rights held in the name of the United States for the benefit of the Company in connection with its rights under this contract, the United States may, independently of the Company, bring and prosecute judicial proceedings for the determination of such dispute and take all other measures necessary toward the defense and protection of its water rights, and such proceedings may be brought and prosecuted by the Company.

Refusal to Deliver Water in Case of Default

25. No water available to the Company under this contract shall be delivered to or for the Company if the Company is in arrears in the advance payment of operation and maintenance charges owed to the United States,

if any, or more than twelve (12) months in arrears in the payment of construction charge obligation instalments, or more than twelve (12) months in arrears in the payment of any other amount owed to the United States under this contract. The Company shall refuse to deliver water to lands or parties who are in arrears in the advance payment of operation and maintenance charges due from such lands or parties to the United States or to the Company, or to lands or parties who are in arrears more than twelve (12) months in the payment of amounts due from such lands or parties to the United States or the Company under this contract. The provisions of this article are not exclusive and shall not in any manner prevent the United States from exercising any other remedy given by this contract or by law to enforce the collection of any payments due under the terms of this contract.

Levies and Assessments by Company; All Benefits
Conditioned Upon Payment; Lien to Secure Obligations

26. (a) The Company shall cause to be levied and collected all necessary assessments and charges against its members and stockholders and will use all the authority and resources of the Company (including, without limitation by reason of this enumeration, its power to create liens and to withhold the delivery of water) to meet the obligations of the Company to the United States under this contract.

(b) Should the Company fail to levy the assessments and other charges against any land or the owners thereof as required by this contract, or, having levied, should the Company be prevented from collecting such assessments or other charges by any judicial proceedings or

otherwise fail to collect them, such land and owners shall not be entitled to receive water made available under this contract and the Company, except as otherwise ordered by a court of competent jurisdiction, shall not deliver such water to such lands or the owners thereof unless and until arrangements for its delivery satisfactory to the Secretary have been made.

(c) All construction charge obligations to the United States assumed by the Company under this contract shall be and remain a lien on the Company's storage rights in the reservoir system as defined in this contract until paid or otherwise satisfied. Whenever the Company is in default in the payment of any instalment of such charges, the Secretary may declare the entire construction obligation due and the lien therefor may be foreclosed in the manner provided by law for the foreclosure of a mortgage.

Lands for Which Water is Furnished;
Limitations on Area

27. Pursuant to the provisions of the Federal Reclamation Laws, water made available to the Company from space in the reservoir system for which the Company is obligated to the United States for construction charges under the terms of this contract shall not be delivered to more than one hundred sixty (160) irrigable acres in the ownership of any one person or other entity nor more than three hundred twenty (320) irrigable acres held by a husband and wife as community property, except that

delivery may be made to lands held in excess of this limitation pursuant to the provisions of section 46 of the act of May 25, 1926 (44 Stat. 649), as amended by the act of July 11, 1956 (70 Stat. 524). These limitations shall cease to operate when the construction charge obligation under this contract has been paid in full.

Limitation on Service to New Lands

28. The additional stored water made available to the Company under this contract shall not be delivered to lands which have not heretofore been irrigated (so-called new lands), except pursuant to arrangements made with the Secretary to govern the sale price of such new lands during the first five (5) years that water is made available thereto under this contract. This limitation shall not apply, however, to new lands which are within the outer boundaries of an ownership heretofore entitled to the delivery of water through the Company's canal system, nor to other new lands to be served by the Company if the total irrigable area of these other new lands to be provided irrigation service within five (5) years after the date when the first Palisades construction charge instalment becomes due under the provisions of article 8 does not exceed 1,500 acres; nor to lands which, by transfer or otherwise, have an independent right to water from the Snake River, which right is intended to be supplemented by water made available under this contract; nor to lands as to which the construction charge obligation has been paid as provided in article 27.

Termination or Modification of Excess
Land Provisions

29. (a) In the event there is a repeal of the so-called excess land provisions of the Federal Reclamation Laws, articles 27 and 28 of this contract will no longer be of any force or effect, and, in the event these provisions are amended in material respects, the United States will, at the request of the Company, negotiate amendments of these articles in order to conform them to the excess land provisions of the law as so amended.

(b) Articles 27 and 28 will no longer be of force or effect if there is a determination by a court of final jurisdiction, binding on all necessary parties, declaring the provisions of these articles to be of no force or effect.

(c) For the purposes of this article, the provisions of articles 27 and 28 are hereby agreed to be severable from the other provisions of this contract.

Penalty for Delinquency in Payment

30. Every instalment or charge required to be paid to the United States under this contract which shall remain unpaid after it has become due and payable shall bear interest at the rate of one-half percent ($1/2\%$) per month from the date of delinquency. The Company shall impose, on delinquencies in the payment of assessments, other charges levied by it to meet its obligations under this contract, such penalties as it is authorized to impose under the laws of the State of Idaho.

Advisory Committee

31. (a) In its operation and maintenance of the various dams and reservoirs of the reservoir system, 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 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 and on the costs of operation and maintenance of these reservoirs which are required to be borne by the space allocated to irrigation storage. The representative of the United States will meet with the Advisory Committee from time to time, but not less often than two times each year beginning with the calendar year 1953, at such dates and places as may be fixed by the Advisory Committee.

(b) Informal memoranda concerning working arrangements for the carrying out of the provisions of this article may be entered into from time to time between the Regional Director or other designated representative of the Secretary and the Advisory Committee.

(c) Beginning January 1, 1953, the Advisory Committee is agreed to be the Committee of Nine, as that committee may be constituted from time to time. The Committee of Nine shall continue to function as the Advisory Committee under this contract until a different representative body has been designated by a vote of the majority of the water users

voting at any regular annual meeting of the water users of District No. 36 held as provided by law. Further designations of bodies to serve as the Advisory Committee may be made from time to time by this same election process.

Ratification of Contract

32. The execution of this contract shall be authorized or ratified by the qualified stockholders of the Company at an election held for that purpose in accordance with the controlling provisions of law. The Company, after the election and upon the execution of this contract, shall promptly furnish to the United States certified copies of all documents required to establish the validity of the election and of the related actions of the Company's officers in executing the contract.

Changes in Company's Organization

33. While this contract is in effect, no changes shall be made as to the lands to which the stock of the Company is appurtenant or as to the Company's organization by partial or total consolidation or merger with another company or by proceedings to dissolve or otherwise, except with the consent of the Secretary evidenced in writing.

Rules and Regulations

34. The Secretary reserves the right, after consultation with the Advisory Committee, to make such rules and regulations consistent with the provisions of this contract, as are proper and necessary to carry out its true intent and meaning, and as are proper and necessary to cover any details of the administration or interpretation of the contract which are not covered by its express provisions. The Company shall observe such rules and regulations.

Representative of the Secretary

35. Where this contract uses the term "Secretary", this shall be deemed to include in all cases the Under Secretary or any Assistant Secretary or other officer of the Department of the Interior of equal authority. Where this contract authorizes action by the Secretary, such action may also be taken for or on behalf of the Secretary by any representative duly authorized therefor in writing.

Notices

36. Any notice, demand or request required or authorized by this contract shall be deemed properly given, except where otherwise herein specifically provided, if mailed, postage prepaid, to the Project Superintendent, (the present "project officer"), Bureau of Reclamation, Burley, Idaho, on behalf of the United States, and to the Secretary, Palisades Water Users, Incorporated, Idaho Falls, Idaho, on behalf of the Company. The designation of the person to be notified or the address of such person may be changed at any time by similar notice.

Discrimination Against Employees or Applicants
For Employment Prohibited

37. In connection with the performance of work under this contract, the Company agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision 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 Company agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Secretary setting forth the provisions of the nondiscrimination clause. The Company further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

Contingent on Appropriations or Allotment of Funds

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

Assignments Prohibited;
Successors and Assigns Obligated

39. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract, or any part thereof, or interest therein, shall be valid until approved by the Secretary.

Officials Not to Benefit

40. No Member or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written.

THE UNITED STATES OF AMERICA

By

H. T. Nelson
Regional Director, Region I
Bureau of Reclamation
P. O. Box 937, Boise, Idaho

PALISADES WATER USERS, INCORPORATED

By

W. D. Holden

(SEAL)

Attest:

Melva Bopp
Secretary

STATE OF IDAHO

County of *Bonneville*

) ss.

On this *20th* day of *March* 196*0*, before me personally appeared *E. R. Holden* and *Melva Doffey* to me known to be, respectively, the President and the Secretary of the Palisades Water Users, Incorporated, the corporation that executed the within and foregoing instrument. They acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned; and on oath stated that they were authorized to execute said instrument and that the seal affixed is the seal of said corporation.

IN WITNESS WHEREOF, I set my hand and affix my official seal the day and year first above written.

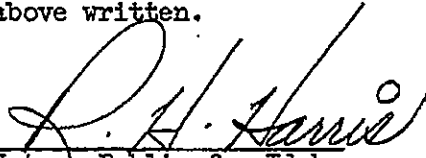
(SEAL)

Rosetha J. Smith
Notary Public in and for the
State of Idaho
Residing at
Idaho Falls, Idaho
My commission expires
May 10, 1961

STATE OF IDAHO.)
County of Ada) ss.

On this 4th day of April 1960, personally appeared before me H. T. Nelson, to me known to be the official of The United States of America that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said United States, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.


Notary Public for Idaho
Residing at Boise
My Commission expires 6/18/61

(SEAL)

EXHIBIT A

Palisades Project Operating Plan for Palisades Reservoir As Set Forth in the Appendixes of House Document No. 720, 81st Congress

The Bureau of Reclamation plans to construct and operate Palisades Reservoir for the optimum multiple-purpose use of the entire storage of 1,400,000 acre-feet. To attain this objective, the storage below elevation 5,497 feet mean sea level, approximating 200,000 acre-feet, will be reserved for dead storage and allocated exclusively to the production of hydroelectric power and the maintenance of a permanent pool for the preservation and propagation of fish and wildlife. The remainder of the storage capacity in the amount of 1,200,000 acre-feet will be operated in the joint interests of irrigation and flood control governed by the best available runoff forecasts.

The Bureau of Reclamation will forecast from time to time during the period from February 1 to July 31 of each year, on the basis of precipitation, temperature, snow survey, and runoff data, the volume of runoff that may be expected in the drainage area tributary to the Snake River above Heise, Idaho. To the extent that such services can be arranged for by cooperative agreements, the Bureau of Reclamation will make the forecasts hereunder after consultation with the reclamation engineer of the State of Idaho or his authorized representative, and the Chief of Engineers or his authorized representative. To facilitate the forecasting of runoff the Bureau of Reclamation will expand the existing hydrologic network and will establish and operate continuously a system for the efficient assembling and analyzing of the basic data. Until such time as a better method of forecasting be devised, the forecasts will be based upon

estimates of area-elevation weighted snow water content as determined from periodic snow surveys on or about February 1, March 1, April 1, and May 1, and upon precipitation for September of the preceding year. A sample curve of the correlation between weighted snow water content on April 1 of a given year plus precipitation of the preceding September and the resultant runoff from April 1 to July 31, inclusive, of the year in question, is shown on Plate II.

To the end of accomplishing the optimum multiple-use of the reservoir, the Bureau of Reclamation, beginning with the first year the reservoir is put into operation, will operate the reservoir on the basis of the forecasted runoff as nearly as practicable in accordance with the following plan:

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

It is the reservoir space which, using the governing forecast of flood runoff for the year, according to the curves shown on Plate I is required to the end of controlling the forecasted flood volume from the time in that year that reservoir inflow first exceeds 20,000 second-feet through the succeeding July 31 by releases from the reservoir during that period such that the flow at the Heise gage will not exceed 20,000 second-feet, in so far as this control can be accomplished with a reservoir capacity not exceeding 1,200,000

acre-feet. The governing forecast of flood volume for each year is the forecast made as of the day when reservoir inflow in that year first exceeds 20,000 second-feet.

The parameters shown on Plate I, empirically derived from floods of record, are enveloping curves of the storage requirements for various volumes of total forecast runoff from any given date to July 31. The reservoir capacity required to control the flood to a discharge of 20,000 second-feet (or less) below the dam is indicated by the ordinate of the parameter corresponding to the forecasted runoff on the date when the inflow to the reservoir exceeds 20,000 second-feet.

2. During the period of each year from the date of the first forecast about February 1 to the date of making the governing forecast for that year (approximately the middle of May) herein designated as the evacuation period, the reservoir will be operated in such a manner that the required reservoir level as determined by the parameters on Plate I at the time inflow to the reservoir exceeds 20,000 second-feet can be attained with minimum practicable rates and fluctuations of discharge. The rate of discharge during the evacuation period would be determined as follows: The reservoir level required on or about May 15 (the date on which inflows normally may be expected to exceed 20,000 second-feet) would be estimated by use of the parameters on Plate I and a May 15 forecast would be derived by deducting probable minimum inflows for the intervening period

from the date of periodic forecasts beginning on February 1. The reservoir levels thus estimated would comprise tentative allocations of flood control space at which to aim the evacuation procedure. The rate of discharge then would be selected as that required to release the probable maximum inflow for the period between date of forecast and May 15 plus the evacuation necessary to attain the required reservoir level indicated by the latest tentative allocation.

3. From the date of the governing forecast each year through July 31 of that year herein designated the filling period, the reservoir shall be operated in such a manner that the reservoir content shown on the chart (Plate I) will be maintained but not be exceeded except when storage above those levels is required to limit the flows to 20,000 second-feet at Heise. When the forecasted runoff indicates a required storage capacity in excess of the total active storage capacity of the reservoir, releases in excess of 20,000 second-feet will be made as required but at rates not to exceed 30,000 second-feet, except as indicated in paragraph 4 below.

4. Whenever the pool shall have risen above elevation 5,620, the full reservoir level, due to an extraordinary excess of inflow over the maximum releases permitted under paragraph 1 or is expected to rise above that level within the next 48 hours, releases may be increased temporarily above those previously specified, so as to minimize the peak rate of release and to draw the reservoir down to the full reservoir level as rapidly

as possible. However, the maximum rate of such extraordinary release shall not exceed the estimated maximum mean daily rate of inflow to the reservoir during the period when the reservoir level is above elevation 5,620.

5. All reservoir releases made as herein provided are subject to the condition that no releases shall be made at rates or in a manner that would be inconsistent with whatever operating rules and regulations are laid down by the Chief Engineer of the Bureau of Reclamation for the purpose of protecting the dam and reservoir from damage.

If operating experience indicates the desirability therefor, the Secretary of the Interior may, after consultation with the Secretary of the Army, modify from time to time the operating plan herein described with respect to the amount of space allocated to flood control each year on the basis of advance forecasts as to runoff, but no modification which would result in a substantial change in the control of floods herein stated to be the objective of the original operating plan shall be made without the concurrence of the Secretary of the Army. Revisions of the rules and regulations prescribed under the Flood Control Act of 1944 will be made by the Secretary of the Army if, in his judgment, these are requisite because of such modifications in flood control space allocations. Modifications in the operating plan not requiring the concurrence of the Secretary of the Army shall not be the occasion for a revision of the conclusions originally reached as to the flood control benefits to be realized from the original operating plan or of the formula adopted for the allocation of construction costs to flood control purposes.

NOTES:

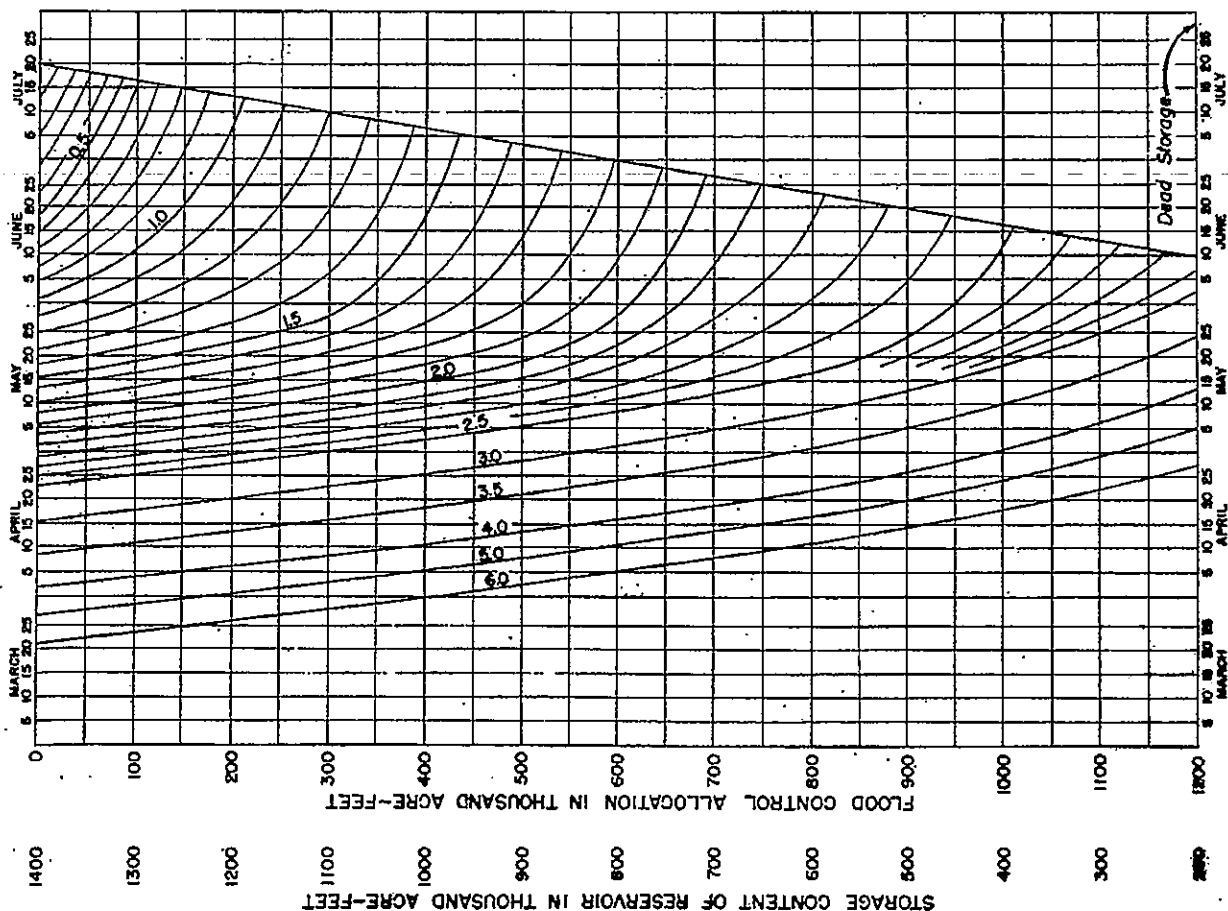
- Parameters are anticipated flood run-off of Snake River at Heise in millions of acre-feet for the remainder of the season from any given date to July 31. The anticipated run-off is the forecasted flow at Heise less the storage capacity available in Jackson Lake. A minimum of two hundred thousand acre-feet of storage space in Jackson Lake will be held vacant until May 1 of every year unless the forecast indicates that storage should begin earlier to insure filling that space.
- Storage reservation based upon a release which would give a maximum regulated flow at Heise of twenty thousand second-feet.

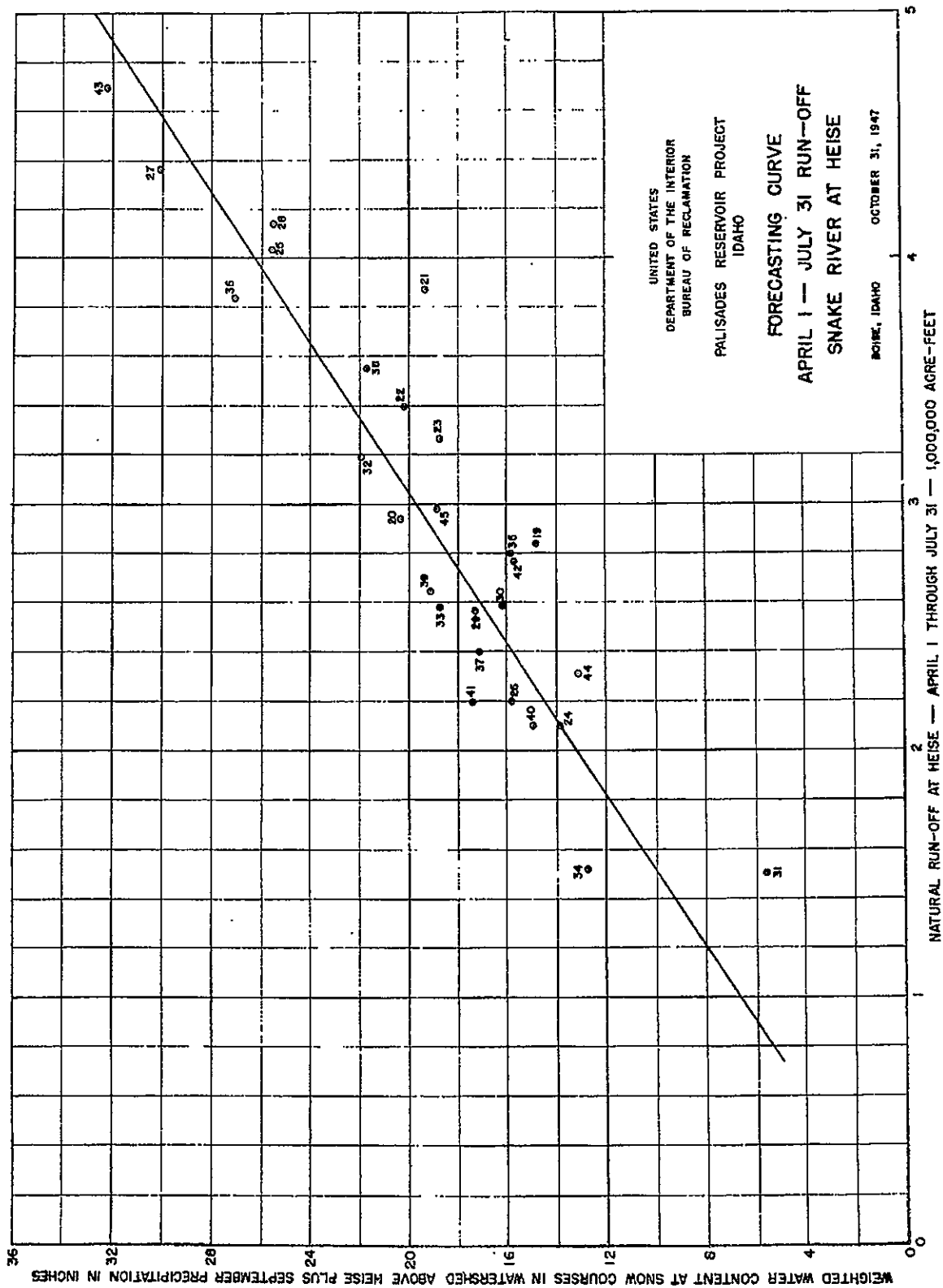
UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
PALISADES RESERVOIR PROJECT
IDAHO

BOISE, IDAHO OCTOBER 31, 1947

ALLOCATION OF FLOOD CONTROL SPACE

PLATE I





Revised
EXHIBIT B

Minidoka and Palisades Projects
Idaho

Basic Provisions Incorporated, or to be Incorporated, in Contracts With Upper Valley and Lower Valley Water Users Organizations to Govern the Permanent Exchange of Certain American Falls and Jackson Lake Storage Rights

Prior to the date of this amendatory contract, the United States operated and maintained for the benefit of the South Side Pumping Division of the Minidoka Project and for the North Side Canal Company, Limited, the following rights, on an exchange basis, in American Falls Reservoir, being equivalent to the capacities held immediately prior to October 1, 1952 in Jackson Lake Reservoir below elevation 6752 above sea level (U.S.G.S. datum), herein referred to as elevation 6752:

South Side Pumping Division, Minidoka Project: 139,780 acre-feet

North Side Canal Company, Limited: 10,000 acre-feet

In order to effectuate the permanent exchange of these Jackson Lake rights for an equivalent amount of space in American Falls Reservoir, confirming the action taken October 1, 1952, the United States has made or will make available to the upper valley water users organizations involved, a certain percentage of the active capacity in Jackson Lake Reservoir below elevation 6752, within the limits and on the terms and conditions provided by contract, this being in lieu of an equivalent amount of American Falls storage capacity. The total amount of Jackson Lake capacity so to be available will equal 149,780 acre-feet.

In exchange for this right, the upper valley water users organizations involved will be required, as of October 1, 1958 (being a revised date, first being October 1, 1952), to relinquish all their rights to an equivalent capacity in American Falls Reservoir. The total amount of American Falls capacity so to be relinquished by upper valley organizations will not exceed on a permanent basis 149,780 acre-feet but this relinquishment will be accompanied by a pro rata annual exchange and will be contingent on there being effective a confirmatory relinquishment by the Burley Irrigation District and the North Side Canal Company, Limited of their respective rights to 149,780 acre-feet of capacity in Jackson Lake heretofore operated for the benefit of those two organizations by the United States.

Under basic provisions like those above described, holders of storage rights in American Falls Reservoir will have acquired in lieu of those rights 34.2112% of the total active capacity in Jackson Lake Reservoir below elevation 6752, these rights in Jackson Lake Reservoir being hereinafter called the upper valley exchanged space; and 8.8106% of the active capacity in American Falls Reservoir will be held for the South Side Pumping Division, Minidoka Project, and the North Side Canal Company, Limited, these rights being hereinafter called, collectively, the lower valley exchanged space. The 34.2112% in Jackson Lake below elevation 6752 and the 8.8106% in American Falls, shall so long as the respective total active capacities are not less than 847,000 and 1,700,000 acre-feet, be treated as the equivalent of 149,780 acre-feet. The latter figure will, however, be subject to

adjustment from time to time by agreement between the Secretary and the Advisory Committee whenever there are determinations that the active capacities are other than above stated.

Confirming the principle which was established for the 1952-1953 storage season, starting anew with the figures at the beginning of the 1958-1959 storage season, there will be a determination at the end of each storage season in which the lower valley exchanged space fails to fill, taking carryover storage into account, (1) of the amount by which the American Falls storable inflow to which the lower valley exchanged space was entitled during that season failed to fill that space, and (2) of the amount, if any, by which the Jackson Lake storable inflow to which the upper valley exchanged space was entitled during that season failed to fill that exchanged space. If the amount under (1) exceeds the amount under (2), there will be credited to the lower valley exchanged space and charged to the upper valley exchanged space an amount of stored water equal to the difference, but not in excess of the amount required to fill the lower valley exchanged space as of the end of that storage season. Determinations hereunder are to be made by a committee of three, comprising the State Watermaster of District 36, a representative to be selected jointly by the Burley Irrigation District and the North Side Canal Company, Limited, and the officer of the United States in charge of the Minidoka Project.

Except as modified by the operation of the guarantee provisions above outlined, the determinations of the rights of the holders of space in each of the two reservoirs to reservoir inflow during each storage

season will be determined by the existing storage right or priorities held by the United States for each reservoir and these rights in Jackson Lake Reservoir will continue to be governed by the difference in storage priorities held by the United States for the capacity below elevation 6752 and for the capacity above that elevation.

The document entitled "Criteria and Method for Determination of Certain Minidoka Powerplant Production Losses from Restrictions on Use of Water Rights" and referred to in article 13, is a part of this contract and is on file as indicated in the footnote to that article.