

CONTRACT TO IMPLEMENT
Chapter 259, Sess. Laws, 1983

THIS CONTRACT, Made and entered by and between the STATE OF IDAHO, hereinafter referred to as "Idaho", acting by and through the Governor of the State of Idaho, pursuant to the provisions of Senate Bill No. 1180, 1983 Idaho Session Laws, Chapter 259, and the IDAHO POWER COMPANY, a Maine corporation, qualified to do business in Idaho, with its principal offices in Boise, Idaho, hereinafter referred to as the "Company";

W I T N E S S E T H:

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

CONTRACT PROVISIONS

1. Definitions

- (a) The phrase "consumptive water uses for domestic uses" means water for one or more households and water used for all other purposes including irrigation of a residential lot in connection with each of said households where total use, other than water for irrigation of the residential lot, does not exceed thirteen thousand (13,000) gallons per day. The above definition applies whether such uses are direct or from a municipal water supply. The term "residential lot" means either a lot in an approved subdivision or a lot created by metes and bounds description, which lot had been platted or described prior to November 19, 1982, or meets the minimum residential lot size requirement in effect on November 19, 1982, of the local government agency having jurisdiction. The minimum lot size may be changed by the government agency, but shall not exceed two and one-half acres. The term "consumptive water for domestic uses" shall include, in addition to the uses listed above, use of water for livestock.

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- (b) "Nonconsumptive Commercial, Nonconsumptive Municipal, Nonconsumptive Industrial Use" means any CMI use which does not deplete the water of the Snake River system above Swan Falls more than two acre-feet per day.
- (c) The phrase "substantial investment in irrigation wells and irrigation equipment" means an actual expenditure or written commitment, pursuant to a water right application filed prior to November 19, 1982, or pursuant to a water right permit issued prior to November 19, 1982, for a portion of the costs of construction or purchase of a well, or of equipment to be used primarily for irrigation purposes which meets the following requirements:
1. The actual expenditure or written commitment for irrigation wells or for irrigation equipment equals or exceeds the amount of fifteen thousand dollars (\$15,000) or the actual expenditure or written commitment equals or exceeds twenty-five (25) percent, whichever is less, of the total projected cost of the irrigation project; and
 2. The actual expenditure or written commitment must have been made prior to November 19, 1982.
 3. The parties have determined that the disjunctive "wells or equipment" more clearly effectuates the legislature's intent in this regard, notwithstanding the appearance of the conjunctive "wells and equipment" in § 61-540, Idaho Code.
- (d) The acronym "IPUC" refers to the Idaho Public Utilities Commission and to any agency successor in function.
- (e) The phrase "Ada County Civil No. 81375" refers to the following legal action: Idaho Power Company vs. Idaho Department of Water Resources, et al., Ada County Civil No. 81375.

2. Mutual Covenants

- (a) Notwithstanding the pending district court action in Ada County Civil No. 81375 all water users as

defined in paragraphs 1(a), and 1(b), and all consumptive water users who have beneficially used water prior to November 19, 1982, pursuant to a valid permit, license or decreed right existing prior to November 19, 1982, or valid beneficial use claim, and any persons who have previously made substantial investments in irrigation wells or equipment for use pursuant to a water right application filed prior to November 19, 1982, even though such irrigation wells or irrigation equipment were not in operation prior to November 19, 1982, may continue the perfection of such water right in compliance with Idaho law without protest or interference by the Company.

- (b) As soon as practicable after the effective date of this contract, the Company and Idaho shall dismiss with prejudice its pending case, Ada County Civil. No. 81375, as to those persons who in the opinion of the Company and Idaho, come within the class of users identified in paragraph 2(a) above.
- (c) As to those persons whom the Company and Idaho cannot initially determine, based upon the information available to them, whether or not they come within the class of users identified in paragraph 2(a) above, the Company and Idaho acting through the Idaho Department of Water Resources, shall endeavor to obtain the information necessary to make a decision as to such persons. To the extent it is requested by the Company to provide information, the Idaho Department of Water Resources shall recover its legally authorized costs for researching and producing data including copies. The Company shall subsequently dismiss with prejudice the pending case as to any other persons who are determined by the Company and Idaho based upon the information received to come within the class of users identified in paragraph 2(a) above.
- (d) The Company and Idaho shall not assert any claim for injunctive relief or compensation for depleted flows at the Swan Falls Dam or other Company dam from those persons dismissed from Ada County Civil No. 81375, and will not protest the issuance of a permit or license to such persons on account of the depletion of flows at the

Company's hydro dams for water uses coming within the provisions of Idaho Code § 61-539.

- (e) The Company and Idaho shall not name as defendants in any action, or assert any claim against, holders of consumptive water uses for domestic, nonconsumptive commercial, nonconsumptive industrial, or nonconsumptive municipal uses from the Snake River watershed above Swan Falls Dam occurring from and after November 19, 1982, unless such action or claim is unrelated to such uses, or unless such uses would result in a violation of the Company's water right as defined in paragraph 7(A) of the contract attached hereto as Exhibit A, or in a violation of the minimum stream flow established by the State Water Plan.

3. Intent of the Act and of the Contract

- (a) It is the intent of the Act (Chapter 259, S.L. 1983) and of this Contract, and the interpretation of both parties hereto, that dismissal of defendants by the Company pursuant hereto and failure of the Company to pursue any remedies against persons coming within the terms of paragraphs 2(d) and 2(e) hereof during the existence of this contract shall not expose the Company to claims before the IPUC in the event of later termination of this contract under the provisions of paragraph 7(a), and that the IPUC will lack jurisdiction of such claims in the event of termination of this Contract under the provisions of paragraph 7(a).
- (b) In order to implement the Act and this contract in accordance with the intent, the Company and Idaho shall move the District Court in Ada County Civil No. 81375 under the provisions of I.R.C.P. 41(a)(2) to dismiss said case with prejudice as to the defendants entitled to dismissal under this Contract. The provisions of I.C. 61-539 relating to IPUC jurisdiction shall only apply as to the qualifying uses of each defendant so dismissed.
- (c) The dismissal shall be binding upon the plaintiff irrespective of any declaration by a court of competent jurisdiction that S.B. 1180 is null,

void or of no effect. The dismissal shall be construed as an abandonment by the Company of that portion of its claims for damage against the state and its agencies arising from the issuance of permits or licenses to those holders or their predecessors.

4. Third Party Beneficiaries

Persons coming within the class of users identified in paragraphs 2(a), 2(d) or 2(e) above are third party beneficiaries of this contract who may seek enforcement of applicable provisions, except as to paragraph 3, in accordance with the laws of the State of Idaho. By executing this contract, the Company agrees that its claimed water rights are subordinate to the rights coming within the provisions of paragraphs 2(a), 2(d) and 2(e).

5. Exceptions

No provision of this Contract is intended, nor shall it have the effect of limiting in any manner the nature or scope of the claims or defense which may be utilized by any party to the action remanded to district court by the Idaho Supreme Court in Case No. 13794. The parties agree that by executing this Contract, the State is not conceding nor agreeing that the users or uses identified in paragraphs 2(a), 2(d) or 2(e) in fact interfere with the Company's claimed water rights or that the surface water or ground water used or to be used by such users or uses does in fact contribute to the flow of the Snake River. The parties agree that by executing this Contract the Company is not conceding nor admitting that it cannot state or prove a claim against those water users identified in 2(a), 2(d) or 2(e), nor any other users or potential users of water from the same sources. Neither the plaintiff nor the defendant by this contract makes any admission regarding the nature or quality of the water rights at issue in this or any other litigation. Nor does the state make any admission that the ground waters or various reaches of the Snake River are an interconnected water system.

6. Term

This Contract shall take effect when executed and shall continue in effect until terminated in accordance with the provisions of paragraph 7 hereof.

7. Termination

- (a) In the event the Act is amended or repealed, this Contract shall terminate on the effective date of said law amending or repealing the Act, unless the parties keep this contract in force by way of written addendum. In the event of termination under paragraph 7(a), this contract shall be null and void on and after the date of termination except as to paragraphs 1, 3, 7, and 8, which shall continue in force and effect.
- (b) In addition to any termination that may occur under the provisions of paragraph 7(a) hereof, this contract shall terminate (1) on the date the contract has been performed according to its terms or (2) on the date any decree entered in Ada County Civil No. 81375 is final following on appeal or expiration of the period for appeal, whichever of the foregoing (1) or (2) occurs later. In the event of termination under paragraph 7(b), this contract shall be null and void on and after the date of termination, except as to paragraphs 1, 2(d), 2(e) and 3 which shall continue in force and effect.
- (c) In the event that the agreement between the Governor, the Attorney General and the Company dated October 24, 1984 and attached hereto as Exhibit A is not implemented or is terminated by breach, then this contract shall also terminate, except to the extent this contract has been performed as of the date of termination.

8. Waiver of Defenses

In the event the Contract is terminated under the provisions of paragraph 7(a), the defenses of statute of limitations, abandonment, adverse possession, statutory forfeiture, laches, waiver and other applicable common law defenses due to action or inaction of the Company during the period the Contract was in existence shall not be available against the Company on behalf of persons against whom the Company did not attempt to state a claim based on the existence of this contract for a period of two (2) years after the date of such termination, unless the parties keep this Contract in force by way of written addendum.

9. Authority of Department of Water Resources not affected

This Contract shall not be construed to limit nor interfere with the authority and duty of the Idaho Department of Water Resources to enforce and administer any of the laws of the State which it is authorized to enforce and administer.

10. Modification

This Contract may not be modified except in writing, executed by both of the parties hereto.

11. Successors

The provisions of this contract shall bind and inure to the benefit of the respective successors and assigns of the parties.

12. Entire Agreement

This Contract sets forth all the covenants, promises, provisions, agreements, conditions and understandings between the parties implementing the Act, and there are no covenants, provisions, promises, agreements, conditions or understandings, either oral or written between them other than are herein set forth.

13. Nonlimitations

This Contract is not intended, nor shall it be construed, to limit the rights of either party to prevent the institution or continuance of water uses not in compliance with the laws of the State of Idaho.

14. Effect of Section Headings

The section headings appearing in this Contract are not to be construed as interpretations of the text but are inserted for convenience and reference only.

15. Multiple Originals

This Contract is executed in triplicate. Each of the three contracts with an original signature of each party shall be an original.

IN WITNESS WHEREOF, the parties have executed this agreement at Boise, Idaho.

STATE OF IDAHO

IDAHO POWER COMPANY

BY: *John V. Evans*
JOHN V. EVANS
Governor of the
State of Idaho

BY: *James E. Bruce*
JAMES E. BRUCE
Chairman of the Board
and Chief Executive
Officer



ATTEST:
Paul L. Jauregui
Secretary of State

(Seal of the State of Idaho)

(Corporate Seal of Idaho
Power Company)

ATTEST:
Paul L. Jauregui
Secretary of Idaho Power

APPROVED AS TO FORM:

Jim Jones
JIM JONES
Attorney General of the
State of Idaho

CERTIFICATE OF SECRETARY

Paul L. Jauregui, as secretary of Idaho Power Company, a Maine Corporation, hereby certifies as follows:

- (1) That the corporate seal, or facsimile thereof, affixed to the instrument is in fact the seal of the

corporation, or a true facsimile thereof, as the case may be; and

(2) That any officer of the corporation executing the instrument does in fact occupy the official position indicated, that one in such position is duly authorized to execute such instrument on behalf of the corporation, and that the signature of such officer subscribed thereunto is genuine; and

(3) That the execution of the instrument on behalf of the corporation has been duly authorized.

In witness whereof, I, PAUL L. JAUREGUI, as the secretary of Idaho Power Company, a Maine corporation, have executed this certificate and affixed the seal of Idaho Power Company, a Maine Corporation, on this 25th day of October, 1984.

Paul L Jauregui

Paul L. Jauregui
Secretary of Idaho Power Company

STATE OF IDAHO)
) ss.
County of Ada)

On this 25th day of October, 1984, before me, a Notary Public, in and for said County and State, personally appeared JAMES E. BRUCE, and PAUL L. JAUREGUI, known or identified to me to be the President and Secretary, respectively of Idaho Power Company, the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

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

Larsil Knowlton

NOTARY PUBLIC FOR IDAHO
Residing at Boise, Idaho

STATE OF IDAHO)
) ss.
County of Ada)

On this 25th day of October, 1984, before me, a Notary Public, in and for said County and State, personally appeared JOHN V. EVANS, known or identified to me to be the Governor of the State of Idaho and PETE T. CENARRUSA, known to me to be the Secretary of the State of Idaho; and acknowledged to me that they executed the same.

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

Lucille K. ...
NOTARY PUBLIC FOR IDAHO
Residing at *Boise, Idaho*