

RECEIVED

JAN 19 2018

DEPARTMENT OF  
WATER RESOURCES

William Bacon, ISB #2766  
Shoshone-Bannock Tribes  
PO Box 306  
Fort Hall, Idaho 83203  
Telephone: (208) 478-3815  
Facsimile: (208) 237-9736

Edmund Clay Goodman, ISB #10288  
Hobbs, Straus, Dean & Walker LLP  
806 SW Broadway, Suite 900  
Portland, Oregon  
Telephone: (503) 242-1745  
Facsimile: (503) 242-1072

Attorneys/Representatives for Shoshone-Bannock Tribes

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF THE PETITION	) Docket No. P-WRA-2017-002
REGARDING STORAGE RESET IN	)
WATER DISTRICT 01 FILED BY MILNER	) DECLARATION OF EDMUND C.
IRRIGATION DISTRICT	) GOODMAN IN SUPPORT OF
	) SHOSHONE-BANNOCK TRIBES'
	) BRIEF ON "THRESHOLD ISSUE"

---

**I, Edmund C. Goodman hereby declare and state as follows:**

1. I am over 18 years of age. I am an attorney for the Shoshone-Bannock Tribes.

My work address is 806 SW Broadway, Suite 900, Portland, OR, 97205. I have personal knowledge of the facts stated herein and, if called to do so, could and would competently testify to the facts set forth herein. I am providing this Declaration in support of the attached Shoshone-Bannock Tribes' brief on the "Threshold Issue."

DECLARATION OF  
EDMUND C. GOODMAN

2. On January 12, 2018, staff from our office visited the Idaho Department of Water Resources Water Right and Adjudication Search webpage, available at

<https://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>.

3. The Idaho Department of Water Resources Water Right and Adjudication Search webpage allows a user to perform a query for *inter alia*, a copy of a license for a water right by name, location of use or diversion, water use, date, water right type, and/or status.

4. On January 12, 2018, staff from our office entered multiple queries into the Water Right and Adjudication Search for water rights licenses issued in the 1970s and 1980s, involving many types of water uses from storage. The staff then reviewed licenses issued during those years and saved some examples of licenses where the “period of use” for the water use for storage was from January 1 through December 31. A sampling of licenses within this criteria are attached as the following Exhibits to this Declaration.

Exhibit A is a license to Truman F. Clark issued February 5, 1974.

Exhibit B is a license to Marshall Roberts issued September 6, 1974.

Exhibit C is a license to William M. Junttila issued October 31, 1981.

Exhibit D is a license to the United States Dept. of Agriculture Forest Service issued November 26, 1986.

Exhibit E is a license to the United States Dept. of the Interior Bureau of Reclamation issued January 14, 2005.


5. On January 18, 2018, I contacted Yadyra P. Esparza, Government Information (FOIA/PA/Tort Claims) Specialist at the United States Bureau of Reclamation, Pacific Northwest Regional Office – Boise, Idaho. Ms. Esparza informed me by email that any executed

water service/spaceholder/repayment contracts are public information and thus available to the public. She stated that when the Bureau receives a request for any of the executed contracts, she has provided the guidance that they may be released without going through the Freedom of Information Act.

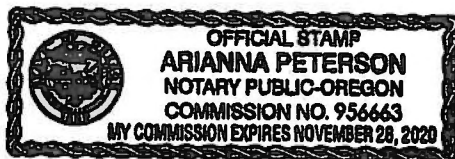
6. I have reviewed several of those publicly-available spaceholder contracts for the Upper Snake River Reservoir System, and all of them define the "storage season" in similar terms as the *Memorandum of Agreement between the Bureau of Reclamation and the Bureau of Indian Affairs Relating to a water supply for Michaud Division of the Fort Hall Irrigation Project as approved April 25, 1957 ("Michaud Contract")*: "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."

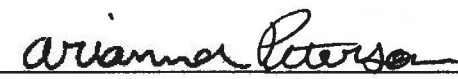
7. Exhibit F is a true and correct copy of one of those contracts, with the Enterprise Canal Company, Ltd. (December 15, 1952).

I swear under the penalty of perjury that the foregoing is true and correct.

By:   
Edmund Clay Goodman

SUBSCRIBED AND SWORN BEFORE ME this 18th day of January, 2018



  
NOTARY PUBLIC in and for the State of  
Oregon at Multnomah  
My commission expires November 28, 2020

DECLARATION OF  
EDMUND C. GOODMAN

# **EXHIBIT A**

---

**IDWR WATER RIGHT LICENSE  
TO TRUMAN F. CLARK  
ISSUED  
FEBRUARY 5, 1974**



State of Idaho

Department of Water Administration

WATER RIGHT LICENSE

License of Water Right No. R-1067/47-2451 Priority June 15, 1960 Amount 100 acre feet

THIS IS TO CERTIFY, that TRUMAN F. CLARK

of Buhl, Idaho, has complied with the terms and conditions of Permit No. R-1067/47-2451 issued pursuant to Application for Permit dated April 12, 1960, and has submitted proof to the Department of Water Administration on July 7, 1970 (late proof), that he has applied water to a beneficial use; an examination by the Department indicates that the works have a capacity for the diversion of 100 acre feet of water from Devil Creek, tributary to Salmon Falls Creek, and that the permit holder has applied to a beneficial use & established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
Storage for: from <u>Jan. 1</u> to <u>Dec. 31</u> at <u>n/a</u> cfs and <u>100 acre feet</u>			
Irrigation & Stockwater from _____ to _____ at _____ cfs and _____			
_____ from _____ to _____ at _____ cfs and _____			

(both dates inclusive)

Subject, however, to the condition that no more than n/a of water be diverted at any one time, and that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed 100 acre feet per year, said waters to be diverted within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Sec. 9,

Twp. 15 S, Rge. 12 E, B.M. in the County of Owyhee,  
and stored behind a dam located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Sec. 2, Twp. 14 S, Rge. 12 E,  
Description and location of place of use: B.M., Twin Falls County.

Twp.	Range	Sec.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				Totals
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
13 S	12 E	25				40									40	40	40	40	200

Total number of acres irrigated 200

NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands or place of use herein described, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 5 day of February, 19 74.

Director

17 2451

# **EXHIBIT B**

---

**IDWR WATER RIGHT LICENSE  
TO MARSHALL ROBERTS  
ISSUED  
SEPTEMBER 6, 1974**

State of Idaho

Department of Water Administration

WATER RIGHT LICENSE

License of Water Right No. R-1139/96-2323 Priority Oct. 16, 1962 Amount 23 acre feet

THIS IS TO CERTIFY, that MARSHALL ROBERTS  
of Newport, Washington, has complied with the terms and conditions of Permit  
No. R-1139/96-2323 issued pursuant to Application for Permit dated October 16, 1962,  
and has submitted proof to the Department of Water Administration on August 9, 1973,  
that he has applied water to a beneficial use; an examination by the Department indicates that the works have a  
capacity ~~for diversion~~ of 23 acre feet of water from an unnamed stream,  
tributary to \_\_\_\_\_, and that the permit holder has applied to a beneficial use &  
established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
Dairy & Stockwater	from <u>Jan. 1</u> to <u>Dec. 31</u>	at <u>0.05</u> cfs and	<u>3.0 acre feet</u>
Recreation	from <u>Jan. 1</u> to <u>Dec. 31</u>	at <u>n/a</u>	<u>23.0 acre feet</u>
Irrigation	from <u>April 1</u> to <u>Nov. 1</u>	at <u>0.02</u> cfs and	<u>3.0 acre feet</u>
Storage for	from <u>Jan. 1</u> to <u>Dec. 31</u>	at <u>n/a</u> cfs and	<u>23.0 acre feet</u>
the above uses (both dates inclusive)			

Subject, however, to the condition that no more than 0.07 cfs of water be diverted at any one time, and  
that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose  
aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed  
23.0 acre feet per year, said waters to be diverted within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Sec. 12,  
Twp. 54 N, Rge. 6 W, B.M. in the County of Bonner

Description and location of place of use:

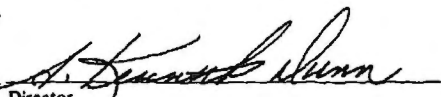
Twp.	Range	Sec.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				Totals
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
54 N	6 W	12															X		One

Total number of acres irrigated One

NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands or place of use herein described, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 6<sup>th</sup> day of  
September, 19 74.

  
Director  
By: A. KENNETH DUNN, Administrator

RECORDED

# **EXHIBIT C**

---

**IDWR WATER RIGHT LICENSE  
TO WILLIAM M. JUNTILA  
ISSUED  
OCTOBER 31, 1981**

State of Idaho  
Department of Water Resources

WATER RIGHT LICENSE

License of Water Right No. 97-7023 Priority May 1, 1972 Amount 0.02 cfs

THIS IS TO CERTIFY, that William M. Junttila  
of Priest River, Idaho, has complied with the terms and conditions of Permit  
No. 97-7023 issued pursuant to Application for Permit dated May 1, 1972,  
and has submitted proof to the Department of Water Resources on June 27, 1977,  
that he has applied water to a beneficial use; an examination by the Department indicates that the works have a  
capacity for the diversion of 0.02 cfs of water from unnamed stream,  
tributary to Cottonwood Creek, and that the permit holder has applied to a beneficial use and  
established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
Irrigation	from <u>April 1</u> to <u>November 1</u>	<u>0.02</u> cfs and	<u>3.0</u> acre feet
Storage for	from <u>January 1</u> to <u>December 31</u>	<u>0.02</u> cfs and	<u>0.5</u> acre feet
Irrigation	from <u>April 1</u> to <u>November 1</u>	<u>0.02</u> cfs and	<u>0.5</u> acre feet
from storage	(both dates inclusive)		

Subject, however, to the condition that no more than 0.02 cfs of water be diverted at any one time, and  
that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose  
aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed  
3.5 acre feet per year, said waters to be diverted within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 17, Twp.  
58N, Rge. 4W in the County of Bonner

Description and location of place of use:

Twp.	Range	Sec.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				Totals
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
58N	4W	17																	1

Total number of acres irrigated 1

NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands or place of use herein described, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 31<sup>ST</sup> day of  
October, 19 81.

Acting for the Director

*Norman C. Young*

# **EXHIBIT D**

---

**IDWR WATER RIGHT LICENSE  
TO THE UNITED STATES DEPT. OF  
AGRICULTURE FOREST SERVICE**

**ISSUED**

**NOVEMBER 26, 1986**

State of Idaho  
Department of Water Resources



# WATER RIGHT LICENSE

License No. 21-7220      Priority    December 11, 1980      Amount    n/a CFS      0.2 AF

THIS IS TO CERTIFY that U.S. DEPT. OF AGRIC., FOREST SERVICE of OGDEN, UTAH, has complied with the terms and conditions of the permit issued pursuant to Application for Permit dated December 11, 1980, and has submitted proof to the Department of Water Resources on June 27, 1983, that water has been applied to a beneficial use; an examination by the Department indicates that the works have a capacity of 0.2 af for storage of water from an unnamed stream tributary to sinks and that a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>VOLUME</u>
Storage for Stockwater	01/01 - 12/31	n/a	0.2 af
Stockwater from Storage	01/01 - 12/31	n/a	0.2 af

Location of point of diversion: SWNW, Sec. 26, Twp 9N, Rge 44E, Fremont Co.

Place of use:

TWP	RGE	SEC	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	TOTAL	
9N	44E	26	:	:	:	:	:	:	X	:	:	:	:	:	:	:	:	:	:	
			:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	
			:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	
			:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	
			:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	
			:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	
			:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	
			:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	
			:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	
			:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	

Total number of acres irrigated:

Use of water under this license is subject to control by the watermaster of State Water District No. 01, Snake River.

NOTE: The right to the use of the water hereby confirmed is restricted and appurtenant to the lands or place of use herein described, as provided by the laws of Idaho. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho Law. This right is subject to all prior water rights and may be forfeited by five years of non-use.

Witness the seal and signature of the Director, affixed at Boise, this 26<sup>TH</sup> day of NOVEMBER, 1986.

Acting for the Director

*Norman C. Young*

# **EXHIBIT E**

---

**IDWR WATER RIGHT LICENSE  
TO THE UNITED STATES DEPT. OF  
THE INTERIOR BUREAU OF  
RECLAMATION  
ISSUED  
JANUARY 14, 2005**



State of Idaho  
Department of Water Resources  
**Water Right License**

WATER RIGHT NO. 25-07004

Priority: June 16, 1969

Maximum Diversion Volume: 90,500.0 AF

It is hereby certified that US DEPT OF INTERIOR  
BUREAU OF RECLAMATION  
1150 N CURTIS RD STE 100  
BOISE ID 83706 has complied with the terms and  
conditions of the permit, issued pursuant to Application for Permit dated June 16, 1969; and has  
submitted Proof of Beneficial Use on November 27, 2002. An examination indicates that the works have  
a diversion capacity of 90,500 AF of water from:

**SOURCE**

WILLOW CREEK

Tributary: SNAKE RIVER

and a water right has been established as follows:

<b><u>BENEFICIAL USE</u></b>	<b><u>PERIOD OF USE</u></b>	<b><u>ANNUAL DIVERSION VOLUME</u></b>
IRRIGATION FROM STORAGE	04/01 to 10/31	80,500.0 AF
IRRIGATION STORAGE	01/01 to 12/31	80,500.0 AF
WILDLIFE STORAGE	01/01 to 12/31	10,000.0 AF

**LOCATION OF POINT(S) OF DIVERSION:**

WILLOW CREEK NW¼NW¼ Sec. 22, Twp 03N, Rge 40E, B.M. BONNEVILLE County

**CONDITIONS OF APPROVAL**

1. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 01.
2. Permanent measuring devices must be maintained in such a manner that the amount of water entering the reservoir and the amount of water released from the reservoir can be measured.
3. Water stored under this right and conveyed to downstream lands is subject to a shrinkage loss as determined by the watermaster.
4. The reservoir storage capacity is 90,500 acre feet when filled to elevation 5112.8 and measured at the upstream face of the dam.
5. The storage of water under this right is contingent upon continued certification by the Department of Water Resources under the dam safety provisions of the Idaho Code, authorizing storage.
6. The place of use for irrigation from storage is upon lands located along the Snake River and its tributaries in Eastern Idaho within the Minidoka Federal Reclamation Project as listed in Storage Contract 4-07-10-W0999 dated March 31, 1994, between the United States and Mitigation, Inc.
7. Place of use for irrigation storage and wildlife storage is Ririe Reservoir.
8. Wildlife storage (inactive storage) shall not be released from storage for a beneficial use.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this 14<sup>th</sup> day of January, 2005.

  
for **KARL J DREHER**  
Director

# **EXHIBIT F**

---

**WATER STORAGE CONTRACT  
WITH THE ENTERPRISE CANAL  
COMPANY, LTD.**

**DATED  
DECEMBER 15, 1952**

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Bureau of Reclamation

Minidoka and Palisades Projects  
Idaho

Contract With  
ENTERPRISE CANAL COMPANY, LTD.  
Concerning Storage Capacity in American Falls and  
Palisades Reservoirs, and Related Matters

EXPLANATORY NOTE

Attached is Form A of a proposed typical contract to be made with a company or district diverting from the Snake River above American Falls Dam, which contractor:

1. Now owns space in American Falls Reservoir and is about to acquire additional space, these combined rights in American Falls to be the subject, in part, of a permanent exchange with Jackson Lake;
2. Now owns space in Jackson Lake Reservoir and will own more as the result of the permanent exchange, with all its Jackson Lake rights to be redefined in this contract; and
3. Is now acquiring Palisades space, part of which is to be preferred.

The contract will have some alternate provisions, depending on whether it is made with a company or a district and whether it is determined at the outset that there are new lands to be served.

The contract will not fit cases in which the contractor has existing rights either in American Falls or Jackson Lake or both which cannot readily be consolidated and redefined in one contract at this time.

Contract No. 14-06-W-15

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Bureau of Reclamation

Minidoka and Palisades Projects  
Idaho

Contract With  
ENTERPRISE CANAL COMPANY, LTD.  
Concerning Storage Capacity in American Falls and  
Palisades Reservoirs, and Related Matters

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
1	Preamble .....	1
2-4	Explanatory Recitals .....	1-2
5	Definitions .....	2-4
 <u>Provisions Relating to Storage Capacity in American Falls Reservoir</u> (Articles 6 through 11)		
6	Capacity to be Available to the Company .....	4-5
7	Construction Charge Obligation .....	5-6
8	Operation and Maintenance Obligation .....	6-8
9	Adjustment for Twin Falls Canal Company's Share of Net Leasing Revenues .....	8-9
10	Nature and Extent of American Falls Reservoir Storage Right .....	9-10
11	Status of Company's Rights Under Prior American Falls Contract .....	10
 <u>Provisions Relating to Storage Capacity in Palisades Reservoir</u> (Articles 12 through 17)		
12	United States to Construct Works .....	10-11
13	Capacity to be Available to the Company .....	11
14	Construction Charge Obligation .....	12-14
15	Operation and Maintenance Obligation - Palisades .....	14-16
16	Nature and Extent of Palisades Storage Right .....	16-18
17	Saving of Winter Water; Special Storage Unit .....	18-21

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
Provisions Relating to Exchange and Redefinition of Existing American Falls and Jackson Lake Storage Rights; Winter Power Operations at the Minidoka Powerplant <hr/> (Articles 18 through 24)		
18	Permanent Exchange of American Falls and Jackson Lake Storage Rights .....	21-23
19	Guarantee in Event Minidoka Exchanged Space Falls to Fill .....	23-24
20	Redefinition of Jackson Lake Storage Rights .....	24-26
21	Operation and Maintenance Obligation - Jackson Lake ....	26-27
22	Relinquishment of Rights in American Falls Reservoir ...	27-28
23	Status of Company's Rights Under Prior Jackson Lake Contract .....	28
24	Winter Power Operation; Minidoka Powerplant .....	28-36
Provisions of General Application to All Rights Established or Defined by This Contract <hr/> (Articles 25 through 51)		
25	Temporary Storage and Exchange of Water; Release of Jackson Lake and Palisades Water for Power Production .....	37-38
26	Rental of Water; Sale of Space .....	38
27	Points of Delivery of Water; Measurement and Losses ....	38-39
28	Ordering of Water .....	39-40
29	Complaints Regarding Water Supply .....	40-41
30	Payment of Costs in Delivery and Distribution of Stored Water .....	41-42
31	Computation of Costs .....	42
32	Title to and Operation of Powerplants; Power Revenues ..	43-44
33	Title to Storage Works; Miscellaneous Revenues .....	44-45
34	Priority of Certain Existing and Future Water Rights ...	45-48
35	Protection of Water Rights .....	48
36	Refusal to Deliver Water in Case of Default .....	48-49
37	Levies and Assessments by Company; All Benefits Condi- tioned Upon Payment; Lien to Secure Obligations .....	49-50
38	Lands for Which Water is Furnished; Limitations on Area	50-51
39	Limitation on Service to New Lands .....	51-52
40	Termination or Modification of Excess Land Provision ...	52

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
41	Penalty for Delinquency in Payment .....	52-53
42	Advisory Committee .....	53-54
43	Ratification of Contract .....	54
44	Changes in Company's Organization .....	54
45	Rules and Regulations .....	55
46	Representative of the Secretary .....	55
47	Notices .....	55
48	Discrimination Against Employees or Applicants for Employment Prohibited .....	56
49	Contingent on Appropriations or Allotment of Funds ....	56
50	Assignments Prohibited; Successors and Assigns Obligated .....	56
51	Officials Not to Benefit .....	57
	Signatures .....	57
	Certificates	
	Exhibits	

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Bureau of Reclamation

Minidoka and Palisades Projects  
Idaho

Contract With  
ENTERPRISE CANAL COMPANY, LTD.  
Concerning Storage Capacity in American Falls and  
Palisades Reservoirs, and Related Matters

THIS CONTRACT, Made this 12th day of December  
1952, pursuant to the Federal Reclamation Laws, between THE UNITED  
STATES OF AMERICA (hereinafter called the United States), acting  
through the Under Secretary of the Interior, and ENTERPRISE  
CANAL COMPANY, LTD. (hereinafter called the Company),  
a corporation organized and existing under the laws of the State of  
Idaho and having its principal place of business at Rigby,  
Idaho,

WITNESSETH, That:

2. WHEREAS, the United States, under the Federal Reclamation  
Laws, has heretofore constructed and is now operating Jackson Lake,  
Island Park, American Falls, and Lake Walcott reservoirs, among  
others, and is now constructing Palisades Dam and Reservoir Project  
(herein called the Palisades Project);
3. WHEREAS, the Company, desiring to cooperate with the United  
States and the various other water users organizations that enter into  
like contracts in the water conservation program that will be made

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

4. WHEREAS, the United States and the Company, serving an upper valley area, have heretofore entered into the following contracts with respect to storage rights in Federal reservoirs on the Snake River above Milner Dam:

In Jackson Lake Reservoir, contract dated April 15, 1917.

In American Falls Reservoir, contract dated July 28, 1925, Symbol and No. I2r-1177, as amended by the contracts of July 29, 1925, and December 1, 1927, all referred to hereinafter as the contract of July 28, 1925, as amended (Symbol and No. I2r-1177).

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

#### Definitions

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

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



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

"Advisory Committee" shall mean the committee defined by article 42 of this contract or its duly authorized representative.

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

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

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

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

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

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

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

Capacity to be Available to the Company

6. (a) The United States will operate and maintain the existing American Falls Dam and Reservoir, and beginning with the first irrigation season following the termination, as announced by the Secretary, of the lease of reserved capacity to the American Falls Reservoir District under the lease dated April 23, 1947, as amended (174r-532), will make available to the Company stored water accruing to one thousand four hundred eighty-five ten thousandths per cent (0.1485%) 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 2,524 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.

(b) The amount of active capacity defined in (a) of this article comprises a net amount of 2,524 acre-feet, which amount is derived from the sum of these: 3,566 acre-feet, being a portion of the reserved capacity with respect to which the Secretary is authorized to contract under the provisions of the Act of September 30, 1950, and 10,509 acre-feet, being the capacity that was initially made available to the Company under its contract with the United States, dated July 28, 1925, as<sup>amended</sup> (Symbol and No. 12r-1177 ), less 11,551 acre-feet, being the capacity which, by operation of article 18 of this contract, is permanently transferred to Jackson Lake Reservoir.

Construction Charge Obligation

7. (a) Notwithstanding the transfer of American Falls space to Jackson Lake Reservoir as provided by article 18, the Company shall pay to the United States with respect to the 3,566 acre-feet of the reserved capacity made available as provided in (b) of article 6, as the construction charge obligation, the sum of fifteen thousand five hundred seventy-five dollars and eighty cents (\$15,575.80 ), less the Company's proportionate share of the net leasing revenues creditable to the 315,000 acre-feet of reserved American Falls space, determined by the Secretary in accordance with the provisions of section 3 of the Act of September 30, 1950. The Company's share of the net leasing revenues available for application hereunder through December 31, 1951, is eleven thousand six dollars and fifty-four cents (\$11,006.54). The amount of such net leasing

revenues thereafter becoming available for application hereunder and the Company's share thereof shall be determined on or before December 31 of the year when stored water for irrigation purposes first becomes available in Palisades Reservoir and a written statement of the determinations made shall be furnished promptly to the Company. Payment for original construction costs allocable to the capacity made available to the Company under the contract of

July 28, 1925, as amended, referred to in article 6, has heretofore been made in full.

(b) The construction charge obligation hereunder shall be repaid by the Company to the United States in . . . ten . . . (10) successive annual instalments, beginning December 31, 1953, each instalment to be paid on or before December 31 of the year in which it is due. Prior to the determination and announcement of the total amount of net leasing revenue that is apportionable to the Company's construction charge obligation hereunder, each annual instalment shall be four hundred fifty-six and 93/100 . . . dollars (\$456.93 ). After such determination has been made, the then unaccrued balance of the construction charge obligation, taking account of the deduction of the Company's share of leasing revenues, shall be paid over the remaining years of the repayment period in annual instalments that are as nearly equal as is practicable.

Operation and Maintenance Obligation

8. (a) The Company, during the period of operation and maintenance of American Falls Dam and Reservoir and related works

(herein called storage works) by the United States, shall pay to the United States the share of costs of operation and maintenance of the storage works, including whatever costs may be incurred in the delivery of water therefrom, which is apportionable to the irrigation storage rights therein and which is allocable to the Company's rights defined in article 6. In determining the total costs apportionable annually to the irrigation storage rights in these works there shall be included payments required to be made in accordance with the provisions of articles 9 and 24, but there shall be excluded whatever amounts are required to be paid as American Falls operation and maintenance charges under the contract of June 15, 1923, between the Idaho Power Company and the United States, as it may hereafter be amended.

(b) Beginning with the 1953 irrigation season, payment of the Company's share of operation and maintenance costs of American Falls Reservoir 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 storage works to be incurred for the calendar year involved, the amount thereof apportionable to the irrigation storage rights therein, and the amount of the Company's share of these estimated costs. The operation and maintenance charge notice shall be furnished to the Company on or before February 1 of

the calendar year for which the notice is issued, but, when requested by the Company, a preliminary estimate shall be given at such earlier date as is agreed on in writing. The Company shall pay the amount stated in the notice on or before April 1 of the year for which it is issued or such other date as may be agreed on in writing.

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

Adjustment for Twin Falls Canal Company's Share of  
Net Leasing Revenues

9. Of the net leasing revenues creditable to the 315,000 acre-feet of American Falls reserved space, as of December 31, 1951, seventy-three thousand seven hundred seventy-three dollars and fourteen cents (\$73,773.14) would have been available to the Twin Falls Canal Company for application on the construction charge obligation of American Falls reserved space which that company might

have acquired. In consideration of the Twin Falls Canal Company's foregoing participation in that reserved space and of the Canal Company's share of the credit being applied against the construction charge obligation of the reserved space made available to the water users, including the contracting company, the latter company will pay to the United States the sum of        nine

hundred                dollars ( \$900.00 ) for payment to the Twin Falls Canal Company or for crediting on obligations in connection with the reservoir system to become due from the Canal Company to the United States. This amount shall be paid to the United States in    ten    ( 10 ) annual instalments of        ninety

dollars ( \$90.00 ), each annual amount to be paid along with the Company's operation and maintenance obligation as provided by article 8.

Nature and Extent of American Falls Reservoir Storage Right

10. (a) Beginning with the 1953 irrigation season, the Company 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 Company 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 Company during an

irrigation season shall not exceed the amount that can be stored in the space made available to the Company under (a) of article 6.

(b) Stored water available under the rights in American Falls Reservoir as defined in this contract shall be available for delivery to the Company during any irrigation season within these limitations:

That the delivery of such water can be effected by an exchange of water, pursuant to the provisions of article 25, with lower valley owners having stored water available for delivery from an upstream reservoir.

Status of Company's Rights Under Prior American Falls Contract

11. Beginning January 1, 1953, this contract supersedes and <sup>amended</sup> takes the place of the contract of July 28, 1925, as / (Symbol and No. I2r-1177 ) between the Company and the United States. Except as to provisions of the latter contract which have been fully executed prior to January 1, 1953, which shall remain unaffected hereby, the latter contract shall continue in effect only to the extent expressly provided herein.

Provisions Relating to Storage Capacity in  
Palisades Reservoir  
(Articles 12 through 17)

United States to Construct Works

12. (a) Within the limits of the authorization therefor, the United States is now constructing and will complete and operate and



maintain Palisades Dam on the Snake River in the vicinity of Irwin, Idaho, to provide a reservoir of an active capacity of about 1,200,000 acre-feet, and related facilities, substantially in accordance with the plans set forth in House Document No. 720, 81st Congress.

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

Capacity to be Available to the Company

13. The authorized dam will provide a reservoir with an estimated active storage capacity of 1,200,000 acre-feet and, based on that estimated capacity, the use and benefit of one and six thousand three hundred thirty-three ten thousandths per cent (1.6333%) of that capacity is allocated hereby to the Company. Beginning with the first full irrigation season after the Secretary has announced that the reservoir is ready for storage and delivery of water for irrigation purposes, the United States will make available to the Company the stored water accruing to that percentage of the active capacity of that reservoir, within the limits and on terms and conditions provided in this contract. That percentage shall, so long as the reservoir has an active capacity of 1,200,000 acre-feet, be treated as the equivalent of 19,600 acre-feet of active capacity. The latter figure may, however, be adjusted from time to time by agreement between the Secretary and the Advisory Committee whenever there are determinations that the active capacity is other than above stated.

Construction Charge Obligation

14. (a) The Company shall pay to the United States for the use of space as provided in article 13, as the construction charge obligation, the sum of                      one hundred seventy-six thousand                      four hundred                      dollars (\$176,400.00 ), this being determined at the rate of nine dollars (\$9.00) per acre-foot of capacity and on the assumption that the reimbursable construction costs of the Palisades Project finally allocated to joint facilities equal or exceed the sum of twenty-three million two hundred one thousand one hundred dollars (\$23,201,100). If the reimbursable joint facility construction costs, as finally determined, are less than twenty-three million two hundred one thousand one hundred dollars (\$23,201,100), and, as a result, the amount of joint facility costs allocated to irrigation is less than the amount expected so to be allocated according to the Secretary's report of July 1, <sup>1/</sup> 1949, the amount of the reduction shall be proportioned between irrigation construction costs assigned to be repaid by the water users and those assigned for repayment from power revenues on the basis of the amounts of estimated irrigation construction costs so assigned in the Secretary's report of July 1, 1949. The amount of reduction, if any, when determined by the Secretary, shall be distributed equally

---

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

as a credit against the construction charge obligation of all space the costs of which are allocated to irrigation. The total amount of credit and the portion thereof to which the Company is entitled shall be announced in writing by the Secretary promptly after final construction costs are determined and the allocations thereof are made. In no event, however, shall the credit be such as to reduce the Company's total construction charge obligation to less than one hundred fifty-one thousand nine hundred dollars (\$151,900.00), this being at the rate of seven dollars and seventy-five cents (\$7.75) per acre-foot of capacity as initially stated in article 13.

(b) The construction charge obligation under this article shall be repaid by the Company to the United States in forty (40) successive annual instalments to be as nearly equal as is practicable. The due date of the initial instalment, established in relation to the date announced by the Secretary as the date that the dam is substantially complete and ready for storage, will be as follows: (i) if, on the announced date, the provisions of (d) of article 32 are still in effect, the first instalment shall be payable on or before December 31 of the third full calendar year after that date, the project for repayment purposes being treated as incomplete during the first two years; and (ii) if, on the announced date, the provisions of (d) of article 32 are no longer in effect, the first instalment shall be payable on or before December 31 of the first

full calendar year after that date. In the event there is, under the operation of (a) of this article, a reduction in the Company's total obligation after the payment of instalments has started, the amount of credit available shall be distributed evenly over the remaining unacrued instalments as of the time the amount of the credit is announced.

Operation and Maintenance Obligation - Palisades

15. (a) The Company, beginning as provided in (b) of this article and continuing during the period of operation and maintenance of the Palisades Dam and Reservoir by the United States, shall pay to the United States in advance one and sixty-three hundredths per cent ( 1.63%) of the costs of operating and maintaining that dam and reservoir, including whatever costs may be incurred in the delivery of water therefrom, which are apportionable to the irrigation storage rights therein. There shall be determined from time to time by the Secretary, after consultation with the Advisory Committee, the basis for distributing among the various purposes which by law are to be served by the dam and reservoir the costs of operation and maintenance thereof and the basis for assigning those costs for repayment. In determining the total costs annually apportioned to the irrigation storage rights there shall be deducted from the total annual cost of operation and maintenance of the dam and reservoir, those costs which are determined to be properly chargeable to other purposes served by the reservoir and for which other provision for repayment, in whole or in part, is made pursuant to law. The costs apportionable to the

irrigation storage rights shall be distributed annually to all storage space that is made available for irrigation purposes.

(b) Beginning with January 1 of the year in which the use and benefit of Palisades space is first available to the Company as provided in article 13, payment of the Company's share of Palisades Dam and Reservoir operation and maintenance costs shall be made for each calendar year on the basis of annual estimates by the Secretary. The notice of these annual estimates, hereinafter referred to as the operation and maintenance charge notice, shall contain a statement of the estimated cost of operation and maintenance of the dam and reservoir to be incurred in the calendar year involved and the amount of the Company's share of those estimated costs. The operation and maintenance charge notice shall be furnished to the Company on or before February 1 of the calendar year for which the notice is issued, but, when requested by the Company, a preliminary estimate shall be given at such earlier date as is agreed on in writing. The Company shall pay the amount stated in the notice on or before April 1 of the year for which it is issued or such other date as may be agreed on in writing.

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

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

Nature and Extent of Palisades Storage Right

16. (a) Beginning with the storage season indicated in article 13, the Company shall be entitled to have the following storage rights in Palisades Reservoir:

- (1) The right to have stored to its credit during each storage season, one and six thousand three hundred thirty-three ten thousandths per cent (1.6333%) of all water stored in Palisades Reservoir during that season under the Palisades storage right.
- (2) The right to have stored to its credit during each storage season and with a priority as indicated in article 17, water to which it is 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 Company's credit at any time shall not, however, exceed the total amount of space in the reservoir available to the Company under this contract, and the Company's storage rights in Palisades Reservoir are hereby made subject to the provisions of (c) of this article.

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

- (1) Except in cases of emergency, deliveries shall be limited to periods when the Company's natural flow rights and stored water in reservoirs downstream from Palisades Reservoir are not sufficient to meet the Company's irrigation water requirements.
- (2) Deliveries shall be limited at any time to the amount which can be delivered by means of the Company's proportionate share of the outlet capacity, taking into account the requirement of passing through the reservoir water belonging to prior rights and the physical limitations of the existing outlet works.

(c) Under the provisions of the Act of September 30, 1950, the active capacity of Palisades Reservoir will be used

jointly for irrigation and flood control storage in accordance with the operating plan set forth in House Document No. 720, 81st Congress, and attached hereto as Exhibit A, as that plan is implemented by rules and regulations issued pursuant to section 7 of the Act of December 22, 1944 (58 Stat. 890). All the Company's storage rights are subject to the operation of the reservoir in accordance with this subarticle. In the event Palisades Reservoir fails to fill during any storage season by reason of such flood control operations, the amount of shortage so attributable shall be prorated equally over all space allocated to storage of water for irrigation, municipal, or other miscellaneous purposes and shall be charged against all stored water including that, if any, carried over from prior irrigation seasons.

Saving of Winter Water; Special Storage Unit

17. (a) Beginning with the date announced by the Secretary as the time when Palisades Reservoir will be ready for operation as provided in article 12, the Company shall, for a period of 150 consecutive days during the period from November 1 through April 30 of each storage season, make no diversion of water from the Snake River or any of its tributaries by means of its existing diversion works or by any other means.

(b) The total savings of water during each storage season as the result of curtailment of winter diversions by the Company and all other water users organizations diverting from the Snake River



who have contracted with the United States to curtail or cease diversions is agreed to be 143,000 acre-feet, of which 135,000 acre-feet are attributable to curtailments by those diverting above American Falls Dam and 8,000 acre-feet below that point. The Company, diverting above American Falls Dam, shall be entitled to store in Palisades Reservoir during each season during which curtailment of winter diversions is made as provided in (a) of this article, 1,820 acre-feet.

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

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

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

The rights of the North Side Canal Company 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 ..... 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 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 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 opera-  
tive until the first year in which that company exer-  
cises the special storage provision to which consent  
is here given.

Provisions Relating to Exchange and Redefinition of  
Existing American Falls and Jackson Lake Storage  
Rights; Winter Power Operations at the Minidoka  
Powerplant  
(Articles 18 through 24)

Permanent Exchange of American Falls and Jackson Lake  
Storage Rights

18. (a) The United States will operate and maintain the exist-  
ing Jackson Lake Dam and Reservoir and, beginning October 1, 1952,  
will make available to the Company stored water accruing to four  
and three hundred seventeen ten thousandths per cent (4.0317%)  
of the active capacity of that reservoir below elevation 6752 feet  
above sea level (U.S.G.S. datum), herein referred to as elevation  
6752, within the limits and on the terms and conditions provided in  
this contract. This percentage shall, so long as the reservoir has a  
total active capacity of 847,000 acre-feet, be treated as the equiva-  
lent of 17,651 acre-feet of active capacity below elevation 6752.

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.

(b) The amount of active capacity defined in (a) of this article comprises the total of 6,100 acre-feet of Jackson Lake Reservoir capacity that was initially made available to the Company under its contract dated April 15, 1917 (Symbol and No. ----) with the United States, together with 11,551 acre-feet of capacity made available by permanent exchange as provided in (c) of this article.

(c) The Company, as indicated by (b) of article 6, is entitled to the use of a total of 14,075 acre-feet of the active capacity in American Falls Reservoir, of which 11,551 acre-feet are available for permanent exchange. The United States, as of the date of this contract, operates and maintains for the benefit of the South Side Pumping and Gravity divisions of the Minidoka Project and for the North Side Canal Company, the following rights to capacity in Jackson Lake Reservoir below elevation 6752:

Minidoka Project ..... 325,810 acre-feet

North Side Canal Company ..... 10,000 acre-feet

In order to assist in effecting the permanent exchange of these Jackson Lake rights for an equivalent amount of space in American Falls Reservoir, beginning October 1, 1952, there is hereby available to the

Company 11,551 acre-feet of active capacity in Jackson Lake Reservoir below elevation 6752, within the limits and on the terms and conditions provided in this contract, this being in lieu of an equivalent amount of American Falls storage capacity.

Guarantee in Event Minidoka Exchanged Space  
Fails to Fill

19. Under the provisions of article 18 above and similar provisions in contracts with other holders of storage rights in American Falls Reservoir, holders of storage rights in American Falls Reservoir will have acquired in lieu of those rights seventy-six and seven tenths per cent (76.7%) of the total active capacity in Jackson Lake Reservoir below elevation 6752 as of October 1, 1952, these rights in Jackson Lake Reservoir being hereinafter called the upper valley exchanged space; and nineteen and seventy-five hundredths per cent (19.75%) of the active space in American Falls Reservoir will be held for the South Side Pumping and Gravity divisions of the Minidoka Project (nineteen and sixteen hundredths per cent (19.16%)) and the North Side Canal Company (fifty-nine hundredths per cent (0.59%)), these rights being hereinafter called collectively the lower valley exchanged space. The seventy-six and seven tenths per cent (76.7%) in Jackson Lake below elevation 6752 and the nineteen and seventy-five hundredths per cent (19.75%) in American Falls shall, so long as the respective total active capacities are not less than 847,000 and 1,700,000 acre-feet, be treated as the equivalent of 335,810 acre-feet.

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. Beginning with the 1952-1953 storage season, there shall be a determination, at the end of each storage season in which the lower valley exchanged space fails to fill, taking carryover storage into account, (1) of the amount by which the American Falls storable inflow to which the lower valley exchanged space was entitled during that season failed to fill that space; and (2) of the amount, if any, by which the Jackson Lake storable inflow to which the upper valley exchanged space was entitled during that season failed to fill that exchanged space. If the amount under (1) exceeds that under (2), there shall be credited to the lower valley exchanged space and charged to the upper valley exchanged space an amount of stored water equal to the difference, but not in excess of the amount required to fill the lower valley exchanged space as of the end of that storage season. The determinations under this article shall be made by a committee of three comprising the state watermaster of District No. 36, a representative to be selected jointly by the Burley and Minidoka irrigation districts and the North Side Canal Company, and the officer of the United States in charge of the Minidoka Project.

Redefinition of Jackson Lake Storage Rights

20. (a) Beginning with the 1952-1953 storage season, the United States will operate Jackson Lake Reservoir so as to hold over, in any

space available in the reservoir, from one irrigation season to the next for use in that next season, stored water to which any holder of space in the reservoir is entitled, but the total amount of stored water which will be held for the use of any holder of space during any irrigation season shall not exceed the space available to that holder. The United States shall, however, in its operation of the reservoir, have the right, after consultation with the Advisory Committee, to lower the water surface elevation in Jackson Lake in each storage season in order to avoid damage to the dam during winter weather and to provide incidental flood control, but, except in cases of operation and maintenance emergencies, such release of water shall not result in loss of storable water in that storage season. If losses do result, these shall be prorated equally over all space in the reservoir and shall be charged against stored water including that, if any, carried over from prior irrigation seasons. Determination of the relative rights of the various holders of space in the reservoir to reservoir inflow during each storage season shall, however, continue to be on the basis of the difference in priorities for the storage of water held by the United States for the capacity below elevation 6752 and those held for the capacity above that elevation.

(b) Stored water available under the rights in Jackson Lake Reservoir as defined in this article shall be available for delivery to the Company during any irrigation season within these limitations:

- (1) Except in cases of emergency, deliveries shall be limited to periods when the Company's natural

flow rights and rights to water stored in reservoirs downstream from Jackson Lake Reservoir are not sufficient to meet the Company's irrigation water requirements.

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

Operation and Maintenance Obligation - Jackson Lake

21. (a) The Company, during the period of operation and maintenance of Jackson Lake Dam and Reservoir by the United States, shall pay to the United States two and eight hundredths per cent ( 2.08%) of the costs of operating and maintaining that dam and reservoir, including whatever costs may be incurred in the delivery of water therefrom.

(b) Beginning with the 1953 irrigation season, payment of the Company's obligation under (a) above 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 under (a) above to be



incurred in the calendar year involved, and the amount of the Company's share of these estimated costs. The operation and maintenance charge notice shall be furnished to the Company on or before February 1 of the calendar year for which the notice is issued, but, when requested by the Company, a preliminary estimate shall be given at such earlier date as is agreed on in writing. The Company shall pay the amount stated in the notice on or before April 1 of the year for which issued or such other date as may be agreed on.

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

#### Relinquishment of Rights in American Falls Reservoir

22. Effective as of October 1, 1952, the Company hereby relinquishes all its rights to 11,551 acre-feet of capacity in American Falls Reservoir as those rights are described in article 18, but there shall be credited to the Company's share of upper valley exchanged space an amount of water equal to the stored water remaining

to the credit of the space hereby relinquished as of October 1, 1952. This relinquishment is contingent on there being effective on or before October 1, 1952, or such later date as may be agreed on between the Secretary and the Advisory Committee a relinquishment by the Burley Irrigation District, the Minidoka Irrigation District, and the North Side Canal Company of their respective rights to the 335,810 acre-feet of capacity in Jackson Lake Reservoir now being operated for their benefit by the United States.

Status of Company's Rights Under Prior Jackson Lake  
Contract

23. Beginning October 1, 1952, this contract supersedes and takes the place of the contract of April 15, 1917 (Symbol and No. -----) between the Company and the United States. Except as to the provisions of the latter contract which have been fully executed prior to that date and which shall remain unaffected hereby, the latter contract shall continue in effect only to the extent expressly provided herein.

Winter Power Operation; Minidoka Powerplant

24. (a) The United States, in its operation of American Falls and Minidoka dams during the storage season of each year is required to pass through enough water to satisfy existing diversion rights in the stretch of river down to and including Milner Dam and certain power rights below Milner Dam, and has the privilege under an existing decree to use at Minidoka Dam 2,700 cubic feet per second of water

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

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

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

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

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

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

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

September 30, 1951, as shown in Table 1 of the document entitled "Criteria and Methods for Determination of Certain Minidoka Power-<sup>2/</sup>plant Production Losses from Restrictions on Use of Water Rights", and for each year thereafter, a net power production loss calculated on the basis of the comparison of (1) the total energy that could have been produced by units 1 through 6 of the Minidoka powerplant based on the water flows actually recorded at the U.S.G.S. Minidoka gaging station (hereinafter called the Minidoka gage), corrected as hereinafter provided, and (2) the energy which theoretically could have been generated at those units with the flows at the Minidoka gage without a curtailment in winter power operation as provided in this article and exclusive of irrigation storage releases. Using conclusions reached as to flows and heads, the power loss calculations will be made by utilizing the power production curves shown in drawing No. 17-100-139 incorporated by reference in the document identified above, but increases in energy in any year by reason of taking American Falls storage into account as provided in subparagraph (iii) of this subarticle (d) shall be accounted for as compensating offset up to but not exceeding energy losses accruing in that year by reason of curtailment in power operations under this article.

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

---

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

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 per cent load factor, under the then existing rate schedule for the sale of firm power and energy from the plant or plants involved.

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

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

Falls storage passing the Minidoka gage shall be the increase in storage at that gage over that computed at the Blackfoot gaging station as shown in the annual report entitled "Water Distribution and Hydro-metric 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 in the order provided in articles 16 and 20. 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:

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



(iii) Although there is no right to have water stored under American Falls Reservoir rights released for power production, during the period that such storage is being released for irrigation there will be more energy produced by these units than is attributable to the natural flow rights therefor, which shall be taken into account as a compensating offset as provided above in this sub-article (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 the Committee constituted as provided in article 19, but, should that Committee fail to make a determination for any year by January 1 of the year for which the determination is required, it may be made by the Secretary.

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

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

Provisions of General Application to All  
Rights Established or Defined by This  
Contract  
(Articles 25 through 51)

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

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

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

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

Rental of Water; Sale of Space

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

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

Points of Delivery of Water; Measurement and Losses

27. (a) Stored water to which the Company is entitled under this contract will be delivered and measured at the outlets of the reservoir in which the water is actually stored, without regard to

whether it is water accruing to storage rights in that reservoir. The Company will bear all losses chargeable to such water between the outlets of the delivering reservoir and the Company's 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 Company in any reservoir of the system at the end of any irrigation season one and one-half per cent ( $1\frac{1}{2}\%$ ) to offset evaporation losses. Such charge shall be made as of not later than the end of the ensuing storage season.

#### Ordering of Water

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

excess of entitlements shall be charged against stored water subsequently accruing to the Company's credit under this contract or any other contract with respect to storage in the reservoir system.

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

Complaints Regarding Water Supply

29. The United States and its officers, agents and employees in charge of reservoirs in the reservoir system and the watermaster will use their best efforts and best judgment to deliver to the Company its proportionate share of the water to which it is entitled under this contract. Should the Company feel aggrieved because of an alleged mistake or inaccuracy in the delivery of water or in the division of stored water among the parties entitled to such water from the reservoir system, the Company shall immediately report such alleged mistake or inaccuracy to the watermaster and to the official of the United States in charge of the reservoir involved. If the watermaster finds that the Company's proportionate share of stored water is not being delivered, he will correct the error as early as possible. No liability, however, shall accrue against the United States, its officers, agents or employees, or the watermaster for damage, direct or indirect, arising by reason of shortages in the quantity of water available through the reservoir system by reason of drought, inaccuracy in distribution, hostile diversions by third parties, prior or superior claims, accident to or failure of the facilities comprising

the reservoir system, whether or not attributable to negligence of officers, agents or employees of the United States, or other similar causes of whatsoever kind. Nor shall the Company's obligations to the United States under this contract be reduced by reason of such shortages in interruptions.

Payment of Costs in Delivery and Distribution of Stored Water

30. (a) The Company shall pay, in addition to its proportionate share of the costs of operation and maintenance of the various reservoirs as provided under articles 8, 15, and 21 of this contract, its proportionate share of all costs of the delivery and distribution of water beyond the outlet works of the delivering reservoirs. These costs shall include, with respect to costs incurred by the United States, all costs and expense of 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 Company and all others on whose behalf such costs have been incurred on the basis that the operation and maintenance costs of the reservoir from which the water was delivered are distributed among the various rights. Unless otherwise agreed in writing by the Secretary and the Advisory Committee, such costs shall be paid annually and for billing purposes shall be included as part

Title to and Operation of Powerplants; Power Revenues

32. (a) Title to American Falls dam powerplant and Palisades dam powerplant and all works incidental and appurtenant thereto, built or to be built by the United States, shall remain in the United States until otherwise provided by the Congress.

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

(c) The United States, in its operation of the American Falls powerplant, will be governed by the provisions of the contract of June 15, 1923, with the Idaho Power Company, as that may be amended, as further limited by the provisions of article 24. The United States, in its operations of the Palisades dam powerplant, will be governed by the provisions of article 25 and these criteria, among others: That the plant shall be operated so as to hold to a practicable minimum the loss of water that would otherwise be available for storage in the reservoir system for irrigation purposes; and that, until such time as a reregulating reservoir has been put into operation, wide fluctuations in the release of water to meet peak power loads will, during irrigation seasons, be confined to periods when this can be done without substantial variation from the flows that would otherwise be present in the river below the dam.

(d) Notwithstanding provisions to the contrary in this contract, the Company consents to the operation of the Palisades dam



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

In addition to normal operation at other times within the limits provided by this contract the plant may be operated to produce an average of 60,000 kilowatts (217,440,000 kilowatt-hours) during the period October through February of each storage season when the flow of the river at the dam is equal to or greater than that for these 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 successor in functions, to help meet certified defense loads served from power systems with which the plant is interconnected, directly or indirectly.

Title to Storage Works; Miscellaneous Revenues

33. (a) Title to American Falls, Palisades, and Jackson Lake dams and reservoirs and all works incidental and appurtenant thereto, built or to be built by the United States, shall remain in the United States until otherwise provided by the Congress.

(b) Miscellaneous revenues realized in connection with the operation and maintenance of American Falls and Jackson Lake dams and

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

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

Priority of Certain Existing and Future Water Rights

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

(b) In connection with Idaho Permit No. 15134, a direct diversion permit with a priority date of March 30, 1921, held in

connection with American Falls Reservoir, the United States may contract with American Falls Reservoir District No. 2 to recognize the right of that district to have water license No. 15134 exercised substantially as follows:

American Falls Reservoir District No. 2 to have the right to divert as natural flow during each irrigation season under water license No. 15134, having a March 30, 1921 priority, as follows: From May 1 of each irrigation season continuing during that season so long as there is natural flow available for that priority, the first 1,700 cubic feet per second of flow to be available one-half ( $1/2$ ) to American Falls Reservoir District No. 2 and one-half ( $1/2$ ) to American Falls Reservoir, except that in any year in which American Falls Reservoir is full to capacity on April 30 or fills after that date, taking into account any water that may be temporarily stored to its credit in upstream reservoirs, all water diverted by American Falls Reservoir District No. 2 within the maximum of 1,700 cubic feet per second during the year prior to the initial storage draft on American Falls Reservoir after the reservoir finally fills in that year shall be considered as natural flow under water license No. 15134. Nothing herein shall prevent American Falls Reservoir District No. 2 from diverting water under said license prior to May 1 of a given irrigation season but all such diversions shall be charged as storage in the event the reservoir is not full on

April 30 of that season or does not fill after April 30 of that season.

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

And the Company agrees that it will not oppose an adjudication of a natural flow right of the waters of the Snake River for the benefit of American Falls Reservoir District No. 2 consistent with the foregoing criteria. The contract by the United States with American Falls Reservoir District No. 2 shall be on the condition, however, that that district assumes its proportionate share of the obligation for the cost of replacement power under the provisions of article 24. When such contract has become operative, the United States shall make application to the State of Idaho for amendment of water permit No. 15134 and the issuance thereunder with a priority date of March 30, 1921, requiring that the remainder of the right under the permit, 6,300 second-feet, to the extent such right remains outstanding, be used for storage in American Falls Reservoir, such right, however, if issued to the United States not to carry voting privileges in water users meetings under the laws of the State of Idaho. Such application shall, however, leave unaffected water license No. R-269 having a priority dated March 30, 1921.

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

#### Protection of Water Rights

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

#### Refusal to Deliver Water in Case of Default

36. No water available to the Company under this contract shall be delivered to or for the Company if the Company is in arrears in

the advance payment of operation and maintenance charges owed to the United States, if any, or more than twelve (12) months in arrears in the payment of construction charge obligation instalments, or more than twelve (12) months in arrears in the payment of any other amount owed to the United States under this contract. The Company shall refuse to deliver water to lands or parties who are in arrears in the advance payment of operation and maintenance charges due from such lands or parties to the United States or to the Company, or to lands or parties who are in arrears more than twelve (12) months in the payment of amounts due from such lands or parties to the United States or the Company 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.

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

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

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

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

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

Lands for Which Water is Furnished; Limitations on Area

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

foreclosure or other process of law, by conveyance in satisfaction of mortgages, by inheritance or devise, water therefor may be furnished temporarily for a period not to exceed two (2) years from the effective date of such acquisition and except that delivery may be made to lands held in excess of this limitation if the excess lands are covered by a recordable contract made in accordance with the provisions of section 46 of the Act of May 25, 1926 (44 Stat. 649). These limitations shall cease to operate when the construction charge obligation under this contract has been paid in full. It shall cease also as to any excess lands in any one ownership when the construction charge obligation hereunder allocable to such land has been paid in full to the United States.

Limitation on Service to New Lands

39. The additional stored water made available to the Company under this contract shall not be delivered to lands which have not heretofore been irrigated (so-called new lands), except pursuant to arrangements made with the Secretary to govern the sale price of such new lands during the first five (5) years that water is made available thereto under this contract. This limitation shall not apply, however, to new lands which are within the outer boundaries of an ownership heretofore entitled to the delivery of water through the Company's canal system, nor to other new lands to be served by the Company if the total irrigable area of these other new lands to be provided irrigation service within five (5) years after the date when the first Palisades construction charge instalment becomes due under the provisions of article 14 does not exceed 1,500 acres; nor to lands which,



by transfer or otherwise, have an independent right to water from the Snake River, which right is intended to be supplemented by water made available under this contract; nor to lands as to which the construction charge obligation has been paid as provided in article 38.

Termination or Modification of Excess  
Land Provisions

40. (a) In the event there is a repeal of the so-called excess land provisions of the Federal Reclamation Laws, articles 38 and 39 of this contract will no longer be of any force or effect, and, in the event these provisions are amended in material respects, the United States will, at the request of the Company, negotiate amendments of these articles in order to conform them to the excess land provisions of the law as so amended.

(b) Articles 38 and 39 will no longer be of force or effect if there is a determination by a court of final jurisdiction, binding on all necessary parties, declaring the provisions of these articles to be of no force or effect.

(c) For the purposes of this article, the provisions of articles 38 and 39 are hereby agreed to be severable from the other provisions of this contract.

Penalty for Delinquency in Payment

41. Every instalment or charge required to be paid to the United States under this contract which shall remain unpaid after it has become due and payable shall bear interest at the rate of one-half per cent (1/2%) per month from the date of delinquency. The

Company shall impose, on delinquencies in the payment of assessments, other charges levied by it to meet its obligations under this contract, such penalties as it is authorized to impose under the laws of the State of Idaho.

Advisory Committee

42. (a) In its operation and maintenance of the various dams and reservoirs of the reservoir system, the United States, acting through the Regional Director of the Bureau of Reclamation or his designee or such other officer as may be designated in writing by the Secretary, shall consult from time to time with the Advisory Committee on the various matters specifically requiring consultation under the terms of this contract and on such other matters as will have a substantial bearing on the determination of the amount of stored water to be available in the various reservoirs and on the costs of operation and maintenance of those reservoirs which are required to be borne by the space allocated to irrigation storage. The representative of the United States will meet with the Advisory Committee from time to time, but not less often than two times each year beginning with the calendar year 1953, at such dates and places as may be fixed by the Advisory Committee.

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

(c) Beginning January 1, 1953, the Advisory Committee is agreed to be the Committee of Nine, as that committee may be constituted from time to time. The Committee of Nine shall continue to function as the Advisory Committee under this contract until a different representative body has been designated by a vote of the majority of the water users voting at any regular annual meeting of the water users of District No. 36 held as provided by law. Further designations of bodies to serve as the Advisory Committee may be made from time to time by this same election process.

#### Ratification of Contract

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

#### Changes in Company's Organization

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

#### Rules and Regulations

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

#### Representative of the Secretary

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

#### Notices

47. 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, Enterprise Canal Company, Ltd., Rigby, Idaho, on behalf of the Company. The designation of the person to be notified or the address of such person may be changed at any time by similar notice.

Discrimination Against Employees or Applicants  
For Employment Prohibited

48. The Company shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and shall require an identical provision to be included in contracts relating to the performance of this contract. This provision, however, does not refer to, extend to, or cover the activities of the Company which are not related to or involved in the performance of this contract.

Contingent on Appropriations or Allotment of Funds

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

Assignments Prohibited;  
Successors and Assigns Obligated

50. 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

51. 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/ Vernon D. Northrop  
Under Secretary of the Interior

ENTERPRISE CANAL COMPANY, LTD.

By /s/ Leonard S. Egan  
President

(SEAL)

Attest:

/s/ C. L. Lewis  
Secretary

STATE OF IDAHO           )  
                              : ss.  
County of Bonneville    )

On this 3rd day of November 1952,  
before me personally appeared Leonard S. Egan  
and C. L. Lewis to me  
known to be, respectively, the President and the Secretary of  
Enterprise Canal Company, Limited, the corpora-  
tion 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 offi-  
cial seal the day and year first above written.

/s/ William S. Holden  
Notary Public in and for the  
State of Idaho  
Residing at Idaho Falls, Idaho

(SEAL)

My commission expires  
June 6, 1953

DISTRICT OF COLUMBIA : ss.

On this 15th day of December, 1952  
before me personally appeared Vernon D. Northrop  
to me known to be the official of The United States of America  
described in the foregoing instrument. He acknowledged that he  
executed the said instrument in the capacity therein stated as  
the free and voluntary act and deed of the 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 set my hand and affix my official seal the day and year first above written.

/s/ Harold L. Byrd  
Notary Public in and for the  
District of Columbia

(SEAL)

My commission expires May 14, 1957



The Following Exhibits Are  
Part of This Contract

Document entitled "Criteria and Method for Determination of  
Certain Minidoka Powerplant Production Losses From  
Restrictions on Use of Water Rights"

Exhibit A entitled "Palisades Project - Operating Plan for  
Palisades Reservoir as set Forth in the Appendixes  
of House Document No. 720, 81st Congress"

See Exhibits at the Beginning of Volume 32A