

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF DISTRIBUTION OF)
WATER TO WATER RIGHT NOS. 36-02356a,) **CM-MP-2009-002**
36-07210 & 36-07247)
)

(Water District 120))
)

IN THE MATTER OF THE MITIGATION)
PLAN FILED BY A&B IRRIGATION)
DISTRICT)
)

(Blue Lakes Delivery Call))
_____)

REPLY TESTIMONY OF
DAN TEMPLE

SUBMITTED ON BEHALF OF:
A&B IRRIGATION DISTRICT

FEBRUARY 16, 2010

1 **REPLY TESTIMONY OF DAN TEMPLE**

2 **Q. CAN YOU PLEASE STATE YOUR FULL NAME, ADDRESS, AND POSITION?**

3 A. My name is Dan Temple and I live at 175 W. 750 Lane N., Rupert Idaho 83350. My
4 work address is 414 11th St., Rupert, Idaho 83350. I am the manager for the A&B
5 Irrigation District.

6 **Q. WHO ARE YOU TESTIFYING FOR IN THIS MATTER?**

7 A. The A&B Irrigation District. I provided direct testimony in support of A&B's mitigation
8 plan in this matter on January 11, 2010.

9 **Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?**

10 A. I am offering rebuttal testimony to points raised by Mr. Gary Ottman in his direct
11 testimony submitted on behalf of the Unit A Association on February 1, 2010.

12 **Q. HAVE YOU REVIEWED THE DIRECT TESTIMONY OF GARY OTTMAN**
13 **AND THE ATTACHED EXHIBITS?**

14 A. Yes I have.

15 **Q. CAN YOU DESCRIBE THE TERM "UNIT A" AND WHAT IT MEANS FOR**
16 **PURPOSES OF OPERATING THE DISTRICT AND DELIVERING WATER?**

17 A. Yes. The District was constructed by the Unites States Bureau of Reclamation with two
18 divisions, Unit A and Unit B. In 1966 the Bureau turned over operation and maintenance
19 of the District to the water users to operate under the 1962 repayment contract with the
20 District. Unit A's water supply consists of natural flow and storage water diverted from
21 the Snake River. Unit B's water supply is ground water from the Eastern Snake Plain
22 Aquifer ("ESPA").

1 **Q. HOW MANY LANDOWNERS RECEIVE SURFACE WATER IN THE**
2 **DISTRICT, INCLUDING THOSE THAT OWN THE CONVERTED LANDS?**

3 A. There are currently 172 individual landowners that are entitled to have surface water
4 deliveries made by the District to them.

5 **Q. DO ALL OF THOSE LANDOWNERS OBJECT TO THE DISTRICT**
6 **PROVIDING SURFACE WATER TO THE CONVERTED LANDS WITHIN THE**
7 **PROJECT?**

8 A. No. Of the 172 individual landowners that receive surface water, only about a dozen or
9 so individuals have voiced any concern or objection to me about the converted Unit B
10 lands receiving part of the District's surface water.

11 **Q. CAN YOU GENERALLY DESCRIBE HOW YOU DELIVER SURFACE WATER**
12 **TO LANDOWNERS, INCLUDING THE CONVERTED LANDS?**

13 A. All water is delivered by District staff with a 24-hour advance notice to the farm unit at
14 the volume requested by the water user. Ordered water will be pumped from the Snake
15 River at the District's pumping plant into the main canal. The main canal then splits into
16 smaller sub-laterals as needed. As the water reaches the requested delivery point, it will
17 be diverted out of a head gate to the farm unit at the requested volume. Water for the
18 converted lands generally is diverted out the ends of a couple of these sub laterals that are
19 in close proximity to the converted lands. This surface water and the drain water are
20 comingled and conveyed on down District drains to the converted farm units and
21 delivered in the same manner as all District deliveries.

22 **Q. DOES THE DISTRICT HAVE ANOTHER OPTION TO PROVIDE THE**
23 **CONVERTED LANDS GROUND WATER AT THIS TIME? WHY?**

1 A. Not in my opinion. The water levels in the area serving the converted lands dropped so
2 low that we could not provide adequate ground water supplies to those lands. Those
3 water levels have not recovered. Similar to the situation when the lands were converted
4 in the mid-1990s, the District does not have any feasible options to provide water to those
5 lands except through the surface water conversion.

6 **Q. ON AN ANNUAL BASIS, HOW MUCH WATER BY VOLUME PER ACRE DO**
7 **YOU DELIVER TO LANDOWNERS WITHIN UNIT A?**

8 A. Under the District's annual operation and maintenance (O&M) assessment for water
9 deliveries, all District landowners with lands that qualify for water deliveries are entitled
10 to 3 acre-feet of water per irrigable acre. However, there is no annual volume limit as
11 long as the District has water available. Water users can use as much as they can put to
12 beneficial use, even if that exceeds the first 3 acre-feet. The historical average volume
13 delivered has held right at the 3 acre-feet per acre.

14 **Q. HOW MUCH SURFACE WATER HAVE YOU DELIVERED TO THE**
15 **CONVERTED ACRES ON AN ANNUAL BASIS?**

16 A. District records computed from diversions and delivery records taken daily by District
17 staff show an annual average of 3,351 acre-feet of surface water deliveries to the 1,377
18 acres of Unit B converted lands from 2000 through 2009. **Exhibit A** to this testimony is
19 a spreadsheet of that water delivery data.

20 **Q. HAS THE USE OF WATER ON THE CONVERTED LANDS REDUCED THE**
21 **AMOUNT OF WATER ALLOCATED TO OTHER LANDOWNERS IN A**
22 **PARTICULAR YEAR?**

1 A. There have only been 2 years in the District's 52 years of operation, 2004 and 2005, that
2 landowners that receive surface water were placed on a restricted per acre water
3 allocation for the year. In 2004 that was a 2.6 acre-feet per acre allocation and in 2005
4 that was a 3 acre-feet allocation. These reduced allocations were a combination of
5 drought conditions with no or very little reservoir fill in junior Palisades space (1939) in
6 2002, 2003, and 2004 (**Exhibit B** – watermaster report excerpts), and Water District 01's
7 and IDWR's decisions related to the treatment of prior exchanges of storage water that
8 the District entered into with other irrigation districts and canal companies. Although
9 A&B believed the water exchanged would return to the respective storage account by
10 reservoir, the Watermaster did not treat the exchange that way, and the exchange water
11 was considered the first water used so A&B did not receive the water back into the
12 reservoir storage space that was intended by the District when the exchanges were
13 executed and approved. A&B challenged the Watermaster's decision but it was upheld
14 by IDWR. The reduced allocations in 2004 and 2005 did not occur due to Unit B's
15 converted lands receiving a share of the available surface water. If you take the measured
16 surface water portion of deliveries to the converted lands and had delivered that water
17 only to the District Unit A lands, the individual allocations would have only increased 0.2
18 acre-feet (about 7%) in 2004 and 0.14 acre-feet (about 5%) in 2005.

19 **Q. CAN LANDOWNERS REQUEST MORE THAN 3 ACRE-FEET PER ACRE?**

20 A. Yes they can. A landowner can pay for "excess" water with an increasing charge for
21 each acre-foot over 3 that is used within an irrigation season.

22 **Q. HAVE ANY UNIT A ASSOCIATION LANDOWNERS USED EXCESS WATER**
23 **TO YOUR KNOWLEDGE?**

1 A. Yes. Every year, in both Units A & B, there are individual water users that use more than
2 their first 3 acre-feet entitlement under the O & M assessment and go into excess usage.
3 The exception to this would be in 2004 and 2005 for Unit A and for several years in Unit
4 B for certain deep well systems that don't have the pumping discharge capacity because
5 of aquifer water table declines.

6 **Q. HAS THE USE OF WATER ON THE CONVERTED LANDS PROHIBITED ANY**
7 **LANDOWNER FROM USING EXCESS WATER IN A PARTICULAR YEAR?**

8 A. No. Unit A lands were placed on an allocation of 3 acre-feet or less in 2004 and 2005,
9 eliminating any excess use, but this was caused by reduced reservoir fill in 2002, 2003,
10 and 2004, and the Watermaster's and IDWR's interpretation of the storage water
11 exchanges the District had entered into in prior years.

12 **Q. HOW IS THE RATE OF DELIVERY DETERMINED?**

13 A. All rates of delivery are based on total water volumes available for delivery to entitled
14 lands in the project. If the water users demand exceeds the District's supply capacity, the
15 water users are placed "on allotment" which is an equally prorated volume based on the
16 water users qualifying irrigable lands, water availability, and the District's delivery
17 system capacity.

18 **Q. FOR SURFACE WATER DELIVERY DOES A&B RESTRICT THE RATE OF**
19 **DELIVERY, OR GO "ON ALLOTMENT" EVERY YEAR?**

20 A. No. Landowners in the Unit A delivery system do not go on allotment every year. For
21 example, there was no allotment in 2009 for Unit A. This varies from year to year based
22 on climate conditions, cropping patterns, timing of the crops water requirements, and if
23 needed the total water supply available.

1 **Q. HOW MUCH STORAGE WATER DOES A&B USE ON AVERAGE FOR**
2 **IRRIGATION USE ON THE PROJECT?**

3 A. The average Unit A annual diversion from the Snake River is approximately 56,000 acre-
4 feet. The amount that is storage usage varies from year to year depending on the amount
5 of natural flow that is available to the District. The 56,000 acre-feet average between the
6 years of 1990 and 2004 consisted of an average of 12,354 acre feet of natural flow and
7 43,683 acre-feet of District storage. *See Exhibit C.* Between American Falls and
8 Palisades Reservoirs, the District has approximately 137,000 acre-feet of storage space.

9 **Q. OTHER THAN 2004 AND 2005 ARE YOU AWARE OF ANY OTHER YEARS**
10 **SINCE 1996 WHEN A&B HAS REDUCED THE ANNUAL VOLUME OF**
11 **SURFACE WATER ALLOCATION PER ACRE TO ITS LANDOWNERS?**

12 A. No. Out of the last 52 years that Unit A has been in operation, 2004 and 2005 were the
13 only 2 years that there has been an allocation that restricted the annual volume of water
14 available to landowners that receive surface water in the District.

15 **Q. IN GENERAL WHAT INFORMATION OR REQUIREMENTS GUIDE THE**
16 **A&B IRRIGATION DISTRICT IN THE DELIVERY OF WATER EACH YEAR?**

17 A. The delivery of water each year is first governed by the District's water rights, the
18 repayment contract with the USBR, District by-laws, and the District Board of Directors'
19 decisions. Each year the District reviews the District's storage carryover before Water
20 District 01 storage allocation is determined, which is usually in June, to anticipate the
21 storage volume available for the coming irrigation season. The Board of Directors and
22 myself then work to make all water deliveries as equitable as possible for landowners
23 within the District. This is substantially easier in Unit A than in Unit B because of the

1 District's storage rights versus Unit B's independent well system and problems with
2 aquifer declines. The District's very reason for existence is to operate and maintain the
3 delivery systems and try and ensure a fair and equitable delivery of water to all
4 landowners.

5 Q. **DOES THE 1955 DEFINITE PLAN REPORT RESTRICT HOW THE DISTRICT**
6 **USES ITS STORAGE WATER ON THE PROJECT?**

7 A. No.

8 Q. **ARE YOU FAMILIAR WITH THE REPAYMENT CONTRACT ENTERED**
9 **INTO BETWEEN A&B AND THE U.S. BUREAU OF RECLAMATION?**

10 A. Yes. I have attached an executed copy to this testimony as **Exhibit D**.

11 Q. **WHEN WAS THE REPAYMENT CONTRACT EXECUTED BY THE PARTIES?**

12 A. The contract was signed by the District's president on February 6, 1962 and by USBR's
13 Regional Director on February 9, 1962.

14 Q. **IS THE CONTRACT REFERENCED AS EXHIBIT E TO THE TESTIMONY OF**
15 **GARY OTTMAN THE SAME CONTRACT?**

16 A. No. Exhibit E to Mr. Ottman's testimony appears to be a prior interim contract between
17 USBR and an individual landowner on the project.

18 Q. **ARE YOU AWARE OF ANY OTHER CONTRACTS BETWEEN THE U.S.**
19 **BUREAU OF RECLAMATION AND INDIVIDUAL LANDOWNERS WITHIN**
20 **THE A&B DISTRICT THAT CURRENTLY REQUIRE THE DISTRICT TO**
21 **DELIVER WATER TO SPECIFIC INDIVIDUALS?**

22 A. No. The repayment contract is the authority and supersedes all interim contracts that
23 were required to be signed by the individual landowners and the USBR prior to full

1 completion of the project. The repayment contract was authorized by a vote of all
2 District landowners.

3 **Q. HAS THE BUREAU PREVIOUSLY PREVENTED A&B FROM USING THE**
4 **DISTRICT'S STORAGE WATER ON THE CONVERTED LANDS PURSUANT**
5 **TO THE CONTRACT?**

6 **A.** No. In fact, they have been fully aware of the District's well problems and the
7 conversions that have taken place beginning in 1993. The Bureau of Reclamation did not
8 protest the mitigation plan either.

9 **Q. WHO PAID FOR THE DISTRICT'S STORAGE WATER?**

10 **A.** All qualified landowners of the District paid for the District's storage space in Palisades
11 and American Falls reservoirs.

12 **Q. WHO PAYS FOR THE CHARGES ASSESSED BY THE U.S. BUREAU OF**
13 **RECLAMATION FOR OPERATING AND MAINTAINING AMERICAN FALLS**
14 **AND PALISADES RESERVOIRS ON AN ANNUAL BASIS?**

15 **A.** All qualified landowners of the District pay the annual reservoir Operating and
16 Maintenance charges assessed to the District by USBR.

17 **Q. DOES A&B HAVE THE ABILITY TO CONVERT ADDITIONAL LANDS TO A**
18 **SURFACE WATER SUPPLY WITH THE EXISTING DELIVERY SYSTEM?**
19 **CAN YOU EXPLAIN WHY?**

20 **A.** No. A siphon, crossing under Interstate 84, along with system capacity constraints and the
21 points of diversions that allow movement of water to the converted lands, are at
22 maximum capacity restricting any further expansion of converted lands.

1 **Q. ARE YOU FAMILIAR WITH IDWR'S RECOMMENDED WATER RIGHTS**
2 **FOR A&B'S NATURAL FLOW AND STORAGE WATER RIGHTS ISSUED IN**
3 **THE DIRECTOR'S REPORT FOR BASIN 01, PART 1?**

4 **A. Yes. Attached to this testimony are IDWR's recommendations for water rights 1-14, 1-**
5 **2064, and 1-2068. Exhibits E, F, G.**

6 **Q. DO THE WATER RIGHTS INCLUDE THE CONVERTED LANDS WITHIN**
7 **THE DISTRICT AS AN AUTHORIZED PLACE OF USE FOR IRRIGATION?**

8 **A. Yes. The storage water rights' place of use for irrigation includes Jerome and Minidoka**
9 **counties. The District's digital boundary, or service area boundary for water right 1-14,**
10 **is located within these counties and includes the converted lands. Exhibit H is a copy of**
11 **the map of the District's service area that was included in the Director's Report.**

12 **Q. HAS IDWR OR THE WATER DISTRICT 01 WATERMASTER PREVIOUSLY**
13 **PREVENTED A&B FROM USING ITS STORAGE WATER RIGHTS WITHIN**
14 **THIS RECOMMENDED AUTHORIZED PLACE OF USE?**

15 **No. They have never placed any restrictions on the District for diversions being made on**
16 **District lands that are under our water rights or the diversion rates allowed within the**
17 **water right.**

Exhibit A

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	10 yr Ave.
UNIT B TO UNIT A CONVERTED LANDS (POD S POND & O POND)											
Total acre feet delivered:	4169.8	3550.7	3890.3	3415.6	2967.2 *	1988.6 *	3259.3	3429.3	3390.7	3456.3	3351.8
Original Unit A Lands (POD O POND)											
Total acre feet delivered:	1360.9	1294.7	1130.2	1279.3	1112.8 *	760.5 *	1264	879.5	1069.5	871.1	1102.3
Combined total acre feet delivered:	5530.7	4845.4	5020.5	4694.9	4080.0	2749.1	4523.3	4308.8	4460.2	4327.4	4454.0
Less Unit A Water Diverted to Converted Lands & Unit A Lands at O Pond and 33BC922 Deliveries:	-4779.8	-4802.1	-4251.5	-4286.3	-3653.8	-2122.9	-4070.6	-4214.4	-4322.8	-4127	-4063.1
Balance of Waste Water Used to Supplement all deliveries:	750.9	43.3	769.0	408.6	426.2	626.2	452.7	94.4	137.4	200.4	390.9
*All surface water users were placed on reduced volume restrictions because of storage allocation reductions.											

Exhibit B

2002 ANNUAL REPORT

WATER DISTRICT 1

SNAKE RIVER AND TRIBUTARIES

ABOVE MILNER, IDAHO

Ronald D. Carlson, Watermaster
Idaho Department of Water Resources
Eastern Regional Office
900 North Skyline Drive, Suite A
Idaho Falls, Idaho 83402

TABLE A
Reservoir Right Accrual for 2002

Reservoir	Priority	Space (Acre-feet)	Accrual (Acre-feet)
Jackson	8/23/1906	298,981	298,981
Jackson	8/18/1910	138,829	138,829
Jackson	5/24/1913	409,190	246,696
Palisades	3/29/1921	256,709	256,709
Palisades	7/28/1939	943,291	158,944
Ririe	6/16/1969	80,500	0
Henrys Lake	5/15/1917	79,350	32,192
Henrys Lake	7/29/1965	10,650	
Island Park	3/29/1921	45,000	45,000
Island Park	3/14/1935	90,000	18,207
Grassy Lake	2/13/1936	15,204	0
American Falls	3/29/1921	156,830	156,830
American Falls	3/31/1921	1,458,008	1,455,998
American Falls LTF	6/01/2001	57,752	0
Walcott	12/14/1909	95,200	95,200
		4,135,494	2,903,586

Notes: Accrual is not necessarily "new" accrual. Palisades for example got no new accrual to the 1939 priority. The amount accrued in this case was water carried over from the previous year and belonged to specific spaceholders. The accrual for each right has not been adjusted for evaporation and will therefore exceed the amount allocated. For Palisades, because there was no new accrual to the 1939 priority, the 97,862 AF of last-to-fill priority is not listed.

On October 1, 2002, 570,600 AF of water remained in storage. Over one-half of the remaining water was in the highest reservoirs, Jackson and Henrys Lake. During the month of October nearly 182,000 AF of water was added to storage. The storage on November 1, 2002 was 752,300 AF, 97,300 AF more than we had started on November 1, 2001.

2003 ANNUAL REPORT

WATER DISTRICT 1

SNAKE RIVER AND TRIBUTARIES

ABOVE MILNER, IDAHO

Ronald D. Carlson, Watermaster
Idaho Department of Water Resources
Eastern Regional Office
900 North Skyline Drive, Suite A
Idaho Falls, Idaho 83402

SUMMARY

At the end of the 2002 water year (September 30, 2002) the upper Snake River reservoir system held 571,000 acre-feet of storage. With the system only 13.7 % full at the start of the water year if precipitation should be below average drought conditions would extend for another year. Irrigation demand continued into October and by October 12, 2002 the contents had dropped to 559,000 acre-feet, the low for the year. With nearly 87% of the system storage space empty it would require 3.5 million acre-feet of storable water to fill the system in 2003. The 2003 snow pack would be only one of the factors that would determine if the goal of filling the system could be reached. Filling the system would depend not only on the snow pack but also on when that snow pack melted. The Water District 1 accounting year starts November 1, and on that date the storage system was 18% full having contents of 752,000 acre-feet. The releases from American Falls were quickly reduced to the winter maintenance level of 350 cfs. These low release rates precluded power production at American Falls and meant that only the small unit at Milner could be operated.

Through December precipitation on all of the major watersheds generally lagged the thirty-year averages. On January 1, 2003 the reservoir system was 34% full. The precipitation on the watersheds continued to lag the thirty-year average through the remainder of the normal snow accumulation season.

By April 1 the storage system was 56.8% full and because of the below average snow pack it appeared unlikely that the reservoir system would fill. The Natural Resources Conservation Service (NRCS) reported the Snake River basin above Palisades to be 91% of average. The Henrys Fork was only 80% of average. The forecasted stream flow for the April through July period was anticipated to be about 80% of the thirty-year average. The actual stream flow for that period is shown in the following table.

River	Unregulated Flow (Acre-Feet)	Percent of Average
Snow nr Heise	2,960,000	71
Henrys Fork nr Ashton	566,000	74
Falls River nr Ashton	395,000	87
Teton nr St. Anthony	303,000	63

The unregulated runoff at Heise, which represents the largest portion of the Upper Snake River watershed, produced 9% less water than was forecast in April.

The low elevation snow pack started melting out early in April. Irrigation diversions in the lower valley started on April 1. By the end of April most of the snow on the lower elevation snow courses had melted. On June 7 the storage in the eight Snake

River Reservoirs reached 2,732,000 acre-feet, their maximum contents of the year. At this point of maximum storage the system was 65.5% full. Because of the abnormally hot dry conditions that prevailed most of the summer, 2003 was characterized by an unusually high demand for water. In the 23 days between June 7 and July 1, 403,000 acre-feet of the available storage was diverted. Between July 1 and August 1, 910,000, or approximately 30% of the allocated storage was diverted during the month of July. Data taken at Kimberly indicated that during the periods of maximum crop growth evapotranspiration (ET) exceeded the application capacity of many sprinkler systems. Because of the unusual demand on September 1 the storage system had less than 733,000 acre-feet of storage remaining. Irrigation demand continued and by October 1, nearly 90% of the storage space in the Upper Snake was empty, with only 444,000 acre-feet of storage scattered among all of the reservoirs. On October 11, a low for the year of 385,000 acre-feet was reached. This represented the lowest system contents of record.

Because of the "global" rental pool rules that were implemented for 2003, which allowed the watermaster to make a predetermined amount of water available from the 2004 storage supply, crops generally were good and no major losses occurred. About 130,000 acre-feet of stored water was made available through the Global Rental Pool in 2003. It is likely that the implementation of the Global Rental Pool in 2003 saved several millions of dollars of crop production.

Between October 11 and October 31, the storage system gained 122,300 acre-feet of storage, within 7,700 acre-feet of what was needed to supply the rental water that was made available through the Rental Pool in 2003.

TABLE 18. 2003 Accrued Storage and Seasonal Evaporation
by Reservoir (acre-feet)

Reservoir	Space	Accrued Storage	Evaporation	Allocable Storage
Jackson Lake	847,000	793,109	24,309	768,800
Palisades	845,430	90,616	2,777	87,838
Palisades WWS	256,709	256,709	7,868	248,840
Henrys Lake	90,000	30,279	928	29,351
Island Park/Grassy Lake	150,204	59,773	1,832	57,941
Ririe	80,500	0	0	0
American Falls	1,614,838	1,614,838	49,495	1,565,342
Lake Walcott	95,200	95,200	2,918	92,282
American Falls LTF	57,752	0	0	0
Palisades LTF	97,862	0	0	0
Other	-	7,967	0	7,967
TOTAL	4,135,494	2,948,489	90,128	2,858,362

TABLE 21. 2003 STORED WATER ACCOUNTS - BLACKFOOT TO MILNER (ACRE-FEET)

NUMBER	NAME	STORAGE OR RENTAL POOL		STORAGE USED	RETURN TO SPACEHOLDER		BALANCE	ADJUST-MENT	EXCESS USED	CARRY-OVER
		STORAGE ALLOCATED	PURCHASE, SUPPLY (-)		REVERTED TO RENTAL POOL FROM USER	FROM RENTAL POOL				
13075900	FT HALL MCHAUD	45570.7	0.0	40366.2	0.0	0.0	5204.5	-1961.3 j)	0.0	3243.2
13076400	FALLS IRRIG	27159.4	-2982.9	25316.5	0.0	0.0	-1140.0	12000.0 k)	0.0	10860.0
13077652	M OSBORN	0.0	0.0	12.4	0.0	0.0	-12.4	0.0	12.4	0.0
13077755	CALL FARMS	0.8	0.0	694.5	0.0	0.0	-693.7	0.0	693.7	0.0
13077775	R EVANS	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
13080000	MINIDOKA NTH S	326589.1	-23777.4	223888.4	0.0	0.0	78923.3	3971.9 m)	0.0	82895.2
13080500	MINIDOKA S	218303.9	-9136.2	158173.8	0.0	0.0	50993.9	1556.1 n)	0.0	52550.0
13084590	E HERBERT	0.0	0.0	164.7	0.0	0.0	-164.7	164.7 o)	0.0	0.0
13084598	MID MISC	0.0	0.0	157.1	0.0	0.0	-157.1	157.1 p)	0.0	0.0
13084599	MILNER MISC	0.0	0.0	234.4	0.0	0.0	-234.4	0.0	234.4	0.0
13084610	LAW-KER FAMRS	0.0	0.0	215.7	0.0	0.0	-215.7	215.7 p)	0.0	0.0
13084640	BURLEY GC	0.0	0.0	290.1	0.0	0.0	-290.1	290.1 o)	0.0	0.0
13084650	CITY OF BURLEY	0.0	0.0	142.5	0.0	0.0	-142.5	142.5 o)	0.0	0.0
13084655	SIMPLT FTLZR	0.0	0.0	189.0	0.0	0.0	-189.0	189.0 q)	0.0	0.0
13084690	AMALGA SUGAR	0.0	0.0	182.8	0.0	0.0	-182.8	182.8 o)	0.0	0.0
13084710	R TILLEY PUMP	0.0	0.0	69.0	0.0	0.0	-69.0	69.0 o)	0.0	0.0
13084720	COORS BREW	0.0	0.0	276.7	0.0	0.0	-276.7	276.7 o)	0.0	0.0
13084725	K SANDMANN	0.0	0.0	1.3	0.0	0.0	-1.3	0.0	1.3	0.0
13085270	H SCHODDE	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
13085275	BAR-U-RANCH #1	1352.6	0.0	134.1	0.0	0.0	1218.5	-189.0 q)	0.0	1029.5
13085300	BAR-U-RANCH #2	997.7	0.0	47.7	0.0	0.0	950.0	0.0	0.0	950.0
13085390	M HOBSON	0.0	0.0	127.8	0.0	0.0	-127.8	127.8 o)	0.0	0.0
13085400	V HOBSON	0.3	0.0	260.1	0.0	0.0	-259.8	259.8 o)	0.0	0.0
13085500	A & B IRR DIST	54881.3	17.1	58497.1	0.0	0.0	-3598.7	13000.0 k)	0.0	9401.3
13085800	PA LATERAL (9)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
13086000	MILNER IRRIG	57828.7	2462.7	54886.9	0.0	0.0	5404.5	1539.5 r)	0.0	6944.0
13086510	A LATERAL (9)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
13086512	J BRUNE	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
13086520	NS XCUT GD (9)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
13086530	RES DIST #2	381487.6	345.1	377928.5	0.0	0.0	3904.2	0.0	0.0	3904.2
13087000	NRTHSDE TWIN F	783782.3	3457.5	617565.8	0.0	0.0	169674.0	0.0	0.0	169674.0
13087500	TWIN FALLS STH	235911.5	15070.9	255249.9	0.0	0.0	-4267.5	1168.9 r)	3098.6	0.0
TOTAL		2133865.8	-14543.2	1815073.0	0.0	0.0	304249.5	33161.3	4040.4	341451.3

2004 ANNUAL REPORT

WATER DISTRICT 1

SNAKE RIVER AND TRIBUTARIES

ABOVE MILNER, IDAHO

Ronald D. Carlson, Watermaster
Idaho Department of Water Resources
Eastern Regional Office
900 North Skyline Drive, Suite A
Idaho Falls, Idaho 83402

SUMMARY

At the end of the 2003 water year (September 30, 2003) the upper Snake River reservoir system was only 10.6% full. The 444,000 acre-feet of water in storage on October 1, 2003, the start of the 2004 water year, is not statistically different from the 571,000 acre-feet of storage residing in the storage system on that date in 2002. The low carryover numbers reflect the uninterrupted drought conditions that have continued for 4 years.

Because the Water District's "accounting year" is November 1 to October 31, storage deliveries continued and reservoir levels continued to decline through October 11, 2003 when the system reached the all-time low of 385,000 acre-feet of water remaining in storage. On this date only 9.2% of total storage capacity was filled. By the end of the Water District's irrigation year on October 31, the system had accrued an additional 122,300 acre-feet of water. The concern over the residual affects of four consecutive drought years grew through out the winter months. The cumulative impact of below average precipitation shows up in reduced base flows and is reflected in the rate at which the storage system was filling through the fall and winter months. The system had only stored 1,192,000 acre-feet by January 1, 2004. This represented a gain of 807,000 acre-feet from the season low of October 11. A comparison of November 1 and January 1, 2000 with those dates in the 2004 accounting year reveal the water past Milner, plus the gain in storage in the system totaled 970,300 acre-feet during that period in 2000 and 741,500 acre-feet between November 1 and January 1, 2004. The 228,800 acre-foot difference between 2000 and 2004 indicates there was a 24% decline in the amount of water accumulated between November 1 and January 1.

Snow accumulation on the upper Snake River watersheds started in early November and most of the snow courses tracked the thirty-year averages through January, 2004. Until mid-February 2004, snow accumulation generally matched the thirty-year averages. However, as the winter progressed it became apparent that 2004 would again be a year of tight water supplies. Starting in February 2004 precipitation amounts began to lag the thirty-year average. Long periods of high pressure and low precipitation caused a stair-stepped snow accumulation pattern, which resulted in forecasts becoming increasingly more pessimistic. By April 1, 2004 the reservoir system had stored 2,135,000 acre-feet, which was 3% less than the contents on that date in 2002. The April 1, 2004 runoff forecast for Heise was 72% of average, 3% below the April 1 forecast in 2002. The forecast for the Henrys Fork was slightly better at 81% of average.

It is likely that because of the, now, five consecutive drought years, the forecast for both the Snake River at Heise and the Henrys Fork over estimated the actual runoff that was actually observed. The actual runoff at Heise was 2,861,000 acre-feet, or 69% of average. The runoff of 565,000 acre-feet on the Henrys Fork was 74% of the thirty-year average. Comparing the actual runoff with the forecasted runoff is interesting in retrospect and may help explain water shortages that exceeded expectations. Unfortunately, these data are only known after-the-fact and are not available during the irrigation season.

Irrigation diversions in the lower valley typically start the first week in April. Diversions generally begin before irrigators need water. These early diversions are required to hydrate the delivery systems and to fill project storage facilities. On April 21 the storage system reached a total of 2,386,000 acre-feet, the peak for the season. This peak in storage contents occurred over a month ahead of the anticipated date when maximum contents is normally reached. The 2004 storage allocation represented only 59.4% of the system capacity. Large amounts of precipitation, in April and May, particularly at the higher elevations, compensated for the near record low reservoir contents.

By June 15 a total of 307,086 acre-feet of storage had been drafted from the Snake River reservoirs. By July 15, the storage allocated for the year had been reduced by 689,000 acre-feet. In comparison, in 2003 the peak storage occurred on June 6 and by July 15, 849,000 acre-feet of storage had been used. Because of late season snow accumulation and cooler temperatures the last of the snow pack was gone around the June 25.

Once again in 2004 major revisions were made to the Rental Pool Procedures. These procedures arose because of the needs to have a mechanism to meet water user commitments made in the settlement of the Nez Perce reserved water right claims and certain ESA obligations defined in what is referred to as "The Term Sheet." The 2004 procedures made a maximum of 55,000 acre-feet of rental storage water available to irrigators but made an additional 3% of the storage allocation of participating spaceholders available to the United States Bureau of Reclamation to meet obligations contained in "The Term Sheet." The procedures provided incentives for all spaceholders to participate. These incentives included no reduction in one's allocation during the current year, payments for participation and additional payments and protections for those who the Watermaster determined actually provided the water from their 2005 allocation. This arises from the concept that any water taken from the system impacts someone. Consequently, it seems fair to set up a rental system that compensates the spaceholder whose space the rental water actually came from. Since the impacts for renting storage normally will not show up until the following year, the adopted rental pool procedures in 2004 set up a process whereby water is actually rented from the following year's supplies. These procedures unfortunately will push the final payments to suppliers into March 2006 when the actual water use and allocation for 2005 is determined through the final water right accounting.

The rain and more moderate summer temperatures had a significant impact on the use of water. On November 1, 2004 the system carried over 673,000 acre-feet of water. While, significantly below the average carryover expected on that date, it was 161,000 acre-feet more water than was in the system on that date in 2003.

TABLE 18. 2004 Accrued Storage and Seasonal Evaporation by Reservoir (acre-feet)

Reservoir	Space	Accrued Storage	Evaporation	Allocable Storage
Jackson Lake	847,000	634,434	20,155	614,279
Palisades	845,430	69,412	2,205	67,207
Palisades WWS	256,709	256,709	8,155	248,554
Henrys Lake	90,000	21,170	673	20,498
Island Park/Grassy Lake	150,204	53,224	1,691	51,533
Rine	80,500	0	0	0
American Falls WWS	156,830	156,830	4,982	151,848
American Falls	1,458,008	1,235,285	39,243	1,196,042
Lake Walcott	95,200	95,200	3,024	92,176
American Falls LTF	57,752	0	0	0
Palisades LTF	97,862	0	0	0
Other	-	12,815	0	12,815
TOTAL	4,135,494	2,535,080	80,129	2,454,951

20050331

TABLE 21. 2004 STORED WATER ACCOUNTS - BLACKFOOT TO MILNER (ACRE-FEET)

NUMBER	NAME	STORAGE OR RENTAL POOL		RETURN TO SPACEHOLDER		BALANCE	ADJUST- MENT	EXCESS USED	CARRY- OVER	
		STORAGE ALLOCATED	PURCHASE, SUPPLY (-)	STORAGE USED	RENTAL POOL FROM USER	FROM RENTAL POOL				
13075900	FT HALL MCHAUD	40056.2	0.0	37410.9	0.0	0.0	2645.3	-1422.1 i)	1223.2	
13076400	FALLS IRRIG	26976.9	-805.2	20989.4	0.0	0.0	5182.3	0.0	5182.3	
13077652	M OSBORN	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
13077755	CALL FARMS	0.0	292.6	292.6	0.0	0.0	0.0	0.0	0.0	
13077775	R EVANS	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
13080000	MINIDOKA NTH S	311246.8	-9699.6	201321.5	0.0	0.0	100225.7	-1026.8 j)	99198.9	
13080500	MINIDOKA S	204072.5	-2170.5	150024.9	0.0	0.0	51877.1	-3067.7 k)	48809.4	
13084590	E HERBERT	0.0	0.0	174.5	0.0	0.0	-174.5	174.5 l)	0.0	
13084598	MID MISC	0.0	0.0	168.9	0.0	0.0	-168.9	168.9 m)	0.0	
13084599	MILNER MISC	0.0	0.0	254.7	0.0	0.0	-254.7	0.0	254.7	
13084610	LAW-KER FAMRS	0.0	0.0	536.2	0.0	0.0	-536.2	536.2 m)	0.0	
13084640	BURLEY GC	0.0	0.0	225.5	0.0	0.0	-225.5	225.5 l)	0.0	
13084650	CITY OF BURLEY	0.0	0.0	227.9	0.0	0.0	-227.9	227.9 l)	0.0	
13084655	SIMPLT FTLZR	1583.9	-47.3	0.0	0.0	0.0	1536.6	0.0	1536.6	
13084690	AMALGA SUGAR	0.0	0.0	372.0	0.0	0.0	-372.0	292.0 l)	80.0	
13084710	R TILLEY PUMP	0.0	0.0	737.8	0.0	0.0	-737.8	737.8 n)	0.0	
13084720	COORS BREW	0.0	0.0	214.5	0.0	0.0	-214.5	214.5 l)	0.0	
13084725	K SANDMANN	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
13085270	H SCHODDE	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
13085275	BAR-U-RANCH #1	96.8	0.0	98.9	0.0	0.0	-2.1	2.1 l)	0.0	
13085300	BAR-U-RANCH #2	235.8	0.0	245.8	0.0	0.0	-10.0	10.0 l)	0.0	
13085390	M HOBSON	0.0	0.0	366.4	0.0	0.0	-366.4	366.4 l)	0.0	
13085400	V HOBSON	0.0	0.0	146.3	0.0	0.0	-146.3	146.3 l)	0.0	
13085500	A & B IRR DIST	45936.0	1201.8	49707.0	0.0	0.0	-2569.2	2569.2 o)	0.0	
13085800	PA LATERAL (9)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
13086000	MILNER IRRIG	42081.9	7611.6	42410.0	0.0	0.0	7283.5	1451.7 p)	8735.2	
13086510	A LATERAL (9)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
13086512	J BRUNE	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
13086520	NS XCUT GD (9)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
13086530	RES DIST #2	313346.8	0.0	294810.1	0.0	0.0	18536.7	80.6 q)	18617.3	
13087000	NRTHSDE TWIN F	645283.8	13673.4	611274.6	0.0	0.0	47682.6	6458.4 r)	54141.0	
13087500	TWIN FALLS STH	150218.7	34904.4	118426.5	0.0	0.0	66696.6	-7883.8 s)	58812.8	
TOTAL		1781136.2	44961.2	1530436.9	0.0	0.0	295660.4	261.6	334.7	296256.8

Exhibit C

Unit A Diversions by Year																
	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	AVE
Acre feet natural flow	3969	8071	0	15620	5290	21957	26990	36976	22093	24465	16749	1303	853	982	0	12354.53
Acre feet storage	56027	46689	62189	34239	52946	27993	29606	14499	28737	29014	44682	61927	58502	58497	49709	43683.73
Total	59996	54760	62189	49859	58236	49950	56596	51475	50830	53479	61431	63230	59355	59479	49709	56038.27

Exhibit D

Draft 11/27/61

Contract No. 14-06-100-2358

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
North Side Pumping Division
Minidoka Project, Idaho

REPAYMENT CONTRACT BETWEEN THE UNITED STATES OF AMERICA
AND THE A & B IRRIGATION DISTRICT

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Draft 11/27/61

Contract No. 1A-06-100-2368

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
North Side Pumping Division
Minidoka Project, Idaho

REPAYMENT CONTRACT BETWEEN THE UNITED STATES OF AMERICA
AND THE A & B IRRIGATION DISTRICT

THIS CONTRACT, Made this 9th day of February, 1962, by and between THE UNITED STATES OF AMERICA, hereinafter called the United States, acting through the Secretary of the Interior, and pursuant to the Act of Congress of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplementary thereto, including the Act of Congress approved September 30, 1950 (64 Stat. 1083), called collectively the Federal Reclamation Laws, and the A & B IRRIGATION DISTRICT, an irrigation district organized and existing under and by virtue of the laws of the State of Idaho, hereinafter referred to as the District,

WITNESSETH, THAT:

Explanatory Recitals

2. WHEREAS, under the authority of the Federal Reclamation Laws, the United States is constructing the irrigation project in the State of Idaho, known as the North Side Pumping Division, Minidoka Project; and

3. WHEREAS, the District, as the duly authorized representative of the water users, desires to enter into a contract to provide for repayment to the United States of the cost of constructing the project;

NOW, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is mutually agreed by and between the parties hereto as follows:

Definitions

4. The following terms hereinafter used in this contract shall have the following respective meanings:

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

(b) "Project" shall mean the entire North Side Pumping Division of the Minidoka Project constructed and being constructed by the United States under the Federal Reclamation Laws.

(c) "Irrigation system" shall mean the works and facilities being constructed for use for the irrigation of lands within the jurisdiction of the District, being the works authorized by the act of September 30, 1950.

(d) "Transferred works" shall mean all of the irrigation works built and to be built to serve the lands within the District, exclusive of the reserved works, and which may hereafter be transferred to the District for operation and maintenance.

(e) "Reserved works" shall mean Palisades Dam and Reservoir, American Falls Dam and Reservoir, and all buildings, roads, telephone lines and other works incidental and appurtenant to those works.

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

(g) "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.

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

(i) "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.

(j) "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.

(k) "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.

(l) "Advisory Committee" shall mean the committee defined by article 44 of this contract or its duly authorized representative.

PROVISIONS RELATING TO PROJECT CONSTRUCTION AND
CONSTRUCTION CHARGE OBLIGATION - ARTICLES 5 THROUGH 10

Description and Cost of Project Works

5. (a) The United States has constructed American Falls Dam and Reservoir and Palisades Dam and Reservoir.

(b) To the extent funds are and may be made available therefor, the United States, within the limitations of this contract, will undertake to complete construction of the facilities of the irrigation system to serve the lands within the jurisdiction of the District, including these works:

Unit A pumping plant, intake structures, discharge line, surge tank, switch gear and transformers;

wells and ground water pumping installations; and

a distribution system to serve the lands of the District,

together with the appurtenant auxiliary structures and other works related thereto which are determined by the Secretary to be necessary for the irrigation of approximately 78,000 acres of land within the District, with the lateral system to provide a single point of delivery to each farm unit determined by the Secretary to be economically irrigable.

(c) The estimated reimbursable cost for construction of the works described in (b) of this article based on July 1961 cost estimates is twelve million three hundred forty-two thousand dollars (\$12,342,000.00). The reservoir water supply costs apportionable to the District for the works described in (a) of this article are two hundred seven thousand eight hundred seventy-nine dollars and seventy cents (\$207,879.70) for American Falls Reservoir, and seven hundred three thousand seven hundred

dollars (\$703,700.00) for Palisades Reservoir. The District's repayment obligation under this contract is based on the premise that actual reimbursable costs will not exceed these estimates.

District's Construction Charge Obligation

6. (a) The District's maximum construction charge obligation is hereby established as twelve million five hundred ninety-eight thousand four hundred ninety-seven dollars and ninety-three cents (\$12,598,497.93), including the storage supply costs as described in article 5. This total amount reduced by:

(1) such credits as have accrued until the date the Secretary makes a final determination of costs, as provided in (b) of this article, as are applicable to the North Side Pumping Division relating to rentals of water from Jackson Lake and American Falls Reservoir, the sale of space in Jackson Lake, the leasing of grazing lands, and other miscellaneous revenues in excess of those accrued as of June 30, 1961, these accrued credits being six hundred fifty-five thousand eighty-one dollars and seventy-seven cents (\$655,081.77); and

(2) the difference, if any, between twelve million three hundred forty-two thousand dollars (\$12,342,000.00), and actual construction costs applicable to the North Side Pumping Division,

comprises the District's net construction charge obligation under this contract.

*See letter 7-2-23-76
NRE repayable costs? Remaining
\$12,195, 32-6.17. balance of
unpaid balance of
\$11,196, 44-21.*

(b) The Secretary shall notify the District in writing as and when final determination of costs are made on the basis of adjustments as provided in (a) of this article, furnishing the District with a full statement of the expenditures made and portions thereof allocable to the District.

(c) There has not been reflected in the District's construction charge obligation any allocation of project costs by reason of the benefits from the project to other than irrigation purposes except as to the water supply costs relating to Palisades Dam and Reservoir. If allocations of costs on a nonreimbursable basis are authorized by law, the Secretary shall notify the District with respect to such nonreimbursable allocations and of the extent to which the District's construction charge obligation will be reduced thereby.

(d) The construction charge obligation shall be repaid by the District to the United States in successive annual installments determined as provided in articles 8 and 9.

Establishment of Irrigation Blocks

7. The Secretary has, from time to time, designated by appropriate notices, areas of land within the District for which irrigation water was available from the project works at substantially the same time, each of these areas comprising an irrigation block. Eight such blocks have been designated, their respective areas being as established by public notices heretofore issued, as follows:

Block 1, Public Notice No. 44, dated April 6, 1953, published April 25, 1953, Vol. 18 of Federal Register, page 2461, comprising 5,124.9 irrigable acres.

Block 2, Public Notice No. 44, dated April 6, 1953, published April 25, 1953, Vol. 18 of Federal Register, page 2461, comprising 2,164.3 irrigable acres.

Block 3, Public Notice No. 45, dated March 5, 1954, published April 2, 1954, Vol. 19 of Federal Register, page 1846, comprising 8,894.3 irrigable acres.

Block 4, Public Notice No. 46, dated February 7, 1955, published February 25, 1955, Vol. 20 of Federal Register, page 1182, comprising 10,467.5 irrigable acres.

Block 5, Public Notice No. 47, dated January 19, 1956, published February 9, 1956, Vol. 21 of Federal Register, page 909, comprising 23,913.0 irrigable acres.

Block 6, Public Notice No. 48, dated March 15, 1957, published April 4, 1957, Vol. 22 of Federal Register, page 2252, as amended in Vol. 22 of Federal Register, page 8125, dated October 12, 1957, comprising 18,857.7 irrigable acres.

Block 7, Public Notice No. 49, dated April 3, 1958, published April 22, 1958, Vol. 23 of Federal Register, page 2645, comprising 5,135.8 irrigable acres.

Block 8, Public Notice No. 50, dated April 21, 1961, published May 10, 1961, Vol. 26 of Federal Register, page 4030, comprising 1,854.3 irrigable acres.

Determination of Basic Annual
Construction Installments

8. In keeping with the provisions of the Reclamation Project Act of 1939, there has been established for each irrigation block a development period beginning with the first year that water was available to such block for the entire irrigation season and terminating on December 31 of the years for the respective blocks as follows:

<u>Block</u>	<u>Year</u>
1	1961
2	1963
3	1964
4	1965
5	1966
6	1967
7	1968
8	1971

The Secretary shall make an allocation of the District's general repayment obligation to the lands in each of the respective irrigation blocks. The basic annual installment on account of each irrigation block construction charge shall be the amount so allocated by the Secretary to such irrigation block scheduled as follows:

- (a) For the first five (5) annual installments an amount determined by multiplying the irrigable acreage established for the block by \$1.00 per acre;
- (b) for the next five (5) installments an amount determined by multiplying the irrigable acreage established for the block by \$1.75 per acre;
- (c) for the next five (5) installments an amount determined by multiplying the irrigable acreage established for the block by \$2.50 per acre; and
- (d) for the remaining thirty-five (35) installments an amount determined by dividing the allocation of the repayment obligation to the block remaining unpaid after the fifteenth installment by 35 years.

Each of the District's basic annual installments shall be the aggregate of the annual sums due and payable by the District to the United States on account of each irrigation block. The first installment for each block shall be due for the first calendar year following the close of the development period provided for that block. Each annual installment of the District shall be payable one-half on March 15 of the year following the year for which it is applicable, and one-half the succeeding June 30, except the final installment which shall be due and payable on December 31 of the year for which it is applicable.

Adjustment of Annual Installments

9. The District upon resolution of the board of directors may elect, with respect to the basic annual installments scheduled to be repaid pursuant to article 8, to adjust those installments under the procedure set out in this article. Beginning with the installment for which the District elects and thereafter until the construction charge obligation is fully paid, the annual installment of the construction charge obligation for any calendar year shall be determined by increasing or decreasing the basic annual installment for that year as follows:

(a) For the purposes of this article the net irrigable acreage within the District shall comprise the project contract unit.

(b) Each calendar year in which construction charge obligation payments are required to be made pursuant to this article as to any irrigation block, the Secretary shall determine the annual returns and the normal returns for the project contract unit, and shall determine the parity ratio.

(1) The term "annual returns" means the amount of the weighted average gross crop values per acre of the area in cultivation within the project contract unit for any calendar year.

(2) The "normal returns" shall be the weighted average of the annual returns of the ten (10) calendar years including the calendar

year for which the normal returns are being determined and the nine (9) calendar years preceding it. Until adequate records of annual returns are available for the full ten (10) year period on the project contract unit, the normal returns shall be determined on the basis of all the years for which adequate records of annual returns are available.

(3) The "parity ratio" shall be the average of the twelve monthly national agricultural parity ratios expressed in percentage of the calendar year for which the normal returns are being determined divided by 94 percent. The monthly parity ratios shall be those determined by the Department of Agriculture under the provisions of the Agricultural Adjustment Act of 1938 (62 Stat. 1250), as it has been and may be amended from time to time. If the monthly parity ratios cease to be determined officially by the Department of Agriculture at any time during the repayment period, the parity ratio shall cease to be determined hereunder.

(c) A determination of the annual and normal returns and the parity ratio by the Secretary for any calendar year will be on the basis of final figures as nearly as practicable. The Secretary, however, as a basis for meeting the

District assessment requirements will, on the request of the District, cooperate with it in preparing an estimate of these factors for that year. When so requesting the District shall furnish the United States such assistance as is requested by the Secretary, including the preparation of estimates and final determination of annual returns.

(d) Each calendar year in which the District is obligated hereunder to make payments on account of the construction charge obligation, the Secretary shall determine the percent of the normal returns for that year by which the annual returns for the year exceed or are less than the normal returns. For each one percent (1%) or major fraction of one percent (1%), there shall be an increase or decrease, respectively, of two percent (2%) in the amount of the basic annual installment due and payable by the District to the United States for that year, and that sum shall be further increased or decreased by multiplying it by the parity ratio determined under the provisions of this article; Provided, That in no event shall the amount due and payable for the year be less than fifteen percent (15%) or more than one hundred seventy-five percent (175%) of the amount due and payable for that year as provided in article 8. Written notices of the amount of the adjusted sum due and payable to the United States hereunder shall

be furnished each year to the District by the Secretary on or before March 1 of the year following the year for which it is applicable.

(e) If at any time by reason of the operations of this article the construction charge obligation of the District has been reduced to an amount equal to or less than seventy-five thousand dollars (\$75,000.00), the unaccrued portion shall be paid on the due date of the next installment without further adjustment under this article. If at any time by reason of the operation of this article, the construction charge obligation of any block is not repaid at the end of the 50th annual installment, additional annual installments shall be paid, scheduled under the same procedures, until such obligation is completely repaid to the United States.

Project Irrigable Acreage

10. The lands of the District have been classified as to each irrigable acre of land within the jurisdiction of the District. As a basis for the final distribution of the construction charge obligation, the lands within the District may, with the approval of the Secretary and under standards consistent with those used in making that detailed classification, be reclassified from time to time before the close of the development period. Any such classification shall not change the construction charge obligation established by this contract for payment by

the District. The District, with the approval of the Secretary, may, for purposes of adjustments and matters of its own internal administration, make changes in the basic irrigable area from time to time.

PROVISIONS RELATING TO PROJECT OPERATION AND
MAINTENANCE - ARTICLES 11 THROUGH 16

Development Period

11. During the development period for each block, the District shall not assess the lands in that block for the annual installment on account of the District's construction charge obligation, but shall collect a development period charge for such lands, such charge to be announced annually by appropriate notice to the District from the Secretary on or before December 1 of each calendar year of the development period for the succeeding year. Development period charges shall, over the entire period, and over all irrigation blocks as a whole, be sufficient to cover all operation and maintenance costs involved, with annual charges adjusted so that deficits in the early years of the period will be offset by higher charges in the later years of the period. From the date that the care, operation and maintenance of the works are transferred to the District pursuant to article 13, such charge fixed by the Secretary shall include as a minimum the estimate of the District of the operation and maintenance for such year, and include an appropriate share of the cost of power and of operation and maintenance of the reserved works. Any deficit existing when the works are taken over by the District during the development period shall be repaid by the District to the United States before the end of the development period on terms satisfactory to the Secretary. When,

during the development period, the works are being operated by the United States, the development period charge fixed by the Secretary shall be paid to the United States one-half on or before April 15 of the year for which it is applicable, and one-half on or before the succeeding June 30th. Any credit over and above the cost of operating at the close of the development period shall be credited to the District.

Operation and Maintenance Charges

12. Beginning with the close of the development period for each block, the District shall assess against those lands in the District an amount necessary to cover the cost of the operation and maintenance. Except as to the procedures established in article 16, the assessments to be made hereunder shall be uniform for all such lands in the District. All charges to be made under the terms of this contract, exclusive of construction charge installments, and development period charges, shall be included in said assessments.

Transferred Works; Care, Operation,
and Maintenance Thereof

13. (a) At any time after January 1, 1963, upon request by the District or by the Secretary and agreement between the Secretary and the District, the Secretary shall, upon appropriate written notice to the District, transfer to it, and the District shall assume the care, operation and maintenance of any of the transferred works which, in the Secretary's opinion, may appropriately be so transferred at such time. Transfer of equipment and supplies with appropriate title thereto required in connection with the operation and maintenance of transferred works shall be made

concurrently pursuant to arrangements satisfactory to the Secretary for the payment of that portion of the cost thereof not theretofore charged to the District.

(b) The District shall, at its own cost and without expense to the United States, care for, operate and maintain any transferred works being operated by it in such manner that they will remain in good and efficient condition and of equal capacity for the carrying and distribution of irrigation water as of the date of transfer to the District, and shall use all practicable methods to insure the economical and beneficial use of water.

(c) If, in the opinion of the Secretary, the District shall have failed at any time, or from time to time, to perform substantially any provision of this contract, the United States may give the District written notice specifying the respects in which the District has failed so to perform, and in the event the District fails to cure or take appropriate steps to cure such default within thirty (30) days after the giving of such notice, the United States may, on 30 days written notice to the District, take over the operation and maintenance of all or any part of the transferred works. Such operation and maintenance by the United States shall continue until the Secretary determines that the District is again capable of operating all or any part of the transferred works then being operated and maintained by the United States, and upon written notice to the District, establishing the effective date, may retransfer to the District all or any part of the transferred works. Upon receipt of such

notice, the District shall accept the care, operation and maintenance of such transferred works in accordance with this contract.

(d) During periods in which any of the transferred works, or any part thereof, are operated and maintained by the United States, the cost of such operation and maintenance shall be paid in advance by the District to the United States, except development period costs for which other repayment arrangements are made pursuant to article 11. Payments under this subarticle (d) shall be on the basis of annual estimates made by the Secretary, and shall contain a statement of the estimated cost of operation and maintenance of the transferred works to be incurred by the United States in the following calendar year. The notice of estimates shall be furnished to the District on or before September 1 of the calendar year preceding the one for which the notice is issued. When the United States takes over initially the operation and maintenance of any part of the transferred works, the Secretary shall give the District immediately:

(1) notice of the estimated amount of such charge from the effective date of the United States' operation and maintenance of the works to the end of the calendar year; and

(2) a notice to cover the following year when the initial taking over occurs after September 1 of any year.

Except in the case of the initial notice in connection with a particular resumption hereunder, the District shall pay the amounts set out in any such notice in two equal installments, one on or before January 1 of the

year for which it is due and one on or before June 30 of that year. In the case of the initial notice, the District shall pay the amounts set out in the notice on or before the date or dates fixed by the Secretary in that notice, and shall without delay levy whatever special assessments or toll charges are necessary to raise the funds for payment of such amounts.

(e) Whenever, in the opinion of the Secretary, funds so advanced will be inadequate to operate and maintain the works being operated by the United States, he may give a supplemental notice stating therein the amount of additional funds required, and the District shall advance that amount on or before the date specified in the supplemental notice. If funds advanced by the District under this article exceed the actual cost of operation and maintenance for such works for the year for which advanced, the surplus shall be credited to any amounts thereafter to become due from the District.

Reserve Fund for Replacements and for Extraordinary
Operation and Maintenance

14. (a) Beginning with the calendar year 1963, the District shall make levies and assessments necessary to accumulate and maintain a reserve fund to be available for the purpose of replacements and for extraordinary maintenance of the project works. The reserve fund shall be accumulated and maintained in an amount of at least two hundred thousand dollars (\$200,000.00) at the rate of twenty thousand dollars (\$20,000.00) annually, unless a lesser amount will accumulate or replenish the fund.

(b) The reserve fund shall be available only:

(1) primarily for replacement of major project works, or

(2) secondarily, to meet unforeseen costs of operation and maintenance and repair of the project works or to meet other project costs, the use for which has been approved by the Secretary.

(c) The reserve fund shall be deposited and maintained apart from other District funds in a depository meeting the requirements of the laws of the State of Idaho relating to deposit of irrigation district moneys or may be invested in United States bonds. During such time or times as the operation and maintenance of any of the project works are the responsibility of the United States, such funds shall be available for use by the United States for the same purposes that they are available for use by the District, and upon request by the Secretary, the District shall pay to the United States such amounts as are properly requested in accordance with this article.

Reserved Works; Care, Operation
and Maintenance Thereof

15. (a) The District, during the period of operation and maintenance of the reserved works by the United States, shall pay to the United States the share of costs of operation and maintenance thereof, including whatever costs may be incurred in the delivery of water therefrom, which is apportionable to the irrigation storage rights therein and which is allocable to the District's rights defined in article 17. In determining

the total costs apportionable annually to the irrigation storage rights in these works there shall be included payments required to be made in accordance with the provisions of article 24, but there shall be excluded whatever amounts are required to be paid as American Falls operation and maintenance charges under the contract of June 15, 1923, between the Idaho Power Company and the United States, as it may hereafter be amended.

(b) With respect to the determination under (a) of this article of the costs for Palisades Dam and Reservoir, 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 such 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 in Palisades Dam and Reservoir shall be distributed annually to all storage space that is made available for irrigation purposes.

(c) Payment of the District's share of operation and maintenance costs of the reserved works 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 works to be incurred for the calendar year involved, the amount thereof apportionable to the irrigation storage rights therein, and the amount of the District's share of these estimated costs. The operation and maintenance charge notice shall be furnished to the District on or before February 1 of the calendar year for which the notice is issued, but, when requested by the District, a preliminary estimate shall be given at such earlier date as is agreed on in writing. The District 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.

(d) Whenever in the opinion of the Secretary funds so advanced will be inadequate to operate and maintain the reserved works, he may give a supplemental operation and maintenance charge notice, stating therein the amount of the District's share of the additional funds required, and the District shall advance that additional amount on or before the date specified in the supplemental notice. If funds advanced by the District under this article exceed the District's share of the actual cost of operation and maintenance of the works for the year for which advanced, the surplus shall be credited on the operation and maintenance charges to become due for succeeding years.

Allotment of Water; Excess Water Charges

16. (a) The provisions of this article are made with the objective, among other things, of encouraging the economical use of water and of distributing the operation and maintenance charges equitably among the lands of the District.

(b) The District shall, except as to lands in a development period status, levy a minimum annual operation and maintenance charge against each irrigable acre of land within the District, and the payment of such minimum charge shall be required whether or not water is used. The amount of water in acre-feet per acre which is to be delivered each year for the minimum annual charge shall be determined by the District's board of directors, but it may not be set in excess of 3 acre-feet until the District assumes operation and maintenance under article 13. For water to be delivered each year in excess of the minimum amounts, the landowners or water users involved shall pay to the District an excess charge as follows:

(1) For the first acre-foot per acre or fraction thereof, at a rate per acre-foot not less than one hundred twenty percent (120%) of the rate per acre-foot charged for water made available for the year under the annual minimum charge.

(2) For the second acre-foot per acre or fraction thereof, at a rate per acre-foot not less than one hundred sixty percent (160%) of the rate per acre-foot charged for water made available under the annual minimum charge.

(3) For each acre-foot per acre or fraction thereof in excess of that delivered under (1) and (2) above, at a rate per acre-foot not less than two hundred percent (200%) of the rate per acre-foot charged for water made available under the minimum annual charge.

When the District assumes operation and maintenance under article 13, the board of directors may adjust the charges to be made for excess water so as to increase or decrease such charges as it determines to be necessary for the efficient operation of the project.

(c) To carry out the provisions of this article, the District or the United States, whichever is operating the irrigation works, shall measure the water delivered to each farm turnout and shall keep individual farm turnout delivery records.

PROVISIONS RELATING TO PROJECT WATER SUPPLY
ARTICLES 17 THROUGH 27

Water Supply; American Falls and
Palisades Storage

17. (a) The water supply to be available under this contract comprises water accruing to capacity in Palisades Reservoir and in American Falls Reservoir, natural flow rights and ground water rights held for the District, as more fully defined herein.

(b) The United States will operate and maintain the existing American Falls Dam and Reservoir, and will make available to the District stored water accruing to two and seven thousand nine hundred ninety-six ten thousandths percent (2.7996%) of the active capacity of that reservoir within the limits and on the terms and conditions provided in this contract. This percentage shall, so long as the reservoir has an active capacity of 1,700,000 acre-feet, be treated as the equivalent of 47,593 acre-feet of active capacity. The latter figure may, however, be adjusted from time to time by agreement between the Secretary and the Advisory Committee whenever there are determinations that the active capacity is other than above stated.

(c) The District shall be entitled to have delivered to it during each irrigation season its proportionate share of all irrigation water stored in American Falls Reservoir during the storage season ending during or immediately preceding that irrigation season. The District shall also be entitled to have held over from one irrigation season to the next for its use in that next season stored water to which it is entitled, but the total amount of stored water which will be held over for the use of the District during an irrigation season shall not exceed the amount that can be stored in the space made available to the District under (b) of this article.

(d) The United States has now constructed and will 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. The United States will make available to the District the stored water accruing to seven and five thousand six hundred sixty-seven ten thousandths percent (7.5667%) 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 90,800 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.

(e) The District 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, seven and five thousand six hundred sixty-seven ten thousandths percent (7.5667%) of all water stored in Palisades Reservoir during that season under the Palisades storage right.

(2) The Palisades storage right under subdivision (1) is subject to the right of others to have stored to their credit during each storage season and with a priority as indicated in article 19, water to which they are entitled through the curtailment of water diversions as provided in that article.

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

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

(1) Except in cases of emergency, deliveries shall be limited to periods when the project's natural flow rights under permit No. 26216 are not sufficient to meet the project's irrigation water requirements.

(2) Deliveries shall be limited at any time to the amount which can be delivered by means of the District'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.

(g) 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 District'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.

(h) The United States has, in connection with the construction of the project, made appropriate filings in conformity with the statutes of Idaho as to the diversions at the Unit A project pumping plant and for the diversion of ground water. These include water right permits numbers 26216 and 20736. The United States will take appropriate steps under these permits to obtain water right certificates for the benefit of the lands of the District.

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

18. (a) It is the purpose of the United States and the water users having storage rights in the reservoir system (including the District) 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 District 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 power-plant, 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.

Winter Power Operation; Minidoka Powerplant

19. (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 District 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:

(1) 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).

(2) 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 (1) or (2) 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 Methods for Determination of Certain Minidoka Powerplant Production Losses From Restrictions on Use of Water Rights"^{1/} 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 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, as revised, 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 (3) 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.

To correct flows under (1) above, all storage releases except American Falls shall be excluded and the measure of American Falls storage passing

^{1/} Duplicate originals of this document shall be filed with the water-master of District No. 36, the officer of the United States in charge of the Minidoka Project, and the Burley Irrigation District.

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 in this article, these assumptions shall be used with respect to units 1 through 6 of the Minidoka powerplant:

(1) 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.

(2) There is a right to use, within the hydraulic capacity of these units, whatever natural flow passes Minidoka Dam during each irrigation season.

(3) 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 by the Burley and Minidoka irrigation districts and the North Side Canal Company, Ltd., 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:

(1) 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

(2) 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 District'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.

Consent to Special Storage Rights, to Permanent Exchange,
and to Priority of Certain Storage Rights

20. (a) The District hereby consents to the granting to holders of storage capacity in Palisades and American Falls Reservoirs, within the limitations of capacity available to them, special storage rights, which

shall be prior in time to storage rights held by the United States for American Falls Reservoir, on the following conditions and limitations:

(1) To those water users or water users organizations who, directly or indirectly, contract to curtail storage season diversions for not less than one hundred fifty (150) consecutive days out of each storage season, within these maxima as to total special storage rights:

For water users and water users organizations diverting above American Falls Dam--135,000 acre-feet.

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

(2) To the North Side Canal Company, Ltd., and the Twin Falls Canal Company, the right to store during the months of November through March of any storage season water that would otherwise accrue to them within these rights:

The rights of the North Side Canal Company, Ltd., 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, Ltd., -- 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, Ltd., 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, Ltd., 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 provisions to which consent is here given.

(b) Certain water users organizations owning storage rights in American Falls Reservoir have agreed, or will agree, in connection with the

acquisition of additional reservoir rights in Palisades or American Falls Reservoirs, to accept in exchange for a portion of their American Falls Reservoir 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 document entitled "Basic Provisions Incorporated or to be Incorporated in Contracts With Water Users Organizations to Govern the Permanent Exchange of Certain American Falls and Jackson Lake Storage Rights", attached hereto as Exhibit B. The rights to be held in American Falls Reservoir as a result of this exchange, comprising nineteen and seventy-five hundredths percent (19.75%) of the active capacity in that reservoir, are identified collectively as the lower valley exchanged space. The District hereby consents to such exchange.

(c) In connection with Island Park Reservoir, located on the North (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 District 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.

(d) 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 District 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 19. 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 that 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 date of March 30, 1921.

(e) 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 District

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.

Points of Delivery of Water;
Measurement and Losses

21. (a) Stored water to which the District 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 District will bear all losses chargeable to such water between those outlets and the District's point 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 District at the end of any irrigation season one and one-half percent ($1\frac{1}{2}\%$) to offset evaporation losses. Such charge shall be made as of not later than the end of the ensuing storage season.

Ordering of Water

22. The ordering of stored water shall be effected by the District 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 District 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 District's diversions is chargeable to stored water being held in the reservoir system for the District, and diversions by the District in excess of entitlements shall be charged against stored water subsequently accruing to the District's credit under this contract.

Complaints Regarding Water Supply

23. The United States and its officers, agents and employees in charge of American Falls and Palisades Reservoirs and the watermaster will use their best efforts and best judgment to deliver to the District its proportionate share of the water to which it is entitled under this contract. Should the District 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 reservoirs, the District shall immediately report such alleged mistake or inaccuracy to the watermaster and to the official of the United States in charge of the reservoir. If the watermaster finds that the District'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, or other similar causes of whatsoever kind. Nor shall the District'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

24. (a) The District shall pay, in addition to its proportionate share of the cost of operation and maintenance of American Falls Reservoir and Palisades Reservoir, as provided under article 15 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 expenses of whatsoever 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 District and all others on whose behalf such costs have been incurred on the basis that the operation and maintenance costs of the reservoir are distributed among the various rights. Unless otherwise agreed in writing by the Secretary and the District, such costs shall be paid annually and for billing purposes shall be included as part of the operation and maintenance costs under article 15 of this contract.

(b) The District 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 22 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.

Protection of Water Rights

25. (a) In case any dispute arises as to the character, extent, priority or validity of any of the water rights held in the name of the United States for the benefit of the District in connection with its rights under this contract, the United States may, independently of the District, 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 District.

(b) The District, during the term of this contract and subject to the fulfilment of all its obligations hereunder, shall have a right to its share of the water supply for beneficial use on the project lands superior to any other contract of the United States for such share of the water supply and, upon completion of payment of the District's construction charge obligation, such right shall become permanent subject to the payment of the District's operation and maintenance obligations under the provisions of this contract.

Waste, Seepage, and Return Flow Waters

26. (a) The United States does not abandon or relinquish any of the waste, seepage, or return flow waters attributable to the irrigation of the lands to which water is supplied under this contract. All such waters are reserved and intended to be retained for the use and benefit of the United States as a source of supply for the project.

(b) If suitable drainage or return flow water from any part of the project shall at any time be or become available at points where it can be used on lands within the District, the United States may supply such water as a part of the supply to which the lands in the District are entitled.

No Liability for Water Shortage or Interruptions

27. No liability shall accrue against the United States or the District or any of their officers, agents or employees for damage, direct or indirect, arising by reason of shortages in the quantity of water available through the project works or interruptions in water deliveries to lands in the District resulting from drought, inaccuracy in distribution, hostile diversion, prior or superior claims, accident to or failure of facilities of the project works, whether or not attributable to negligence of officers, agents or employees of the United States or the District, or other causes of whatsoever kind. Nor shall the District's obligations to the United States under this contract be reduced by reason of such shortages or interruptions.

PROVISIONS RELATING TO PROJECT POWER SUPPLY
ARTICLES 28 THROUGH 29

Power for Irrigation Pumping

28. (a) Out of the power and energy to be generated in the Palisades powerplant, there is hereby set aside in perpetuity for the benefit of the District that power and energy required for the operation of the pumping plants of the District to deliver water to the lands of the District (subject to the reservation of adequate capacity to the United States for operation of the Palisades Dam and powerplant), with the right in the United States to provide from other sources an amount of power and energy in lieu of all or any part of that so set aside. The power and energy so set aside or provided in lieu thereof will be furnished to the electric pumping plants or at such other points as are agreed on between the United States and the District at rates per kilowatt-hour to govern for irrigation pumping on Federal reclamation projects as to power and energy from the Palisades powerplant and interconnected plants as these are established from time to time by the Secretary pursuant to the Federal Reclamation Laws.

(b) The District may make arrangements other than herein provided for the purchase of power for irrigation pumping from sources other than the Palisades powerplant, but to the extent that power is procured from other sources there is hereby released from the block of Palisades power and energy set aside for the District an amount equivalent to that obtained by the District from other sources.

(c) While the United States is operating the project works the power charge shall be determined annually by the Secretary and included in the development period charge or in the costs of project operation and

maintenance, as appropriate. Beginning with the year in which the District operates and maintains the transferred works, payments for the District's power supply under this article shall be made each calendar year on the basis of annual estimates by the Secretary. Notice of these annual estimates, hereinafter referred to as the power charge notice, shall contain a statement of the estimated charge for power to be incurred for the calendar year involved. This power charge notice shall be furnished to the District on or before February 1 of the calendar year for which the notice is to be issued, but, when requested by the District, a preliminary estimate shall be made at such earlier date as is agreed on in writing. The District shall pay one-half of the amount stated in the notice on or before April 15 of the year for which it is issued, and one-half on or before the succeeding June 30, or such other dates as may be agreed on in writing. Whenever in the opinion of the Secretary payments so advanced will be inadequate to pay the actual cost being incurred for a power supply under this article, he may give a supplemental power charge notice stating therein the amount of the additional charges required and the District shall advance that additional amount on or before the date specified in the supplemental notice. If amounts advanced by the District under this article exceed the District's actual power charges under the provisions of this article for the year for which advanced, the surplus shall be credited on the power charges to become due from the District for succeeding years.

Title to and Operation of Powerplants;
Power Revenues

29. (a) Title to Palisades Dam powerplant and American Falls 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 and American Falls Dam powerplant shall be and remain the property of the United States.

(c) The United States, in its operation of the American Falls Dam powerplant will be governed by the provisions of the contract of June 15, 1923, with the Idaho Power Company, as that may be amended, and as further limited by the provisions of article 19.

(d) The United States, in its operation of the Palisades Dam powerplant, will be governed by the provisions of article 18 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.

(e) Notwithstanding provisions to the contrary in this contract, the District 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. 71), 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 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.

PROVISIONS OF GENERAL APPLICATION
ARTICLES 30 THROUGH 54

Public Lands Subject to Assessment

30. Pursuant to the provisions of section 3 of the act of May 15, 1922 (42 Stat. 541), all unentered public lands and entered public lands for which no final certificate has been issued embracing any of the irrigable lands within the District are hereby designated as subject to the provisions of the act of August 11, 1916 (39 Stat. 506); Provided, That

unentered public lands while in that status shall not be assessed by the District for any purpose.

Rights of District Reserved

31. The District has entered into this contract on the basis that the works to serve the project lands can be substantially completed to provide an adequate water supply as contemplated in the plan adopted by the Secretary and contained in House Document No. 721, 81st Congress, 2d Session, within the cost obligation assumed by the District hereunder. If it should develop that the repayment ability of the lands of the District is impaired due to changed or unforeseen conditions, economic or otherwise, adverse to those contemplated in the said project plan, the District reserves the right to request, pursuant to the provisions of the Reclamation Project Act of 1939, an amendatory contract adjusting the District's repayment obligations to reflect its then repayment ability.

Title to Works; Miscellaneous Revenues

32. (a) Title to works 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 District 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.

(c) Miscellaneous revenues realized in connection with the operation and maintenance of the reserved works and related costs, except those in (b) of this article, shall be distributed among the irrigation storage rights on the same basis that operation and maintenance costs are distributed, such distribution to be effected annually in connection with the final annual adjustments of operation and maintenance costs.

(d) Miscellaneous revenues applicable to the North Side Pumping Division relating to the rentals of water from Jackson Lake and American Falls Reservoir, the sale of space in Jackson Lake, and the leasing of grazing lands will be applied annually against that installment of the construction charge obligation due the year following that which they are realized.

Computation of Costs

33. The costs which enter into the District's obligation hereunder 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 are to be treated as nonreimbursable.

General Obligations; Levies Therefor

34. (a) The District shall cause to be levied and collected all necessary assessments and charges, and will use all of the authority and resources of the District to make all payments to the United States when due and to meet its obligations under this contract.

(b) The respective obligations of the lands for charges coming due under this contract shall be a general obligation of all District lands.

All Benefits Conditioned Upon Payment

35. (a) Should the District fail to levy the assessments, tolls, or other charges against any lands in the District required to be levied to meet the District's obligation to the United States under this contract, or, having levied, should the District be prevented from collecting such assessments, tolls, or other charges by any judicial proceedings, or otherwise fail to collect them, such lands shall not be entitled to receive water from the supply made available hereunder, and the District, except as otherwise ordered by a court of competent jurisdiction, shall not deliver water to such lands from such water supply unless and until arrangements for its delivery satisfactory to the Secretary have been made.

(b) As to any such lands the District is hereby authorized, as a fiscal agent of the United States, to collect whatever charges may be required under the delivery arrangements made as provided in this article. Payment shall be required as a condition precedent to the delivery of

water. Collections so made by the District shall be paid promptly to the United States in the manner directed by the Secretary.

(c) No action taken by the Secretary under the provisions of this article shall in any manner relieve the District of the obligations assumed by it under this contract.

Refusal to Deliver Water in Case of Default

36. No water available to the District under this contract shall be delivered to or for the District if the District 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 installments, or more than twelve (12) months in arrears in the payment of any other amount owed to the United States under this contract. The District 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 District, 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 District to the United States 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.

Inspection of Transferred Works

37. The Secretary may cause an appropriate inspection of the transferred works and of the books and records of the District to be made to

ascertain whether the requirements of this contract are being satisfactorily performed by the District. Such inspection may include physical inspection of all properties and audit of the books and records of the District. Any such inspection or audit shall, except in case of an emergency, be made only after advance consultation with the District as to the need therefor and after written notice to the District. The actual expense thereof shall be borne by the District and paid to the United States in accordance with the terms of an appropriate notice from the Secretary.

Penalty for Delinquency in Payment

38. Every installment 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 District shall impose, on delinquencies in the payment of assessments and 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.

Crop Returns and Census

39. The District shall keep an accurate record of all crops produced on lands within the District. While the District is operating the project, the District shall furnish the United States each year a report covering such crops on or before December 31.

Books, Records, and Reports

40. The District shall maintain a modern set of books of account showing all financial transactions of the District, and furnish such

financial statements and reports as may be required from time to time. Subject to applicable Federal laws and regulations, the secretary of the District, or his representative, shall have full and free access at all reasonable times to the account books and official records of the Bureau of Reclamation relating to the construction, operation, and maintenance of the project, and the status of the accounts concerning the District's payments of construction and operation and maintenance charges, with the right at any time during office hours to make copies thereof. Subject to applicable state laws and regulations, the proper representative of the United States shall have similar rights in respect to the account books and records of the District.

Lands for Which Water is Furnished;
Limitations on Area

41. (a) The water delivered under the terms of this contract shall be used solely for distribution by the District to water users for irrigation and domestic uses incidental thereto.

(b) The District (and the United States while it is operating and maintaining the transferred works) will operate the irrigation system to the end of making available to each irrigable acre of land in the District, during each irrigation season, that quantity of water to which it is entitled.

(c) Pursuant to the provisions of the Federal Reclamation Laws, water made available to the District for which the District 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 as delivery may be made to lands held in excess of this limitation pursuant to the provisions of the act of July 11, 1956 (70 Stat. 524), and the act of September 2, 1960 (74 Stat. 732).

Termination or Modifications of
Excess Land Provisions

42. (a) In the event there is a repeal of the so-called excess land provisions of the Federal Reclamation Laws, article 41 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 District, negotiate amendments of this article in order to conform them to the excess land provisions of the laws as so amended.

(b) Article 41 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 that article to be of no force or effect.

(c) For the purposes of this article, the provisions of article 41 are hereby agreed to be severable from the other provisions of this contract.

(d) Effective on December 31, 1962, the provisions of the recordable contracts with the individual settlers are terminated.

Termination of Recordable Contracts

43. All the provisions of the recordable and interim repayment contracts entered into by the individual settlers and landowners within the District are terminated effective on December 31, 1962, notwithstanding

contrarywise provisions in those contracts. All payments made or to become due to the United States or to the District on or before that date under those contracts on account of such provisions shall be retained or collected and applied as therein provided. After the termination date of these contracts the Secretary will announce by an appropriate recordable document this termination and will take appropriate steps, by offering for filing in the appropriate county offices, to establish of public record the fact of termination.

Advisory Committee

44. (a) In its operation and maintenance of the various Federal dams and reservoirs on the Snake River, the United States has contracted with the various water users organizations having a storage capacity in that system to consult from time to time with the Advisory Committee on the various 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 those reservoirs which are required to be borne by the space allocated to irrigation storage. The consultation shall include such matters as under this contract specifically require consultation with that Committee. 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 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.

Performance of Work With Contributed Funds

45. (a) At the request of the District, the United States, at its option, pursuant to the act of March 4, 1921 (41 Stat. 1367, 1404), may perform with funds contributed by the District any construction or maintenance work within the authority of the District but which is not otherwise provided for by this contract. If the United States determines that it will undertake any such work, funds therefor shall be advanced by the District as directed by the Secretary. The advance shall be accompanied by a certified copy of a resolution of the District's board of directors describing the work to be done and authorizing its performance by the United States with the District's funds.

(b) After completion of any work so undertaken, the United States shall furnish the District with a statement of the cost of the work done. Any unexpended balance of the funds advanced will be refunded to the District or applied as otherwise directed by the District.

Confirmation of Contract

46. The execution of this contract shall be authorized or ratified by the qualified electors of the District at an election held for that purpose. The District, after the election and upon the execution of this contract, shall promptly secure a final decree of the proper court of the State of Idaho approving and confirming this contract and decreeing and adjudging it and the apportionment of benefits made thereunder to be lawful, valid, and binding on the District. The District shall furnish to the United States certified copies of such decrees and of all pertinent supporting records.

Changes in District Organization

47. While this contract is in effect, no changes shall be made in the District, either by inclusion or exclusion of lands, by partial or total consolidation or merger with another district, by proceedings to dissolve or otherwise, except with the consent of the Secretary evidenced in writing.

Rules and Regulations; Determinations of Fact

48. (a) The Secretary reserves the right to make, after consultation with the District's board of directors, such rules and regulations, consistent with this contract, as are proper and necessary to carry out its true intent and meaning, and as are necessary and proper to cover any details of the administration or interpretation which are not covered by its express terms. The District shall observe such rules and regulations.

(b) The District's board of directors may also from time to time make such rules and regulations as it regards as desirable for the

administration of its responsibilities under this contract and as are not inconsistent with this contract and the rules and regulations of the Secretary made as herein provided.

(c) In the event the District questions any factual determination made by any representative of the Secretary as required in the administration of this contract, any findings as to the facts in dispute thereafter made by the Secretary shall be made only after consultation with the District's board of directors.

Notices

49. 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, A & B Irrigation District, Rupert, Idaho, on behalf of the District. 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

50. In connection with the performance of work under this contract, the District, in this article termed the contractor, agrees as follows:

(a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard

to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The contractor will comply with all provisions of Executive Order No. 10925 of March 6, 1961, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(e) The contractor will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, and by the rules,

regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(g) The contractor will include the provisions of the foregoing subarticles (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to section 303 of Executive Order No. 10925 of March 6, 1961, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for non-compliance; Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Employment of Manager or Superintendent

51. Until the construction charge obligations under article 6 of this contract have been paid in full, the District shall employ as manager or superintendent a competent irrigation engineer, or other person who has had at least three (3) years experience as a manager or superintendent in the operation of works similar to the transferred works of the District.

Contingent on Appropriations or Allotment of Funds

52. 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 District from any obligations theretofore accrued under this contract, nor give the District the right to terminate this contract as to any of its executory features. No liability shall accrue against the United States in case such funds are not so appropriated or allotted.

Assignments Prohibited;
Successors and Assigns Obligated

53. 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

54. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit 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 /s/ R. T. Nelson
Regional Director, Region 1
Bureau of Reclamation
P. O. Box 937, Boise, Idaho

A & B IRRIGATION DISTRICT

By /s/ Russell E. Mahlum
President of its Board of Directors

(SEAL)

Attest:

/s/ E. H. Van Slyke
Secretary

STATE OF IDAHO

County of ~~Minidoka~~

ss.

On this ~~6th~~ day of ~~February~~, 1962, before me personally appeared ~~Russell A. McAllister~~ and ~~M. W. Van Sigh~~ to me known to be, respectively, the President and the Secretary of the Board of Directors of the A & B Irrigation District, 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)

/s/ Wm. C. Henderson
Notary Public in and for the
State of Idaho
Residing at: ~~Barley~~
My commission expires: ~~Mar. 25, 1962~~

STATE OF IDAHO

County of Ada

ss.

On this ~~9th~~ day of ~~February~~, 1962, 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.

(SEAL)

/s/ E. H. Burkin
Notary Public in and for the
State of Idaho
Residing at: Boise
My commission expires: ~~6/12/63~~

Exhibit E

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 1-14

NAME AND ADDRESS: A & B IRRIGATION DISTRICT
PO BOX 675
RUPERT ID 83350-0675

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 267.000 CFS

PRIORITY DATE: 04/01/1939

POINT OF

DIVERSION: T10S R21E S24 SESWSW Lot 2 Within JEROME County

PURPOSE AND

PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/15 11/15	267.000 CFS

PLACE OF USE:

82610.1 ACRES TOTAL

The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.

Place of use is within the boundary of A & B Irrigation District pursuant to Section 43-323, Idaho Code.

This right is limited to the irrigation of 14,637 acres within the place of use described above in a single irrigation season.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

The delivery of water to this right may be subject to procedures described in the United States Bureau of Reclamation "space holder" contracts and the Burley Irrigation Dist. v. Eagle, Supplemental Decree (Idaho 5th Jud. Dist., July 10, 1968) and Aberdeen-Springfield Canal Co. v. Eagle, Supplemental Decree (Idaho 7th Jud. Dist., March 12, 1969) together with the natural-flow and storage deliveries as calculated by the Idaho Department of Water Resources.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

Right Nos. 1-10225 and 1-10241 are enlargements of this right pursuant to Section 42-1426, Idaho Code.

Exhibit F

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 1-2064

NAME AND ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
REGIONAL DIRECTOR PN REGION
BUREAU OF RECLAMATION PN-3100
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 1,672,590.00 AFY

Total reservoir capacity is 1,672,590 acre feet when filled to elevation 4354.5 and measured at the upstream face of the dam.

PRIORITY DATE: 03/30/1921

The appropriator shall exercise this right in a manner that recognizes the historic practice that the use of water for power generation is incidental to the rights of others to the use of water for other purposes. The appropriator shall not make a delivery call for hydropower generation except as against junior hydropower rights.

POINT OF

DIVERSION: T07S R31E S30 SWSE Within POWER County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION STORAGE	01/01 12/31	1,628,316.00 AFY
IRRIGATION FROM STORAGE	03/15 11/15	1,628,316.00 AFY
POWER STORAGE	01/01 12/31	295,163.00 AFY
POWER FROM STORAGE	01/01 12/31	295,163.00 AFY

The diversion and release of storage for power purposes under this water right is subject to those conditions contained in contract nos. 11r-733 and 11r-801 between the United State Bureau of Reclamation and Idaho Power Company.

PLACE OF USE:

Place of use for irrigation storage and power storage is American Falls Reservoir, provided, however, that water under this right may be temporarily held in the unoccupied space of any of the reservoirs upstream of Milner Dam, located at township 10S, range, 21E, sections 28 and 29, when determined by the Department of Water Resources, the Water District advisory committee, and the United States Bureau of Reclamation that such temporary storage will maximize the storage of water upstream of Milner Dam.

Place of use for irrigation from storage is within the following counties: Fremont, Madison, Jefferson, Bonneville, Bingham, Bannock, Power, Minidoka, Cassia, Lincoln, Jerome, Twin Falls, Gooding, and Elmore.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

Although the name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address section of this partial decree, the ownership of this water right is divided. The United States Bureau of Reclamation holds nominal legal title. Beneficial or equitable title to this water right is held in trust by the irrigation organizations, in the quantities and/or percentages specified in the contracts between the Bureau of Reclamation and the irrigation organizations, for the benefit of the landowners entitled to receive distribution of this water from the respective irrigation organizations pursuant to Idaho law. As a matter of law, this interest is appurtenant to the lands within the boundaries of or served by such irrigation organization. The ownership of this water right is derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and the irrigation organizations.

A portion of this right is designated as the first to fill for the benefit of the contract holders as provided in the provisions for saving winter water as recognized in the Burley Irrigation Dist. v. Eagle, Supplemental Decree (Idaho 5th Jud. Dist., July 10, 1968) and Aberdeen-Springfield Canal Co. v. Eagle, Supplemental Decree (Idaho 7th Jud. Dist., March 12, 1969).

The delivery of water to this right may be subject to procedures described in the United States Bureau of Reclamation "space holder" contracts and the Burley Irrigation Dist. v. Eagle, Supplemental Decree (Idaho 5th Jud. Dist., July 10, 1968) and Aberdeen-Springfield Canal Co. v. Eagle, Supplemental Decree (Idaho 7th Jud. Dist., March 12, 1969) together with the natural-flow and storage deliveries as calculated by the Idaho Department of Water Resources.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Right includes accomplished change in purpose of use pursuant to Section 42-1425, Idaho Code.

Exhibit G

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 1-2068

NAME AND ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
REGIONAL DIRECTOR PN REGION
BUREAU OF RECLAMATION PN-3100
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 1,200,000.00 AFY

Total reservoir active capacity is 1,200,000 acre feet when filled to elevation 5620 and measured at the upstream face of the dam.

PRIORITY DATE: 07/28/1939

The appropriator shall exercise this right in a manner that recognizes the historic practice that the use of water for power generation is incidental to the rights of others to the use of water for other purposes. The appropriator shall not make a delivery call for hydropower generation except as against junior hydropower rights.

POINT OF
DIVERSION:

T01S R45E S17 NENE Lot 1 Within BONNEVILLE County
T01S R45E S17 NWNE Lot 2 Within BONNEVILLE County
T01S R45E S17 SWNE Lot 3 Within BONNEVILLE County
T01S R45E S17 SENE Lot 4 Within BONNEVILLE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
POWER FROM STORAGE	01/01 12/31	1,200,000.00 AFY
POWER STORAGE	01/01 12/31	1,200,000.00 AFY
IRRIGATION STORAGE	01/01 12/31	1,200,000.00 AFY
IRRIGATION FROM STORAGE	03/15 11/15	1,200,000.00 AFY

PLACE OF USE:

Place of use for irrigation storage and power storage is Palisades Reservoir, provided, however, that water under this right may be temporarily held in the unoccupied space of any of the reservoirs upstream of Milner Dam, located at township 10S, range, 21E, sections 28 and 29, when determined by the Department of Water Resources, the Water District advisory committee, and the United States Bureau of Reclamation that such temporary storage will maximize the storage of water upstream of Milner Dam.

Place of use for irrigation from storage is within the following counties: Fremont, Madison, Jefferson, Bonneville, Bingham, Bannock, Power, Minidoka, Cassia, Lincoln, Jerome, Twin Falls, Gooding, and Elmore.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

The delivery of water to this right may be subject to procedures described in the United States Bureau of Reclamation "space holder" contracts and the Burley Irrigation Dist. v. Eagle, Supplemental Decree (Idaho 5th Jud. Dist., July 10, 1968) and Aberdeen-Springfield Canal Co. v. Eagle, Supplemental Decree (Idaho 7th Jud. Dist., March 12, 1969) together with the natural-flow and storage deliveries as calculated by the Idaho Department of Water Resources.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

Although the name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address section of this partial decree, the ownership of this water right is divided. The United States Bureau of Reclamation holds nominal legal title. Beneficial or equitable title to this water right is held in trust by the irrigation organizations, in the quantities and/or percentages specified in the contracts between the Bureau of Reclamation and the irrigation organizations, for the benefit of the landowners entitled to receive distribution of this water from the respective irrigation organizations pursuant to Idaho law. As a matter of law, this interest is appurtenant to the lands within the boundaries of or served by such irrigation organization. The ownership of this water right is derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and the irrigation organizations.

A portion of this right is designated as the first to fill for the benefit of the contract holders as provided in the provisions for saving winter water as recognized in the Burley Irrigation Dist. v. Eagle, Supplemental Decree (Idaho 5th Jud. Dist., July 10, 1968) and Aberdeen-Springfield Canal Co. v. Eagle, Supplemental Decree (Idaho 7th Jud. Dist., March 12, 1969).

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Exhibit H

A & B IRRIGATION DISTRICT

07S22E

07S23E

07S24E

07S25E

08S21E

08S22E

08S23E

08S24E

08S25E

09S21E

09S22E

09S23E

09S24E

10S21E

10S22E

Service Area Boundary



Water Right No.:

- Service Area
- Township/Range
- Sections

01-14
01-10225
01-10237
01-10238
01-10239
01-10240
01-10241

GIS Place of Use Illustration
1987 NAPP Photography
Prepared by: E. Carlsen
Date: December 2005