Palisades Water Users, Inc. ("PWUI") and the City of Idaho Falls (the "City"), by and through their counsel, Holden, Kidwell, Hahn & Crapo, P.L.L.C., hereby submit their Opening Brief of Palisades Water Users, Inc. and the City of Idaho Falls Re: Threshold Legal Question as permitted under the Order re: Statements of Issues and Responses; Order Adopting Deadlines; Amended Notice of Status Conference dated January 3, 2018 (the "Deadline Order"). Pursuant to the Deadline Order, this brief is timely submitted to address the threshold legal question posed therein. That question is "whether the plain language of the ‘period of use’ element of the storage water right partial decrees for federal onstream reservoirs in Water District 01 that specifies ‘1/1 to 12/31’ as the time period for ‘irrigation storage’ requires that the reset date for those rights be January 1." Deadline Order, p. 3.
I. ARGUMENT

This matter is about whether Director Gary Spackman (the "Director"), of the Idaho Department of Water Resources ("IDWR" or "Department"), has the discretion, pursuant to Chapter 6 of Title 42 of the Idaho Code, to determine the reset date when storage water rights begin accruing storage (the "Reset Date"). While this issue has arisen in the context of one specific entity, Milner Irrigation District, taking issue with certain specific actions, the results of this proceeding will affect all of the storage water rights and reservoirs in Water District 01 (collectively, the "Storage Water Rights").

While the Director has a duty to distribute water, "the details of the performance of the duty are left to the [D]irector's discretion." In re SRBA, Case No. 39576, Subcase 00-91017 (Basin-Wide Issue 17—Does Idaho Law Require a Remark Authorizing Storage Rights to 'Refill', Under Priority, Space Vacated for Flood Control), 157 Idaho 385, 393, 336 P.3d 792, 800 (2014) (hereinafter, simply "BW 17") (citations omitted). "Somewhere between the absolute right to use a decreed water right and an obligation not to waste it and to protect the public’s interest in this valuable commodity, lies an area for the exercise of discretion by the Director." Am. Falls Reservoir Dist. No. 2 v. Idaho Dep’t of Water Res., 143 Idaho 862, 880, 154 P.3d 433, 451 (2007).

While "the Director cannot distribute water however he pleases," as long as the method "follow[s] the law," the "[d]etails are left to the Director." BW 17, 157 Idaho at 393, 336 P.3d at 800.¹

¹ As this matter implicates the functioning of Water District 01, its relation to IDWR and the Director’s discretion is important. The Idaho Attorney General’s office has explained that "Water District 1 is an instrumentality of the state established by a predecessor of the [Director], pursuant to Idaho Code § 42-604, for the purpose of assisting the Department in carrying out its responsibility to distribute the public waters of the state in accordance with the rights of prior appropriation." Attorney General Opinion No. 91-7 (August 5, 1991) (available online at http://www.ag.idaho.gov/publications/op-guide-cert/1991/OP91-07.pdf); see also Big Wood Canal Co. v. Chapman, 45 Idaho 380, 263 P. 45 (1927); Bailey v. Idaho Irrigation Co., 39 Idaho 354, 227 P. 1055 (1924); Jones v. Big Lost River Irrigation District, 93 Idaho 227, 459 P.2d 1009 (1969); and Idaho Code §§ 42-604, 42-607 (all supporting this proposition).
The specifics of accounting methodologies (including the Reset Date) are among these details of water administration that are left to the Director’s discretion. See id. The Director is correct to consider the law in exercising his discretion; including, as particularly relevant here, the principle that any “interpretation of water right partial decrees must begin with the plain language of the decrees.” Deadline Order, p. 3. However, the “1/1 to 12/31” period of use element on the Storage Water Rights does not unambiguously mandate a Reset Date of January 1st of each year and, because the Reset Date is a detail left to the Director’s discretion, the Director must consider extrinsic evidence in determining a Reset Date.

A. The plain language of the period of use element of the Storage Water Rights does not limit the Director’s discretion in determining the Reset Date.

In accordance with the adjudication statutes, each partial decree must state “the period of the year when water is used for such [authorized] purposes.” Idaho Code §§ 42-1411(2)(g); 42-1412(6). In regard to the partial decrees of Storage Water Rights, the Idaho Supreme Court has explained:

The purpose of use element of a storage water right generally contains at least two authorized purposes of use. The first authorizes the storage of water for a particular purpose (i.e., “irrigation storage,” or “power storage”). The second authorizes the subsequent use of that stored water for an associated purpose, which is often referred to as the “end use” (i.e., “irrigation from storage,” or “power from storage”). Each purpose of use is assigned its own quantity and period of use, which may or may not differ from one another. With respect to storage rights for irrigation, for example, it is typical for the ‘irrigation storage’ purpose of use to be a year-round use (January 1 to December 31), and the ‘irrigation from storage’ purpose of use to be limited to the irrigation season (e.g., March 15 to November 15).

BW 17, 157 Idaho at 389, 336 P.3d at 796 (emphasis and underlining added); see also Black Canyon Irrigation Dist. v. State, No. 44636, 2018 WL 258900, at *1, n. 2 (Idaho, Jan. 2, 2018) (quoting this statement from BW 17). As described by the Supreme Court, the Storage Water Rights have multiple purposes of use, with differing periods of use. The irrigation storage use of
each right lists a “period of use” as “01-01 TO 12-31.” Amended Partial Decree for Water Right No. 01-219 (filed March 29, 2017) (capitalization in original); see also the partial decrees for the other Storage Water Rights. Accordingly, the January 1st to December 31st period of use simply means “year-round use” as explained in BW 17. There is nothing in the plain language of the partial decrees mandating that the Reset Date must be January 1st.

The legal interpretation process for SRBA partial decrees has been explained by the Idaho Supreme Court as follows:

When interpreting a water decree this Court utilizes the same rules of interpretation applicable to contracts. Id., 153 Idaho at 523, 284 P.3d at 248. If a decree’s terms are unambiguous, this Court will determine the meaning and legal effect of the decree from the plain and ordinary meaning of its words. Cf. Sky Canyon Props., LLC v. Golf Club at Black Rock, LLC, 155 Idaho 604, 606, 315 P.3d 792, 794 (2013) (“If a contract’s terms are clear and unambiguous, the contract’s meaning and legal effect are questions of law to be determined from the plain meaning of its own words.”). A decree is ambiguous if it is reasonably subject to conflicting interpretations. Cf. Huber v. Lightforce USA, Inc., 159 Idaho 833, 850, 367 P.3d 228, 245 (2016) (“Where terms of a contract are ‘reasonably subject to differing interpretations, the language is ambiguous....’ ” (quoting Clark v. Prudential Prop. and Cas. Ins. Co., 138 Idaho 538, 541, 66 P.3d 242, 245 (2003))). Whether ambiguity exists in a decree “is a question of law, . . . .” Rangey, Inc. v. Idaho Dep’t of Water Res., 159 Idaho 798, 807, 367 P.3d 193, 202 (2016) (quoting Knipe Land Co. v. Robertson, 151 Idaho 449, 455, 259 P.3d 595, 601 (2011)).


The plain language of this “period of use” element does not mandate a Reset Date for the storage rights of January 1st. A “period” (the word used in statue and on the face of the partial decrees), as relevant here, denotes either “the interval between certain happenings” or “a portion of time, often indefinite, characterized by certain events, processes, conditions, etc.” WEBSTER’S NEW WORLD COLLEGE DICTIONARY 1085 (5th ed. 2014). On its face, the period of use element does not state that the Storage Water Rights can be used, or filled “from” January 1 to December 31. Rather, the Storage Water Rights’ period of use element allows the storage use(s)
“year-round,” that is to say, any time between January 1 and December 31. *BW 17*, 157 Idaho at 389, 336 P.3d at 796. The accounting methodology—including the Reset Date—is the administrative consideration of the partial decrees’ year-round authorization to store water. And it is in the administration of water that the Director’s discretion is the most pervasive.

The SRBA Court and the Idaho Supreme Court have held that the issue of “fill” for Storage Water Rights “is purely an issue of administration,” within the discretionary determination of the Director. See *BW 17*, 157 Idaho at 392, 336 P.3d at 799. In *BW 17*, the Court settled the question of “whether the Director is determining water rights, and therefore property rights [pursuant to the partial decrees], when he determines that a water right is ‘filled,’ or if the Director is just distributing water [within the scope of the Director’s discretion].” *Id.* at 393, 336 P.3d at 800. There, the Court explained that “the Director's clear duty to act means that the Director uses his information and discretion to provide each user the water it is decreed. And implicit in providing each user its decreed water would be determining when the decree is filled or satisfied.” *Id.* at 393-94, 336 P.3d at 800-01. Given this implicit inclusion in the Director’s legal duty to distribute water and the Director’s “specialized expertise” in water law—appreciated by the Court and the Idaho Legislature—the Court concluded that a Storage Water Right “is a property right to a certain amount of water: a number that the Director must fill in priority to that user. However, it is within the Director's discretion to determine when that number has been met for each individual decree.” *Id.* at 394, 336 P.3d at 801 (emphasis added). Thus, because the fill of a water right is within the Director’s discretion, it is only reasonable that the determination of the Reset Date is also within the Director’s discretion as—at its core—the Reset Date is one facet of accounting methodology and a detail of water right administration that is left to the Director.
B. The storage water contracts entered into with the United States, while not binding on the Director, inform the exercise of the Director’s discretion in determining the Reset Date.

In exercising this agency discretion, the Director must “(1) perceive[] the issue in question as discretionary, (2) act[] within the outer limits of [his] discretion and consistently with the legal standards applicable to the available choices, and (3) reach[h] decision through an exercise of reason.” Rangen, Inc. v. Idaho Dep’t of Water Res., 160 Idaho 251, 255, 371 P.3d 305, 309 (2016) (citing Haw v. Idaho State Bd. of Med., 143 Idaho 51, 54, 137 P.3d 438, 441 (2006)). The Director must satisfy each of these three criteria to lawfully exercise his discretion in determining the Reset Date for the Storage Water Rights.

First, as discussed above, the administration of water rights—including the determination of the Reset Date—is not dictated by the plain language of the Storage Water Rights’ partial decrees and lies within the Director’s discretion. See Section I.A., supra. Second, the determination of any date as the Reset Date is within the outer limits of the Director’s discretion and this legal process is meant to assist the Director in deciding on a Reset Date consistently with the appropriate legal standards. Finally, the Director must decide on a Reset Date through an exercise of reason. In recognition of this principle, the Deadline Order provides the parties with “an opportunity to submit additional information regarding the history of storage water right administration and accounting in response to the December 1, 2017, staff memorandum prepared by Tony Olenichack.” Deadline Order, p. 3. PWUI and the City submit that one vital piece of information that the Director must consider in determining the Reset Date is PWUI’s storage water contract (herein, the “Contract,” a copy of which, with four pages of the Contract per exhibit page, is attached hereto as Exhibit A) with the United States Bureau of Reclamation (the “BOR”), which is similar to such contracts between irrigation entities and storage entities throughout Idaho.
The Director must consider the Contract because the Contract defines PWUI's expectations and use of its storage water. While the Contract does not specify the water right(s) under which the storage water accrues in Palisades Reservoir, the Contract outlines the contractual relationship between PWUI (which holds an equitable interest in the storage water, see *United States v. Pioneer Irr. Dist.*, 144 Idaho 106, 157 P.3d 600 (2007)) and BOR (which holds legal title to the storage water after it is first diverted, see *id.*).

The Contract explicitly defines a "storage season" as "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." Contract, ¶ 5 (emphasis added). In contrast, an "irrigation season" is the "period of each year beginning April 1 and ending October 31 of that year." *Id.* Under the Contract, PWUI obtained an interest in 4.1442% (or approximately 49,370 acre-feet)² of the storage capacity of Palisades Reservoir. Contract, ¶ 7. Specifically, this means PWUI has:

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

Contract, ¶ 10(a) (emphasis and underlining added). The underlined terms of this quote underscore the use of the defined term "storage season," which again, under the Contract begins on October 1st.

---

² On March 16, 1973, PWUI accepted an assignment of the spaceholder contract previously entered into with the BOR by Shattuck Irrigation Company, No. 14-06-W-31, on December 12, 1952, amended February 13, 1963, under the terms of which Shattuck Irrigation Company had acquired 0.325% of the active storage capacity of Palisades Reservoir, which was agreed to be 3,900 acre-feet of such active storage capacity, with all future repayment obligations for construction charges, together with annual operation and maintenance obligations allocated to such storage space. The current grand total of storage space contracted by PWUI is 53,630 acre-feet.
The Contract also contains further protections for the amount of storage water due to PWUI in various circumstances. See, e.g., Contract, ¶¶ 10(c), 11, 13. The Contract contemplates that storage water begins accruing from October 1st of each year. See Contract, ¶ 5. That assumption underlies the amount of storage water credited to PWUI under the Contract. In different terms, the Contract assumes that the Reset Date would be October 1st. This is not binding on the Director (i.e., it does not mandate that the Director select October 1st as the Reset Date), but it is a fact that the Director must consider in exercising his discretion to select a Reset Date—especially as the Contract is exemplary of many storage water contracts that will be affected by the Reset Date.

II. CONCLUSION

The period of use element does not mandate a Reset Date of January 1. On its face, the plain language of the period of use element does not state that the Storage Water Rights can be used, or filled “from” January 1 to December 31. Rather, the “1/1 to 12/31” language indicates a “year-round” ability to divert water to storage under the Storage Water Rights. BW 17, 157 Idaho at 389, 336 P.3d at 796. The Reset Date is a detail of administration, an aspect of the accounting methodology used within Water District 01. As such, the matter is left to the Director’s discretion. In exercising that discretion, the Director must consider PWUI’s Contract, which informs the actual use, expectation, and contractual rights of storage water users.

Dated this 19th day of January, 2018.

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

I hereby certify that on this 19th day of January, 2018, I served a true and correct copy of the following described pleading or document on the attorneys and/or individuals listed by the methods indicated.

Document Served: OPENING BRIEF OF PALISADES WATER USERS, INC. AND THE CITY OF IDAHO FALLS RE: THRESHOLD LEGAL QUESTION

ORIGINAL BY EMAIL TO: Director Gary Spackman
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720
Gary.Spackman@idwr.idaho.gov
Garrick.Baxter@idwr.idaho.gov
Emmi.Blades@idwr.idaho.gov
Kimi.White@idwr.idaho.gov

Attorneys and/or Individuals Served:

Attorneys for the Cities of Bliss, Buhl, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, and Wendell
Chris M. Bromley
Candice M. McHugh
McHugh Bromley, PLLC
380 South 4th Street, Suite 103
Boise, ID 83702
cbromley@mchughbromley.com
cmchugh@mchughbromley.com

Attorneys for City of Pocatello
Sarah A. Klahn
Mitra M. Pemberton
White & Jankowski, LLP
511 Sixteenth Street, Suite 500
Denver, CO 80202
sarahk@white-jankowski.com
mitrap@white-jankowski.com

U.S. Mail
Federal Express
Facsimile: 208-287-0864
Electronic Mail
Attorneys for A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company
John K. Simpson  
Travis L. Thompson  
Jonas A. Reagan  
Barker Rosholt & Simpson LLP  
163 2nd Avenue West  
Twin Falls, ID 83301  
jks@idahowaters.com  
tlt@idahowaters.com  
jks@idahowaters.com

Attorneys for A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company
W. Kent Fletcher  
Fletcher Law Office  
P.O. Box 248  
Burley, ID 83318  
1200 Overland Avenue  
Burley, ID 83318  
wkf@pmt.org

Attorneys for Idaho Power Company
John K. Simpson  
Barker Rosholt & Simpson  
P.O. Box 2139  
Boise, ID 83701-2139  
1010 W. Jefferson, Suite 102  
Boise, ID 83701-2139  
jks@idahowaters.com

Attorneys for Fremont-Madison Irrigation District, North Fork Reservoir Company, Idaho Irrigation District, and New Sweden Irrigation District
Jerry R. Rigby  
Rigby, Andrus & Rigby Law, PLLC  
P.O. Box 250  
Rexburg, ID 83440-0250  
25 N 2nd E  
Rexburg, ID 83440  
jrigby@rex-law.com
Attorneys for Aberdeen-Springfield Canal Company
Norman M. Semanko
Parsons Behle & Latimer
800 West Main Street, Suite 1300
Boise, ID 83702
NSemanko@parsonsbehle.com
ecf@parsonsbehle.com

Attorneys/Representatives for Shoshone-Bannock Tribes
William Bacon
Shoshone-Bannock Tribes
PO Box 306
Fort Hall, ID 83203
bbacon@sbttribes.com

Attorneys/Representatives for Shoshone-Bannock Tribes
Edmund Clay Goodman
Hobbs, Straus, Dean & Walker LLP
806 SW Broadway, Suite 900
Portland, OR 97205
egoodman@hobbstraus.com

Attorneys/Representatives for U.S. Department of the Interior,
Bureau of Indian Affairs
Duane Mecham
US. Department of the Interior
Bureau of Indian Affairs
805 SW Broadway, Suite 600
Portland, OR 97205
Duane.mecham@sol.doi.gov

Lyle Swank
Water District 01
900 N. Skyline Drive, Suite A
Idaho Falls, ID 83402-1718
lyle.swank@idwr.idaho.gov

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

\Law\data\WPDATA\RLH0691 PALISADES WATER USERS, INC\09 Milner Storage Reset\Threshold Question MEMO v02.docx

Page 11 OPENING BRIEF OF PALISADES WATER USERS, INC. AND
THE CITY OF IDAHO FALLS RE: THRESHOLD LEGAL QUESTION
Exhibit A

to the

Opening Brief of
Palisades Water Users, Inc. and
the City of Idaho Falls
re: Threshold Legal Question
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
RIVERS AND REGULATIONS
CONSTRUCTION AND ADMINISTRATION OF RECLAMATION PROJECTS
AND RELATED MATTERS

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

<table>
<thead>
<tr>
<th>Article No.</th>
<th>Title</th>
<th>Page No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>United States to Construct Works</td>
<td>6-4</td>
</tr>
<tr>
<td>7</td>
<td>Capacity to be Available to the Company</td>
<td>6-5</td>
</tr>
<tr>
<td>8</td>
<td>Construction Charge Obligation</td>
<td>6-7</td>
</tr>
<tr>
<td>9</td>
<td>Operation and Maintenance Obligation - Palisades</td>
<td>6-9</td>
</tr>
<tr>
<td>10</td>
<td>Return and Extent of Palisades Storage Rights</td>
<td>6-11</td>
</tr>
<tr>
<td>11</td>
<td>Saving of Winter Water; Special Storage Rights</td>
<td>6-13</td>
</tr>
</tbody>
</table>

Provisions Relating to Exchange and Definitions of Existing Hydropower Rights and Palisades Lake Storage Rights; Winter Power Operations at the Palisades Pumpplant
(Articles 12 through 13)

<table>
<thead>
<tr>
<th>Article No.</th>
<th>Title</th>
<th>Page No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>Consent to American Falls-Anderson Lake Exchange and Definitions of Storage Rights</td>
<td>13-14</td>
</tr>
<tr>
<td>13</td>
<td>Winter Power Operations; Palisades Pumpplant</td>
<td>13-22</td>
</tr>
</tbody>
</table>

This Contract, made this 4th day of April 1960, pursuant to the Federal Reclamation law, between the United States of America (hereinafter called the United States), acting through the Secretary of the Interior, and PALISADES WATER URBAN, INCORPORATED (hereinafter called the Company), a corporation organized and existing under the laws of the State of Idaho and having its principal place of business at Idaho Falls, Idaho, STIPULATES THAT:

2. THE UNITED STATES, the United States, under the Federal Reclamation Law, has heretofore constructed and is now operating Jackson Lake, Island Park, American Falls, and Lake Wapato reservoirs, among others, and is now constructing Palisades Dam and Reservoir Project (hereinafter called the Palisades Project).

3. THE UNITED STATES, 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.

ARTICLE 26

Provisions for Federal Acquisition of Waters

<table>
<thead>
<tr>
<th>Article No.</th>
<th>Title</th>
<th>Page No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>26</td>
<td>Provisions for Federal Acquisition of Waters</td>
<td>26-33</td>
</tr>
</tbody>
</table>
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 construct for the use for its benefit of storage capacity in Palisades Reservoir; and

4. RESOLVED, the United States and the Company, serving an upper valley area, have heretofore entered into any contract with respect to storage rights in Federal reservoirs on the Snake River above Palisades; and

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 Law" shall mean the act of June 17, 1902 (33 Stat. 396) and any amendments thereto or supplemental thereto, including the act of December 4, 1924 (44 Stat. 915).

"Advisory Committee" shall mean the committee defined by article 2 of this contract or its duly authorized representative.

Provisions Relating to Storage Capacity in Palisades Reservoir

6. (a) Within the limits of the authorization hereinafter, the United States is to construct and will complete and operate and maintain Palisades Dam on the Snake River in the vicinity of Idaho Falls, 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, 60th Congress.

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

Capacity to be Available to the Company

7. The authorized dam will provide a reservoir with an estimated active storage capacity of 1,200,000 acre-feet and, based on that estimated capacity, the use of benefit of four and one thousand four hundred forty-one thousand two hundred thirty-nine percent (4,144,923) of that capacity is allowable hereto 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 according 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, as long as the reservoir has an active capacity of 1,200,000 acre-feet, be treated as the equivalent of 49,730 acre-feet of active capacity. The latter figure may, however, be adjusted from time to time by agreement between the Secretary and the Advisory Committee whenever there are determinations that the active capacity is other than above stated.

Construction Charge Obligation

8. (a) The Company shall pay to the United States for the use of space as provided in article 7, the construction charge obligation, the sum of four hundred forty-one thousand four hundred forty-one thousand two hundred thirty-nine hundred dollars ($1,444,923), this being determined at the rate of nine dollars ($9.00) per acre-foot of capacity and on the assumption that the reasonable construction costs of the Palisades Project finally allowed to affect facilities equal or exceed the sum of twenty-three million two hundred five thousand one hundred dollars ($23,205,100). If the reasonable joint facility construction costs, as finally determined, are less than twenty-three million two hundred five thousand one hundred dollars ($23,205,100), and, as a result, the amount of joint facility costs allocated to irrigation is less than the amount expected as to be allocated according to the Secretary’s report of July 1, 1929, the amount of the reduction shall be proportioned between irrigation construction costs assigned to be repayable by the water users and those

\[ \text{Of the estimated joint facility construction costs, $1,724,400 were allocated to irrigation under the report approved and adopted by the Secretary on July 1, 1929 (H. Rept. No. 720, 60th Cong.).} \]
assigned for repayment from power revenues on the basis of the amounts of authorized irrigation construction costs as assigned in the Secretary's report of July 1, 1949. The amount of reduction, if any, was determined by the Secretary, shall be distributed equally as credit against the construction charge obligation of all lands to which are allocated to Irrigation. The total amount of credit and the portion thereof to which the Company is entitled shall be announced in writing by the Secretary promptly after final construction costs are determined and the allocations thereof are made. In no event, however, shall the credit be such as to reduce the Company's total construction charge obligation to less than three hundred eighty-five thousand four hundred seven dollars and fifty cents ($385,407.50), this being at the rate of seven dollars and seventy-five cents ($7.75) per one-foot of capacity as initially stated in Article 7.

(b) The construction charge obligation under this article shall be repaid by the Company to the United States in forty (40) consecutive annual installments to be as nearly equal as is practicable. The due date of the initial installment, 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: (1) the due date of the first installment shall be one year on or before December 31 of the third full calendar year after that date, the project for repayment purposes being treated as susceptible during the first two years, and (2) the due date of the first installment shall be one year on or before December 31 of the third full calendar year after that date, the project for repayment purposes being treated as susceptible during the first two years.

The costs payable to the irrigation storage rights shall be distributed annually to all storage areas that are available for irrigation purposes.

(b) Beginning with January 1 of the year in which the use and benefit of Palisades area in first available to the Company as provided in Article 7, payment of the Company's share of Palisades Dam and Reservoir operation and maintenance costs shall be made for each calendar year on the basis of annual estimates by the Secretary. The notice of these annual estimates, hereafter 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 these estimated costs. The operation and maintenance charge notice shall be submitted 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 upon 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 upon in writing.

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

Return and Relinquish of Palisades Storage Rights

(c) Beginning with the storage season indicated in Article 7, the Company shall be entitled to have the following storage rights in Palisades Reservoir:

1. The right to have stored to its credit during each storage season, four and one thousand four hundred forty-two thousand and one hundred forty-four thousand water stored in Palisades Reservoir during the season under the Palisades storage right.

2. The right to have stored to its credit during each storage season, four and one thousand four hundred forty-two thousand and one hundred forty-four thousand water stored in Palisades Reservoir during the season under the Palisades storage right.
The total amount of stored water in the Company's control 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 Pahimitas Reservoir are hereby made subject to the provisions of (a) of this article.

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

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

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

(c) Under the provisions of the act of September 30, 1921, the active capacity of Pahimitas Reservoir will be used jointly for irrigation and flood control storage in accordance with the operating plan set forth in House Document No. 700, 61st Congress, and attached hereto as Exhibit A, as that plan is implemented by rules and regulations served pursuant to section 7 of the act of December 20, 1941.

(d) 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 being a priority dated March 30, 1925), 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 those limits as to total special storage rights:

(1) For water users organizations and water users diverting above American Falls Dam — 125,000 acre-feet.

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

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

(28 Part. 290). All the Company's storage rights are subject to the operation of the reservoir in accordance with this article. In the event Pahimitas 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 incidental purposes and shall be charged against all stored water including that, if any, carried over from prior irrigation seasons.

Spring of Water Storage: Special Program Right

21. (a) Beginning with the date announced by the Secretary at the time when Pahimitas Reservoir will be ready for operation as provided in article 6, certain water users' organizations have contracted with the United States to make, for a period of 130 consecutive days during the period from November 1 through April 30 of each storage season, a 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 establishment of winter diversions by the water users' organizations diverting from the Snake River who have contracted with the United States to curtail or cease diversions is agreed to be 141,000 acre-feet, of which 125,000 acre-feet are attributable to curtailment by those diverting above American Falls Dam and 9,000 acre-feet below that point.

The Company, not participating in the winter water savings program, shall be entitled to no storage in Pahimitas Reservoir by reason of the program set out in this article.

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

North Side Canal Company, Limited ...................... 125,000 acre-feet

Twin Falls Canal Company ..................... 150,000 acre-feet within this limitation:

If, taking account of all allowable water whether stored or not, Pahimitas and American Falls reservoirs fail to fill during any storage season, any water diverted during that storage season by the North Side Canal Company, Limited in excess of 125,000 acre-feet (but not to exceed the amount of deficiency in fill), and by the Twin Falls Canal Company in excess of 150,000 acre-feet (but not to exceed the amount of deficiency in fill), will be charged as of the end of that storage season against the allotment of American Falls storage to these respective companies.

This limitation in the case of the North Side Canal Company, Limited shall become operative from the date Pahimitas Reservoir is ready for operation, but in the case of the Twin Falls Canal Company need not be made operative until the first year in which that company exceeds the special storage provision to which consent has been given.
Provisions Relating to Exchange and Substitutability of Water in Idaho 
(Hasalo Reservoir) and Benefits in South Dakota 

I. Provisions Relating to Exchange and Substitutability of Water Rights

2. Certain Upper Valley water users organizations owning storage rights in American Falls Reservoir have agreed or will agree in connection with the acquisition of Palisades Reservoir to accept in exchange for a portion of their American Falls storage rights in Palisades Reservoir certain storage rights in Jackson Lake Reservoir below elevation 1,531 feet above sea level (T.D.A. datum), the provisions for such exchange being substantially as set out in the revised document entitled "Provisions Incorporated or to be Incorporated in Exchange with Upper Valley Water Users Organisations to Resolve the Permanent Exchange of Certain American Falls and Idaho Lake Storage Rights", attached hereto as Exhibit A, and these and other water users organizations here agreed or will agree to permit the United States to operate all space in Jackson Lake Reservoir on a holder-down basis. The Company hereby agrees to such exchange and to such holder-down operating arrangements.

Exchange Water Operation: Hasalo Pumping

13. (a) The United States, in the operation of American Falls and Hasalo 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 Hines Dam and certain power rights below Hines Dam, and has the privilege under an existing decree to use at Hasalo Dam 2,700 cubic feet per second of water for the development of power. While the United States must operate the American Falls and Hasalo 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 the American Falls and Hasalo pumpplants to secure the release of additional water from American Falls Reservoir for power production at those pumpplants during the storage season of any year whenever operation of those pumpplants to the full extent of their respective water rights for power production would result in loss of irrigation water otherwise available in the reservoir system. Accordingly, except as it is determined by the Secretary that additional water may be passed through American Falls and Hasalo dams without the loss of water that would be stored for irrigation in the reservoir system, the United States will, during each storage season beginning October 1, 1957, and continuing so long as the provisions of (a) of this article remain operative, limit the release of water through these dams as follows:

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) A statement of releases as provided in (a) of this article will result in these being, in some years, additional water available for storage for irrigation purposes in American Falls, Idaho Reservoir, and Palisades reservoirs. In any storage season when these reservoirs fall to fill, the water stored attributable to such operation shall be credited, first, to Idaho Reservoir to the extent of 1,500 acre-feet without regard to the priority of the storage permit held for that reservoir, and thereafter to American Falls, Idaho Reservoir, and Palisades reservoirs in the order of priority of their respective storage permits, the crediting to Idaho Reservoir and to any storage right in any other reservoir (except the Upper Valley exchange space in American Falls Reservoir) being contingent on the status of those rights obligating themselves for their share of the annual permits for power replacement in keeping with the provisions of (a) of this article.

(c) For the purposes of this contract and except relinquishment of any part of the power rights herein described, it is assumed that for curtailment of operations as provided in (a) of this article, mile 1 through 6 of the Hasalo pumpplant would be operated during the storage season of each year to the minimum extent practicable within the limits of the power rights (1,200 second-feet as decreed by the District Court of the Fourth Judicial District of Idaho on June 28, 1931, in the case of Tusl Falls Irrigation Company v. Charles S. Cutter 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 contemporaneously as practicable, make replacement by the delivery of power and energy into the Hasalo power system at the Hasalo pumpplant from other interconnected Federal power plants 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 takings resulting from operations under the provisions of (a) of this article in annual amounts as follows:

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

(ii) Beginning with the date when either the American Falls pumpplant or Palisades dam pumpplant is first in service, the payment for any year shall
be the product, in dollars, of the then controlling average annual replacement requirements, in kilowatt-hours, times the average annual replacement requirement in kilowatt-hours, figured at 100 percent load factor, under the then existing rate schedule for the sale of firm power and energy from the plant or plants involved.

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

(c) 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, 1951, and ending September 30, 1951. The average annual replacement requirements under either (1) or (ii) of (a) above for the year ending September 30, 1954, shall be the average of the annual replacement requirements for each quarter 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 quarter of the 20-year period ending on September 30 of the prior year. In deriving this average these shall be used, as annual net power production losses for each year, the annual figures for the years through September 30, 1951, as shown in Table 1 of the document entitled

To correct flows under (1) above, all storage releases except American Falls shall be included and the reserve of American Falls storage passing the Hinkocks 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 Meteorology Work, District 26, 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 Palouse storage which was diverted above the Hinkocks gage. In measuring American Falls storage, 11 shall be assumed that storage is released from downstream reservoir first. The flow at the Hinkocks 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 curtailing of power operations as provided by this article, these assumptions shall be used with respect to units 1 through 5 of the Hinkocks powerplant:

(1) There is a right for power production to maintain a flow of 2,700 second-feet at Hinkocks Dam during the storage season of each year in accordance with the decree entered June 20, 1913, hence, if that flow, disregarding the storage of saved water in the reservoir system under the provisions of this article, would be available at Hinkocks Dam.

(ii) Although there is no right to have water stored under American Falls Reserve 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 therefore, which shall be taken into account as a compensating offset as provided above in this subclause (d).

To determine controlling power heads, the effective power head for any period shall be derived on the basis of recorded future 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 Hinkocks irrigation districts. Determinations as to net power production losses for each year and the average annual replacement requirements under this article shall be made by a committee of three consisting of the state watermaster of District No. 26, a representative to be selected jointly by the Burley and Hinkocks irrigation districts and the North Idaho Irrigation Company, Limited, and the officer of the United States in charge of the Hinkocks project, but, should that committee fail to make a determination for any year by January 1 of the year for which the determination is required, it may be made by the Secretary.
(e) The annual payment determined as provided in this article shall be apportioned among the benefiting reservoirs as follows: (1) prior to the first full storage season during which Palisades Reservoir is in operation, eighty-eight percent (88%) to American Falls Reservoir and twelve percent (12%) to Inland Park Reservoir; and (2) beginning with the first full storage season of Palisades operation, seventy-eight percent (78%) to American Falls, twelve percent (12%) to Inland Park, and ten percent (10%) to Palisades. The amount apportioned to each reservoir shall be accounted for as part of the operation and maintenance costs for which provisions for payment for the Company's share of costs are included 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 owner of any storage rights benefits from the operation of this article fails to obligate themselves for their share of the annual payments for power replacement hereunder, the annual water credits attributable 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.

(b) During any storage season, the United States, after consultation with the Advisory Committee, may release stored water from Palisades Reservoir for the maintenance of power production at Palisades dam and may store such water in American Falls Reservoir. The release of such water will be confined, however, in storage season when it appears that American Falls, Palisades, and Jackson Lake reservoirs will fall to fill, to water required for the maintenance of a minimum five 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 so much release shall be made that will preclude the later delivery of water, by exchange or otherwise, in the upper valley entities entitled thereto.

33. (a) The Company may use stored water which has accrued to its credit in any reservoir of the system, but such water 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 each 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.
Obligations Regarding Water Supply

18. The United States and its officers, agents and employees in charge of reservoirs in the reservoir system and the wateruser shall use their best efforts and best judgment to deliver to the Company the proportionate share of the water to which it is entitled under this agreement. Should the Company fail to deliver because of an alleged failure or lack of water in the delivery of water or in the division of stored water among the parties entitled to such water from the reservoir supplies, the Company shall immediately report such alleged failure or lack of water to the wateruser and to the official of the United States in charge of the reservoir involved. If the wateruser finds that the Company's proportionate share of stored water is not being delivered, it will correct the error as soon as possible. In all other cases, however, shall assume against the United States, its officers, agents or employees, or the wateruser for damage, direct or indirect, arising by reason of shortages in the quality of water available through the reservoir system or from lack of water in the delivery of water or from the facilities providing the wateruser, whether or not attributable to negligence of officers, agents or employees of the United States, or other similar causes of whatsoever kind. Nor shall the Company's obligations to the United States under this contract be reduced by reason of such shortages or interruptions.

20. The costs which enter into the cost of operation and maintenance of the various reservoirs and the costs of delivery and distribution of water, portions of which costs are to be paid by the Company, shall embrace all expenditures of whatsoever kind in relation to the function for which the charges are made, including, but without limitation by reason of this enumeration, cost of surveys and investigations, labor, property, machinery and equipment, engineering, legal, superintendent, administration, overhead, general expenses, inspection, special services, and damage claims of all kinds whether or not involving the negligence of officers, agents or employees of the United States, but shall be exclusive of amounts which the law does not require to be paid and which the Secretary determines as necessary and reasonable.

Title to and Operation of Pumpplants: Power Sources

21. (a) Title to Pumplands proper 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 Congress.

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

(c) The United States, in the operation of the Pumplands proper, will be governed by the provisions of article 16 and those criteria, among others: That the plant shall be opened 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 then, until such time as a reservoiring reservoir has been put into operations, 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 flow that would otherwise be present in the river below the dam.

22. (d) Notwithstanding provisions to the contrary in this contract, the Company reserves to the operation of the Pumplands proper, during a five-year period (but not beyond the end of the national defense emergency as declared by Proclamation of the President No. 2314 dated December 18, 1950, 3 CFR 1950 Supp., p. 271), beginning with the date that the first unit of that plant is first placed in service, in the following amounts:

In addition to normal operation at other times within the lights provided for by this contract, the plant may be operated to produce an average of 60,000 kilowatts (197,440,000 kilowatt-hours) during the period October through February of each storage season when the flow of the river at the dam is equal to or greater than that for those months of the median year for the period 1929 through 1941 when such operation is required in the judgment of the Bureau Electric Power Administrator, or his successors in functions, to help meet off-set loads served from power systems with which the plant is interconnected, directly or indirectly.
This is a portion of a legal document, likely related to water rights and usage. The text is divided into sections, each discussing specific water-related legal agreements and conditions. The text is technical and legal, detailing rights of certain parties and the allocation of water resources.

Key Points:
- The document discusses the allocation of water rights between the United States and the State of Idaho.
- It references specific water licenses and reservoirs.
- Conditions include the prioritization of water usage during irrigation seasons.
- The document outlines legal agreements for the use of certain waters by the United States and other entities.

The text is dense and technical, requiring a thorough understanding of water law and legal agreements. It is a legal document that outlines the rights and obligations of various parties regarding water usage.
If any, or more than twelve (12) months in arrears in the payment of construction charge obligations (installments, or more than twelve (12) months in arrears in the payment of any other amount owed to the United States under this contract. The Company shall refuse to deliver water to lands or parties who are in arrears in the advance payment of operation and maintenance charges due from such lands or parties to the United States or to the Company, or to lands or parties who are in arrears more than twelve (12) months in the payment of amounts due from such lands or parties to the United States or the Company under this contract. The provisions of this article are not exclusive and shall not in any manner prevent the United States from enforcing any other remedy given by this contract or by law to enforce the collection of any penalties due under the terms of this contract.

Serious and Unavoidable by Company All Benefits Sufferable from Popularity Into Secure Obligations

26. (a) The Company shall cease to be liable and collected all necessary assessments and charges against its members and stockholders and will use all the auxiliary 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 in the United States under this contract.

(b) Should the Company fail to levy the assessments and other charges against any land or the owner thereof as required by this contract, or, having levied, should the Company be prevented from collecting such assessments or other charges by any judicial proceeding or delivery may be made to lands held in excess of this limitation prior to the provisions of Section 46 of the act of May 11, 1866 (64 Stat. 630), as amended by the act of July 21, 1936 (70 Stat. 181). These limitations shall cease to operate when the construction charge obligation under this contract has been paid in full.

Limitation on Service to New Lands

28. The additional stored water made available to the Company under this contract shall not be delivered to lands that have not heretofore been irrigated (as called new lands), except pursuant to arrangements made with the Secretary to govern the sale prices of such new lands during the first five (5) years that water is made available thereon 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 system, nor to other new lands to be served by the Company if the total irrigable area of such other new lands to be provided irrigation service within five (5) years after the date when the first Palouse construction charge obligation becomes due under the provisions of article 8 does not exceed 1,500 acres nor to lands which, by transfer or otherwise, have an independent right to water from the Snake River, which right is intended to be supplemented by water made available under this contract; nor to lands as to which the construction charge obligation has been paid as provided in article 27.

otherwise fail to collect them, such land or owner 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 water to such lands or the owner thereof unless not, until arrangements for its delivery satisfactory to the Secretary have been made.

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

Leases for Which Water Is Furnished

27. Pursuant to the provisions of the Federal Reclamation Law, 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 (20) irrigable acres held by a husband and wife as community property, except that

Termination or Modification of Power

Local Privilege

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

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

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

Penalty for Delinquency in Payment

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

31. (a) In its operation and maintenance of the various dams and reservoirs of the reservoir system, the United States, acting through the Regional Director of the Bureau of Reclamation or his designee or such other officer as may be designated in writing by the Secretary, shall consult from time to time with the Advisory Committee on the various matters specifically requiring consultation under the terms of this contract and on other matters as may have a substantial bearing on the determination of the amount of stored water to be available to the various reservoirs and on the costs of operation and maintenance of these reservoirs which are required to be borne by the space allocated to irrigation storage. The representative of the United States will meet with the Advisory Committee from time to time, but not less often than two times each year beginning with the calendar year 1951, at such dates and places as may be fixed by the Advisory Committee.

(b) Informal meetings 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, 1957, the Advisory Committee is agreed to be the Committee of Five, or that committees may be constituted from time to time. The Committee of Five 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.

Relocation of Contract

32. The execution of this contract shall be authorized or ratified by the qualified shareholders 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.

Company in Company's Organization

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

Rules and Regulations

34. The Secretary reserves the right, after consultation with the Advisory Committee, to make such rules and regulations consistent with the provisions of this contract, as are proper and necessary to carry out the 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.

Decommission of the Company

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

Rules

36. Any notice, demand or request required or authorized by this contract shall be deemed properly given, except where otherwise herein specifically provided, if mailed, postage prepaid, to the Project Superintendent, (the present "project officer"), Bureau of Reclamation, Burley, Idaho, on behalf of the United States, and to the Secretary, Public Power District No. 1, Incorporated, Idaho Falls, Idaho, on behalf of the Company. The designation of the person to be notified or the address of such person may be changed at any time by written notice.

Discrimination against Background or Qualification

37. In connection with the performance of work under this contract, the Company agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Company agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notice to be provided by the Secretary setting forth the provisions of the anti-discrimination clause. The Company further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

Settlement of Disputes or Arbitration of Funds

38. The expenditure of any money or the performance of any work by the United States hereinafter 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 therefor accrued under this contract, nor give the Company the right to terminate this contract as to any of the Secretary features pending the appropriation or allotment of such Funds. No liability shall accrue against the United States in cases such Funds are not so appropriated or allotted.

Assignments and Subcontracts

39. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but as assignment or transfer of this contract, or any part thereof, or interest therein, shall be valid until approved by the Secretary.
OFFICIAL NOT TO BE WITHHELD

40. 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 thereunder, but this restriction shall not be construed to extend to this contract if made with a corporation or company for the 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

E. H. Daniel, Register

W. R. Neiman, Asst. Register

ALPACA, a Corporation

By

R. W. Ham, Secretary

STATE OF IDAHO

County of Ada

On this 5th day of April 1960, personally appeared before me R. E. Nelson, to me known to be the officer of the United States of America that executed the within and foregoing instrument and acknowledged said instrument to be the true and voluntary act and deed of said United States, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

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

R. W. Ham

Secretary

STATE OF IDAHO

County of Ada

On this 5th day of April 1960, before me personally appeared B. D. Snow and M. J. O. Caplin as Deputies of the Palasszas Water Users, Incorporated, the corporation that executed the within instrument, and acknowledged said instrument to be the true 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 to the said instrument.

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

B. D. Snow

State of Idaho

Secretary

EXHIBIT A

Palouse Project
Plan for Palouse Reservoir

The Bureau of Reclamation plans to construct and operate Palouse Reservoir for the optimum multiple-purpose use of the entire storage of 1,400,000 acre-feet. To attain this objective, the storage below elevation 1,497 feet mean sea level, approximately 300,000 acre-feet, will be reserved for flood storage and allocated exclusively to the production of hydroelectric power and the maintenance of a permanent pool for the preservation and propagation of fish and wildlife. The remainder of the storage capacity in the amount of 1,200,000 acre-feet will be operated in the joint interests of irrigation and flood control governed by the best available runoff forecasts.

The Bureau of Reclamation will forecast from time to time during the period from February 1 to July 31 of each year, on the basis of precipitation, temperature, snow survey, and runoff data, the volume of runoff that may be expected in the drainage area tributary to the Snake River above Boise, Idaho. To the extent that such services can be arranged for by cooperative agreements, the Bureau of Reclamation will make the forecasts hereunder after consultation with the reclamation engineer of the State of Idaho or his authorized representative, and the Chief of Engineers or his authorized representative. To facilitate the forecasting of runoff the Bureau of Reclamation will expand the existing hydraulic network and will establish and operate continuously a system for the efficient assembling and analyzing of the basic data. Until such time as a better method of forecasting be devised, the forecasts will be based upon...
estimates of area-change weighted snow water content as determined from periodic snow surveys on or about February 1, March 1, April 1, and May 1, and upon precipitation for September of the preceding year. A simple curve of the correlation between weighted snow water content as of April 1 of a given year and precipitation of the preceding September and the resultant runoff from April 1 to July 31, inclusive, of the year in question, is shown on Plate 1.

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

1. For the purpose of rules and regulations to be prescribed by the Secretary of the Army under section 7 of the Flood Control Act of 1948 (58 Stat. 581, 957) the storage space allocated to flood control is defined as follows:

   It is the reservoir space which, using the governing forecast of flood runoff for the year, according to the curve shown on Plate 1 is required to the end of controlling the forecasted flood volume for that time at that reservoir inflow first exceeds 10,000 second-feet through the succeeding July 31 by releases from the reservoir during that period such that the flow at the Helena gage will not exceed 20,000 second-feet, so far as this control can be accomplished with a reservoir capacity not exceeding 3,200,000 acre-feet. The governing forecast of flood volume for each year is the forecast made as of the day when reservoir inflow in that year first exceeds 10,000 second-feet.

   The parameters shown on Plate 1, empirically derived from floods of record, are enveloping curves of the storage requirements for various volumes of total forecast runoff from any given date to July 31. The reservoir capacity required to control the flood to a discharge of 20,000 second-feet (or less) below the dam is indicated by the ordinate of the parameter corresponding to the forecasted runoff on the date when the inflow to the reservoir amounts 20,000 second-feet.

2. During the period of each year from the date of the first forecast about February 1 to the date of making the governing forecast for that year (approximately the middle of May) herein designated as the recession period, the reservoir will be operated in such a manner that the required reservoir level as determined by the parameters on Plate 2 at the time inflow to the reservoir exceeds 20,000 second-feet can be attained with minimum practicable rates and fluctuations of discharge. The rate of discharge during the recession period will be determined as follows: The reservoir level required on or about May 15 (the date at which inflows normally may be expected to exceed 20,000 second-feet) would be attained by one of the parameters on Plate 2 and a May 15 forecast would be derived by deducting probable minimum inflows for the intervening period as possible. However, the maximum rate of such auxiliary releases shall not exceed the estimated maximum mean daily rate of inflow to the reservoir during the period when the reservoir level is above elevation 5,420.

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

If operating experience indicates the desirability thereof, the Secretary of the Interior may, after consultation with the Secretary of the Army, modify from time to time the operating plan herein described with respect to the amount of space allocated to flood control each year on the basis of advanced forecasts as to runoff, but no modification which would result in a substantial change in the control of floods herein stated to be the objective of the original operating plan shall be made without the concurrence of the Secretary of the Army. Revisions of the rules and regulations prescribed under the Flood Control Act of 1948 will still be made by the Secretary of the Army if, in his judgment, these are requisite because of such modifications in flood control space allocations. Modifications in the operating plan not requiring the concurrence of the Secretary of the Army shall not be the occasion for a revision of the concurrence originally reached as to the flood control benefits to be realized from the original operating plan or of the formula adopted for the allocation of construction costs to flood control purposes.
Revised

REVISION B

Wastidas and Palisades Projects

Table

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

Prior to the date of this amendatory contract, the United States operated and maintained for the benefit of the South Side Pumping Division of the Wastidas Project and for the North Side Canal Company, Limited, the following rights, on an exchange basis, in American Falls Reservoir, being equivalent to the capacities held immediately prior to October 1, 1932, in Jackson Lake Reservoir below elevation 6720 above sea level (U.S.G.S. datum), herein referred to as elevation 6720:

North Side Pumping Division, Wastidas Projects: 199,780 acre-feet
North Side Canal Company, Limited: 10,000 acre-feet

In order to effectuate the permanent exchange of these Jackson Lake rights for an equivalent amount of space in American Falls Reservoir, confirming the action taken October 1, 1932, the United States has made or will make available to the upper valley water users organizations involved, a certain percentage of the active capacity in Jackson Lake Reservoir below elevation 6720, within the limits and on the terms and conditions provided by contract, this being in lieu of an equivalent amount of American Falls storage capacity. The total amount of Jackson Lake capacity so to be available will equal 209,780 acre-feet.

In exchange for this right, the upper valley water users organizations involved will be required, as of October 1, 1934 (being a revised date, first being October 1, 1932), to relinquish all their rights to an equivalent capacity in American Falls Reservoir. The total amount of American Falls capacity so to be relinquished by upper valley organizations will not exceed a permanent basis 209,780 acre-feet but this relinquishment will be accomplished by a pro rata annual exchange and will be contingent on there being effective a continuation relinquishment by the barley irrigation District and the North Side Canal Company, Limited, of their respective rights to 109,780 acre-feet of capacity in Jackson Lake herebefore operated for the benefit of these two organizations by the United States.

Under basis provisions like those above described, holders of storage rights in American Falls Reservoir will have acquired in lieu of these rights 41,231.25% of the total active capacity in Jackson Lake Reservoir below elevation 6720, these rights in Jackson Lake Reservoir being hereafter called the upper valley exchanged space; and 6,610.25% of the active capacity in American Falls Reservoir will be held for the South Side Pumping Division, Wastidas Projects, and the North Side Canal Company, Limited, these rights being hereafter called, collectively, the lower valley exchanged space. The 41,231.25% in Jackson Lake below elevation 6720 and the 6,610.25% in American Falls, shall so long as the respective total active capacities are not less than 417,000 and 1,700,000 acre-feet, be treated as the equivalent of 209,780 acre-feet. The latter figure will, however, be subject to
adjustment from time to time by agreement between the Secretary and the Advisory Committee whenever there are determinations that the entire capacities are other than above stated.

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

Except as modified by the operation of the guarantee provisions above outlined, the determinations of the rights of the holders of space in each of the two reservoirs to reservoir inflow during each storage season will be determined by the existing storage right or priorities held by the United States for each reservoir and the rights in Jackson Lake Reservoirs will continue to be governed by the difference in storage priorities held by the United States for the capacity below elevation 5752 and for the capacity above that elevation.

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