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*Attorneys for Defendants Idaho Water Resource Board, Idaho Department of Water Resources, Mathew Weaver in his official capacity as the Director of the Idaho Department of Water Resources, and Tony Olenichak in his capacity as Water District 01 Watermaster.*

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF TWIN FALLS**

CITY OF POCA TELLO,

Plaintiff,

vs.

IDAHO WATER RESOURCES BOARD, IDAHO  
DEPARTMENT OF WATER RESOURCES,  
MATHEW WEAVER, in his capacity as Director of  
the Idaho Department of Water Resources, and TONY  
OLENICHAK, in his capacity as Water District 01  
Watermaster,

Defendants,

**Case No. CV42-23-1668**

**AFFIDAVIT OF ANN N.  
YRIBAR IN SUPPORT OF  
STATE OF IDAHO'S CROSS  
MOTION FOR SUMMARY  
JUDGMENT AND REPLY TO  
PLAINTIFF**

and

CITY OF BLISS, CITY OF BURLEY, CITY OF CAREY,  
CITY OF DECLO, CITY OF DIETRICH, CITY OF  
GOODING, CITY OF HAZELTON, CITY OF  
HEYBURN, CITY OF JEROME, CITY OF PAUL, CITY  
OF RICHFIELD, CITY OF RUPERT, CITY OF  
SHOSHONE, and CITY OF WENDELL, BURLEY  
IRRIGATION DISTRICT, FREMONT-MADISON  
IRRIGATION DISTRICT, and IDAHO IRRIGATION  
DISTRICT,

Intervenors.

STATE OF IDAHO                )  
  ) ss  
COUNTY OF ADA             )


ANN N. YRIBAR, being first duly sworn upon her oath, deposes and state that:

1. I am a Deputy Attorney General in the Idaho Office of the Attorney General and one of the attorneys of record for the Defendants Idaho Water Resource Board (“IWRB”), Idaho Department of Water Resources (“IDWR”), Mathew Weaver in his official capacity as the Director of the Idaho Department of Water Resources (“Director”), and Tony Olenichak in his capacity as Water District 01 Watermaster (“Water District 01 Watermaster”).
2. The following is based on my personal knowledge.
3. Attached hereto as the individual exhibits identified below are true and correct copies of the following:
  - a. Exhibit A: A true and correct copy of the Water District 65 Rental Pool Procedures that I printed from the Idaho Department of Water Resources website at <https://idwr.idaho.gov/wp-content/uploads/sites/2/water-supply-bank/WD65-Rental-Pool-Procedures.pdf>.

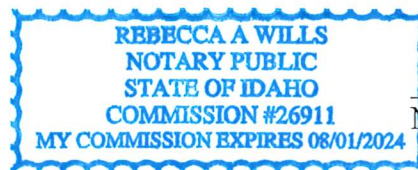
- b. Exhibit B: A true and correct copy of the Water District 65K Rental Pool Procedures that I printed from the Idaho Department of Water Resources website at <https://idwr.idaho.gov/wp-content/uploads/sites/2/water-supply-bank/WD65K-Procedures.pdf>.
  - c. Exhibit C: A true and correct copy of the Water District 63 Rental Pool Procedures that I printed from the Idaho Department of Water Resources website at <https://idwr.idaho.gov/wp-content/uploads/sites/2/water-supply-bank/WD63-Rental-Pool-Procedures.pdf>.
  - d. Exhibit D: A true and correct copy of Water District 1 2023 Rental Pool Procedures adopted by the Idaho Water Resource Board on March 31, 2023.
  - e. Exhibit E: a true and correct copy of the United States Department of the Interior Bureau of Reclamation Minidoka and Palisades Projects Idaho Contract with City of Pocatello Concerning Storage Capacity in Palisades Reservoir, and Related Matters Contract No. 14-06-100-1825 dated January 8, 1960.
- 4. A review of IWRB and IDWR records evidences that the City of Pocatello has never filed a petition for review of an agency action pursuant to I.C. § 42-1701A(3) with either agency regarding the Water District 01 Rental Pool Procedures or any related matter.
  - 5. A review of IWRB and IDWR records evidences that the City of Pocatello did not file a petition for judicial review of any IWRB or IDWR action regarding the Water District 01 Rental Pool Procedures or any related matter pursuant to I.C. § 67-5273.

DATED this 24<sup>th</sup> day of November 2023.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

  
\_\_\_\_\_  
ANN N. YRIBAR  
Deputy Attorney General

SUBSCRIBED AND SWORN to before me this 24<sup>th</sup> day of November 2023.



  
\_\_\_\_\_  
Notary Public for Idaho



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 24th day of November 2023, I caused to be served a true and correct copy of the foregoing via iCourt E-File and Serve, upon the following:

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\_\_\_\_\_  
ANN N. YRIBAR  
Deputy Attorney General

# EXHIBIT A

**2018**

**WATER DISTRICT 65**

**RENTAL POOL PROCEDURES**

## Rental Pool Procedures

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## Rental Pool Procedures

### WATER DISTRICT 65 RENTAL POOL PROCEDURES

#### **RULE 1.0      LEGAL AUTHORITY**

- 1.1      These procedures have been adopted pursuant to Idaho Code § 42-1765 and IDAPA 37.02.03.040 to assure orderly operation of the Payette River Rental Pool.
- 1.2      These procedures shall not be interpreted to limit the authority of the Idaho Department of Water Resources, the Idaho Water Resource Board, Water District No. 65 Advisory Board, or the Watermaster in discharging their duties as prescribed by statute or rule.
- 1.3      These procedures shall be interpreted consistent with Idaho Code, rules promulgated by the Idaho Water Resource Board, relevant provisions of repayment contracts with the United States, and the Snake River Water Rights Agreement of 2004 commonly referred to as the Nez Perce Mediator's Term Sheet dated April 20, 2004.

#### **RULE 2.0      DEFINITIONS**

- 2.1      **Acre-foot:** a volume of water sufficient to cover one acre of land one foot deep and is equal to 43,560 cubic feet.
- 2.2      **Administrative Fee:** a fee of One Dollar (\$1.30) per acre-foot assessed by the District on all storage rented through the Rental Pool.
- 2.3      **Assignment:** a written agreement to convey a specific quantity of storage into the Rental Pool for use during a specified period of time.
- 2.4      **Assignor:** a person who assigns storage to the Rental Pool.
- 2.5      **Board:** the Idaho Water Resource Board (IWRB).
- 2.6      **Board Surcharge:** a surcharge equal to ten percent (10%) of the Net Rental Price assessed on all storage rented from the Rental Pool, which is disbursed to the Board. For purposes of these procedures, the surcharge for in-basin rentals under Rule 6.2.101 is equal to \$0.20 per acre-foot and for out-of-basin rentals under Rule 6.2.102 is equal to \$1.70 per acre-foot
- 2.7      **Committee:** the Advisory Board of Water District No. 65.
- 2.8      **Department:** the Idaho Department of Water Resources (IDWR).
- 2.9      **Director:** the Director of the Idaho Department of Water Resources.
- 2.10      **District:** Water District No. 65 of the State of Idaho.
- 2.11      **Net Rental Price:** The Rental Price less the Administrative Fee and Board Surcharge.
- 2.12      **Person:** an individual, company, association, corporation, partnership, irrigation district, canal company, political subdivision, or governmental agency.

## Rental Pool Procedures

- 2.13 **Reclamation:** the United States Bureau of Reclamation.
- 2.14 **Rental Agreement:** a written agreement to acquire the right to use a specific quantity of storage from the Rental Pool for a determinate period.
- 2.15 **Rental Pool:** a market for the exchange of storage operated by the Advisory Board of Water District No. 65.
- 2.16 **Rental Price:** the fee for rental of storage from the Rental Pool as set forth in Rule 6.2, which includes the Administrative Fee and Board Surcharge.
- 2.17 **Renter:** a person who rents storage from the Rental Pool.
- 2.18. **Reservoir System:** refers to Cascade Lake, Deadwood Reservoir, Payette Lakes, and the Upper Lakes.
- 2.19 **Space:** all or any portion of the active capacity of a reservoir measured in acre-feet.
- 2.20 **Spaceholder:** the holder of the contractual right to space in the reservoir system, or Reclamation.
- 2.21 **Storage:** water that accrues to reservoir space and is available for use.
- 2.22 **Watermaster:** the watermaster of Water District 65.
- 2.23 **Year:** a calendar year.

### **RULE 3.0 PURPOSES**

- 3.1 To promote the maximum beneficial use of stored water establish a process and provide incentives, consistent with Idaho Code § 42-1765, through which storage supplies may be made available for rental by persons who need additional water for beneficial purposes.
- 3.2 Maintain adequate controls and priorities to ensure that (a) irrigation uses are provided an opportunity to obtain supplemental storage supplies ahead of non-irrigation uses, (b) existing water rights are not injured, and (c) the use of storage water obtained through the Rental Pool is consistent with the protection of the local public interest and the conservation of water resources within the state of Idaho.
- 3.3 Provide a source of revenue for the District to make improvements in distribution of water and aid in increasing the conservation of water in the Payette River Basin.

## Rental Pool Procedures

### **RULE 4.0 MANAGEMENT & APPLICATION PROCESS**

- 4.1 **Committee.** The Committee, which shall decide all matters by majority vote, will exercise the following responsibilities:
- (a) Adopt, and amend as necessary, procedures for operation of the Rental Pool;
  - (b) Provide direction to the Watermaster in the operation of the Rental Pool within the framework of the these procedures;
  - (c) Set policies for the investment and disbursement of funds generated by the Rental Pool in conformity with the Public Depository Law, Chapter 1, Title 57, Idaho Code; and
  - (d) Notify the Director and Watermaster of rentals where storage will be moved from the place of use authorized by the permit, license or decree establishing the storage water right.
- 4.2 **Watermaster.** The Watermaster shall serve as the manager of the Rental Pool and shall take all reasonable actions necessary to administer the Rental Pool consistent with these procedures, which include:
- (a) accepting assignments of storage into the Rental Pool;
  - (b) executing rental agreements on behalf of the Committee;
  - (c) distributing storage rented through the Rental Pool;
  - (d) accepting and disbursing funds generated through the rental of storage; and
  - (e) taking such additional actions as may be directed by the Committee.
- 4.3 **Application to Assign Storage to the Rental Pool.**
- 4.3.101 *Contents.* Applications to assign storage to the Rental Pool shall be made upon forms approved by the Watermaster, which shall include:
- (a) the quantity of storage sought to be assigned to the Rental Pool;
  - (b) an indication of whether the storage may be rented for use below the mouth of the Payette River; and
  - (c) the date received in the Watermaster's office.
- 4.3.102 *Acceptance.* For purposes of determining the priority of assigned storage under Rule 5.4, applications shall be deemed conditionally accepted on the date received in the Watermaster's office subject to acceptance by the Committee pursuant to Rule 5.2.
- 4.4 **Application to Rent Storage from the Rental Pool.**
- 4.4.101 *Contents.* Applications to rent storage from the Rental Pool shall be made upon forms approved by the Watermaster, which shall include:
- (a) the amount of storage sought to be rented;
  - (b) the purpose(s) for which the storage will be put to beneficial use;
  - (c) the point of diversion identified by legal description and common name;

## Rental Pool Procedures

- (d) a description of the place of use; and
- (e) the date received in the Watermaster's office.

4.4.102 *Acceptance*. For purposes of determining a rental applicant's priority under Rule 6.1, applications are not deemed accepted until received by the Watermaster together with the appropriate rental fee.

### 4.5 **Rental Pool Account.**

4.5.101. *Account*. All monies submitted by rental applicants shall be deposited in the Rental Pool Account, which shall be an interest-bearing account maintained by the Watermaster on behalf of the Committee. Rental Pool funds shall be considered public funds for investment purposes and subject to the Public Depository Law, Chapter 1, Title 57, Idaho Code.

4.5.102. *Disbursement of Monies*. Monies in the Rental Pool Account will be disbursed to the District, the Board, and the Assignors in the proportions set forth in these procedures. Accrued interest to the Rental Pool Account shall be disbursed pro-rata to the Assignors at the time payments are made under Rule 5.6.

4.5.103 *Contingency Fund*. Administrative fees received by the District in excess of actual costs required to operate the Rental Pool shall be maintained by the Watermaster in a separate interest-bearing account to serve as a contingency fund for use by the Committee for the benefit of the District; provided, however, that such use does not conflict with the Idaho Public Depository Law, Chapter 1, Title 57, Idaho code.

## **RULE 5.0 ASSIGNMENT OF STORAGE TO THE RENTAL POOL**

- 5.1 **Assignment of Storage.** Any spaceholder may assign storage to the Rental Pool subject to acceptance by the Committee.
- 5.2 **Acceptance by Committee.** The Committee may accept or reject, in whole or in part, an application to assign storage to the Rental Pool and may impose conditions necessary to satisfy the purposes set out under Rule 3.2. All storage assigned and accepted into the Rental Pool shall be under the control of the Committee and Watermaster during the term of the assignment.
- 5.3 **Reservoir Designation.** When an assignor has space in more than one reservoir the assignment shall designate the reservoir from which the storage is assigned.
- 5.4 **Priority of Assigned Storage**
  - 5.4.101 *Assignments Made On or Before July 1<sup>st</sup>*. All storage assigned to the Rental Pool on or before July 1 shall be rented on a pro-rata basis.
  - 5.4.102 *Assignments Made After July 1<sup>st</sup>*. All storage assigned to the Rental Pool after July 1 will be rented on a first-in-first-out basis, but only after all storage assigned under Rule 5.4.101 has been rented.
- 5.5 **Term of Assignment**
  - 5.5.101 *Unrented Storage*. All storage assigned to the rental pool, but not rented by December 31, shall revert to the assignor, unless the assignor executes a written



## Rental Pool Procedures

extension.

5.5.102 *Unused Storage.* All storage assigned to and rented from the Rental Pool, but not put to beneficial use by March 1 of the year following the calendar year in which the storage was assigned to the Rental Pool, shall revert to the assignor unless the assignor executes a written extension and the extension is granted by the Committee.

### 5.6 **Payment to Assignors.**

5.6.101 *Amount of Payment.* Payment to assignor will be made only if the storage assigned to the Rental Pool is subsequently rented. Assignors shall share pro-rata in the Net Rental Price from the rental of storage assigned on or before July 1 and shall receive one-hundred percent of the Net Rental Price from the rental of such storage assigned after July 1 based on a first-in-first-out basis. Pursuant to Rule 3.3 purpose; Assignors shall agree to invest 1/3 or more of the payment proceeds into their water delivery systems in an effort to improve efficiency in order to promote the maximum beneficial use of stored water

5.6.102 *Calculation of Payment.* The Watermaster will calculate the payment due each assignor based on data published in the Annual Report of the Watermaster showing the actual quantity of storage rented from the Rental Pool. In the event water is rented after the filing of the Annual Report of the Watermaster; the Watermaster shall file a revised Annual Report to properly represent total Rental Pool activity for the reporting period.

5.6.103 *Timing of Payment.* Payments to assignors shall be due and payable after the Watermaster has calculated the payments under Rule 5.6.102

## **RULE 6.0 RENTAL OF STORAGE FROM THE RENTAL POOL**

6.1 **Priority of Rental Applicants.** Storage rented from the Rental Pool shall be pursuant to the following priorities:

6.1.101 *First Priority.* On or before July 1, rental of water by spaceholders for irrigation purposes within the District.

6.1.102 *Second Priority.* After July 1, rental of water for all any beneficial purpose.

6.1.104 *Sub-priorities.* Priorities among rental applicants within each priority group, identified above, shall be determined based on the date the rental application is accepted by the Watermaster pursuant to Rule 4.4; provided, however, during periods of drought or other extraordinary circumstances, with consideration of the local public interest, the Committee may develop additional or alternative procedures for determining sub-priorities among competing rental applications.

6.2 **Rental Price.** The Rental Price per acre-foot of storage rented from the Rental Pool is as follows:

6.2.101 *In-Basin.* For uses upstream from the mouth of the Payette River the Rental Price is \$3.50 per acre-foot.

## Rental Pool Procedures

- 6.2.102 *Outside Basin*. For uses downstream from the mouth of the Payette River, the Rental Price is \$20.00 per acre-foot.
- 6.3 **Out-of-Basin Rentals**. Storage rented for use below the mouth of the Payette River shall subject the space from which the storage was rented to last to fill in the ensuing year.
- 6.4 **Arbitrage**. A person may not assign storage and rent storage in the same calendar year, unless an exception is granted by the Committee. In the event an exception is granted by the Committee, the rental price shall equal the amount paid to the person for the prior assignment plus a 10% board surcharge and \$2.00 per acre-foot administrative fee.
- 6.5 **Rentals for Greater than Five (5) Years**. Applications to rent water from the Rental Pool for a period of more than five (5) years shall be submitted to the Board, and separately to Reclamation, for review and approval as a condition of approval by the Committee.
- 6.6 **Flow Augmentation**. Notwithstanding the foregoing provisions, Reclamation may assign and rent storage held in uncontracted space for flow augmentation purposes pursuant to the provisions contained in the Snake River Water Rights Agreement of 2004 (aka the Nez Perce Mediator's Term Sheet dated April 20, 2004) and Idaho Code § 42-1763B, in which case only an administrative fee shall be assessed pursuant to Rule 2.2.

# EXHIBIT B

**WATER DISTRICT NO. 65-K, LAKE FORK CREEK**

**RENTAL POOL PROCEDURES**

**RULE 1. AUTHORITY AND STATEMENT OF PURPOSE**

- 1.1 These procedures have been adopted pursuant to Idaho Code, Section 42-1765 and Rule 40 of the Water Supply Bank Rules of the Idaho Water Resource Board to assure orderly operation of the Lake Fork Creek Rental Pool. Under no circumstances shall these procedures be construed to limit or restrict the authority of the Director of the Department of Water Resources, the Water Resource Board, Water District No. 65-K Advisory Board, or the Watermaster of Water District 65-K (Lake Fork Creek) in discharging their duties as set forth in the statutes of the state of Idaho. Anyone leasing water to, or renting water from, such space shall be subject to all applicable water laws of the state of Idaho.
- 1.2 It is the purpose of these procedures to:
  - a. Provide a process, consistent with applicable statutes and administrative rules, by which stored water supplies may be made available for a specified period of time to water users who need additional water.
  - b. Provide incentives for those owning reservoir space and having stored water, which is surplus to their needs, to lease such space/water to the Rental Pool to be made available to other users, and which will serve to protect the local public interest.
  - c. Establish a recognized system through which water supplies can be located, identified and subsequently rented to a water user.
  - d. Provide a source of revenue for Water District No. 65-K to make improvements in distribution of water and aid in increasing the conservation of water in the Lake Fork Creek drainage basin.
  - e. Provide that available water supplies may be leased to the Rental Pool by the Lessor and rented from the Rental Pool for any beneficial purpose recognized by the laws of the State of Idaho, provided that other water rights are not injured, irrigators are not deprived of supplemental storage by renting water for uses other than irrigation, and the use is consistent with the conservation of water resources within the state of Idaho.

**RULE 2. DEFINITIONS:**

- 2.1 **ACRE-FOOT** is a volume of water sufficient to cover one acre one foot deep.
- 2.2 **YEAR** refers to a normal calendar year.
- 2.3 **BOARD** means the Idaho Water Resource Board.
- 2.4 **COMMITTEE** or **LOCAL COMMITTEE** means the Advisory Board of Water District No. 65-K.
- 2.5 **DEPARTMENT** means the Idaho Department of Water Resources or IDWR.
- 2.6 **DIRECTOR** means the Director of the Idaho Department of Water Resources.
- 2.7 **DISTRICT** means Lake Fork Creek Water District No. 65-K.
- 2.8 **LEASE** is the agreement through which a specific amount of storage space or/stored water is obtained by the Rental Pool for use during a year.
- 2.9 **RENTER** is the person renting water from the Rental Pool.
- 2.10 **LESSOR** is the person leasing space/water to the Rental Pool.
- 2.11 **PERSON** means any company, corporation, association, firm, agency, individual, partnership, government agency or other entity.
- 2.12 **RENTAL AGREEMENT** is the agreement through which a Renter obtains the right to a specific amount of storage space or stored water from the Rental Pool.
- 2.13 **RENTAL POOL** refers to the water leasing and renting activities administered by the Local Committee appointed by the Water Resource Board.
- 2.14 **SPACE** means all or any portion of the active capacity of a reservoir measured in acre-feet.
- 2.15 **STORED WATER** is the water that accrues to reservoir space and is available for use.
- 2.16 **WATERMASTER** means the Watermaster of Water District No. 65-K.

**RULE 3. GENERAL:**

- 3.1 It is the policy of the local committee of Water District

No. 65-K to operate the Rental Pool for the maximum beneficial use of available stored water.

- 3.2 Operation of the Rental Pool will be by and for the irrigators within the district through the Committee. These procedures are designed to assure that stored water is maintained and first made available primarily for irrigation use.
- 3.3 The operation of the Rental Pool shall be consistent with the statutes creating the Water Supply Bank and the rules of the Board.
- 3.4 Space will be accepted by the Committee on a contingency basis.
- 3.5 Payments to the lessor will be made only if stored water is subsequently rented from the Rental Pool.
- 3.6 The space of storage water leased to the Rental Pool that is rented for uses below the mouth of Lake Fork Creek shall be the last space to fill in the ensuing year.
- 3.7 No storage water leased to the Rental Pool shall be rented for uses below the mouth of the Lake Fork Creek without the express written consent of the board of directors of the Payette River Water District 65 Rental Pool.
- 3.8 It is the policy of the Committee to facilitate annual leases and rentals, and to base all transactions on water stored (storage) rather than reservoir space.

**RULE 4. MANAGEMENT:**

- 4.1 The Committee shall have the following responsibilities:
  - a. To provide direction to the watermaster in the operation of the Rental Pool within the overall framework of these adopted procedures.
  - b. To notify the department and the watermaster of any rentals where water will be moved from the place of use authorized by the permit, license or decree authorizing the stored water right.
  - c. To set policies for the investment and disbursement of funds generated by the Rental Pool in conformity with Public Depository Law, Chapter 1, Title 57, Idaho Code.
- 4.2 The watermaster shall act as the manager of the Rental Pool. This authority shall include accepting space into

the Rental Pool, executing rental agreements on behalf of the Committee, accepting and transmitting funds to the district treasurer for deposit and disbursement.

- 4.3 The Committee shall decide all issues by a majority vote.

**RULE 5. LEASES:**

- 5.1 All leases of space to the Rental Pool and all rental of stored water from the Rental Pool shall be for the year in which the lease agreement is offered and accepted unless extended as provided in paragraph 6.5 below.
- 5.2 Any contracting entity which owns space in a reservoir located in the district may lease any portion of its space to the Rental Pool.
- 5.3 Leases accepted by the watermaster are subject to the review and approval of the Committee. Space submitted for lease may be rejected in whole or part by the Committee or it may place special conditions on uses, allocation, and price if, in the judgment of the Committee, accepting said space will not be in the best interest of the Rental Pool and Water District No. 65-K.
- 5.4 Any lessor, or renter, or applicant aggrieved by a decision of the rental pool committee on matters related to the operations of the Rental Pool may request a hearing before the Committee within 15 days after receiving notice in writing of the decision. After hearing the grievance and after review by the Committee, a decision will be made by the Committee, in writing, setting forth the reasons for its decision, and said review decision must be signed by a majority of the Committee. The decision of the Committee may be appealed to the Board.
- 5.5 Leases of space to the rental pool shall be on a priority basis as set forth in paragraph 6 of these procedures.
- 5.6 Leases of space shall be in writing and on forms provided by the watermaster and shall bear the date they were received in the watermaster's office.
- 5.7 All space leased to the Rental Pool shall be under the control of the watermaster and Committee for the duration of the lease.
- 5.8 The Committee may allow a contracting entity which owns space in a reservoir located in the district to lease space directly to the Water District 65 rental pool. If such entity desires to lease space to the Water District 65 rental pool, it must obtain the written approval of the Water District 65-K committee.

**RULE 6. PRIORITIES AMONG LESSORS:**

- 6.1 When a lessor leases space to the Rental Pool, the stored water attributable to such space shall be determined by the watermaster according to the percentage the reservoir fills.
- 6.2 All stored water attributable to space leased to the Rental Pool before June 15 will be rented before any stored water from space leased after June 15.
- 6.3 Lessors who lease space to the Rental Pool by June 15, shall share proportionally in the proceeds from the rental of stored water attributable to such space.
- 6.4 Lessors who lease space to the Rental Pool after June 15, shall receive proceeds from the rental of stored water attributable to such space on a "first come" basis, whereby the first lessor to lease space will be the first paid.
- 6.5 All space/water that has not been rented by the end of the irrigation season, shall revert back to the lessor at the end of the irrigation season of the year leased.

**RULE 7. PRIORITIES AMONG RENTERS:**

- 7.1 Any stored water available through the Rental Pool for use shall be provided on a priority basis. The first priority for each time category is defined below. The second priority for each time category consists of all water users not defined in that time category. Water shall be rented to second priority renters only upon specific findings of the Committee, in cases when all first priority uses are anticipated to be satisfied.
- 7.2 Priority until June 15 of each year in acquiring stored water from the rental pool shall be given to renters for irrigation within Water District No. 65-K.
- 7.3 After June 15 of each year all remaining unrented stored water in the Rental Pool shall be available to any water user who desires to rent the water for any beneficial use.
- 7.4 Sub-priority among water users of each priority listed above shall be determined by the date on which the water user's signed rental agreement and payment is received at the office of the watermaster. During periods of drought or special conditions, with consideration to local public interest and with the Director's approval, the Committee may develop additional or alternative procedures.



- 7.5 Any water user having once entered into a rental agreement for stored water may request stored water in subsequent years by confirming, in writing, that all the information on the original agreement is true and correct, and by identifying the amount of water he wishes to purchase. The priority in this case will be the date on which payment is received by the watermaster.
- 7.6 Water must be used by the renter during the year of the rental, unless the Committee grants an extension.

**RULE 8. RENTAL FEES AND PAYMENTS TO LESSORS:**

- 8.1 The price of stored water (including the administrative fee of \$0.50/acre-foot and the Board's 10% surcharge) rented from the rental pool for use upstream from the mouth of Lake Fork Creek is \$2.70 per acre-foot.
- 8.2 Payments to the lessors shall be made in accordance with paragraph 6 and shall be based upon the data published in the annual report of the watermaster. Payments to the lessors shall be considered due and payable once the watermaster has calculated the actual water used within the district for the annual watermaster's report. Payments to the Lessors for water delivered after submittal of the annual watermaster's report shall be made when delivery of the water is completed.
- 8.3 Any administrative revenue in excess of actual costs shall be held in a contingency fund, and may be used for other purposes that the Committee deems to be of benefit to Water District No. 65-K, provided, however, that such uses do not conflict with Idaho Public Depository Law, Chapter 1, Title 57, Idaho Code.
- 8.4 All rental monies shall be maintained in a separate interest-bearing account with accrued interest being distributed on a pro-rata basis at the time payments to lessors are made.

# EXHIBIT C

**Amended 2018**



**WATER DISTRICT NO. 63**

**RENTAL POOL PROCEDURES**

**AMENDED 2/12.2018**

# **WATER DISTRICT NO. 63**

## **RENTAL POOL PROCEDURES**

The Boise River Rental Pool is administered by the Rental Pool Committee thru the

Boise River Watermaster, s office.

Please contact the Watermaster for more information.

Rex R. Barrie

Boise River Watermaster

(208) 908-5480

[waterdistrict63@qwestoffice.net](mailto:waterdistrict63@qwestoffice.net)

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## **WATER DISTRICT 63 RENTAL POOL PROCEDURES**

### **RULE 1.0      LEGAL AUTHORITY**

- 1.1      These procedures have been adopted pursuant to Idaho Code § 42-1765 and IDAPA 37.02.03.040 to assure orderly operation of the Boise River Rental Pool by the Advisory Board of Water District No. 63.
- 1.2      These procedures shall not be interpreted to limit the authority of the Idaho Department of Water Resources, the Idaho Water Resource Board, Water District No. 63 Advisory Board, or the Watermaster in discharging their duties as prescribed by statute or rule.
- 1.3      These procedures shall be interpreted consistent with Idaho Code, rules promulgated by the Idaho Water Resource Board, relevant provisions of repayment contracts with the United States, and the Snake River Water Rights Agreement of 2004 commonly referred to as the Nez Perce Mediator's Term Sheet dated April 20, 2004.

### **RULE 2.0      DEFINITIONS**

- 2.1      **Accounting Year:** the Water District 63 water accounting year that begins on November 1 and ends on October 31
- 2.2      **Acre-foot:** a volume of water sufficient to cover one acre of land one foot deep and is equal to 43,560 cubic feet.
- 2.3      **Administrative Fee:** a fee of One Dollar and Thirty Cents (\$1.30) per acre-foot assessed by the District on all storage rented through the Rental Pool.
- 2.4      **Assignment:** a written agreement to convey a specific quantity of storage into the Rental Pool for use during a specified period of time.
- 2.5      **Assignor:** a person who assigns storage to the Rental Pool.
- 2.6      **Board:** the Idaho Water Resource Board (IWRB).
- 2.7      **Board Surcharge:** a surcharge equal to ten percent (10%) of the Net Rental Price assessed on all storage rented from the Rental Pool, which is disbursed to the Board.
- 2.8      **Committee:** the Advisory Board of Water District No. 63.
- 2.9      **Department:** the Idaho Department of Water Resources (IDWR).
- 2.10     **Director:** the Director of the Idaho Department of Water Resources.
- 2.11     **District:** Water District 63 of the State of Idaho.
- 2.12     **Net Rental Price:** The Rental Price less the Administrative Fee and Board Surcharge.
- 2.13     **Person:** an individual, company, association, corporation, partnership, irrigation district, canal company, political subdivision, or governmental agency.

- 2.14 **Reclamation:** the United States Bureau of Reclamation.
- 2.15 **Rent:** a written agreement to acquire the right to use a specific quantity of storage from the Rental Pool for a determinate period.
- 2.16 **Rental Pool:** a market for the exchange of storage operated by the Advisory Board of Water District No. 63.
- 2.17 **Rental Price:** the fee, including the Administrative Fee and Board Surcharge, for rental of storage from the Rental Pool.
- 2.18 **Renter:** a person who rents storage from the Rental Pool.
- 2.19 **Reservoir System:** refers to Arrowrock, Lake Lowell, Anderson Ranch, and Lucky Peak reservoirs.
- 2.20 **Space:** all or any portion of the active capacity of a federal reservoir measured in acre-feet.
- 2.21 **Spaceholder:** the holder of the contractual right to space in the reservoir system, or Reclamation.
- 2.22 **Storage:** water that accrues to reservoir space and is available for use.
- 2.23 **Watermaster:** the watermaster of Water District 63.

### **RULE 3.0 PURPOSES**

- 3.1 To promote the maximum beneficial use of stored water establish a process and provide incentives, consistent with Idaho Code § 42-1765, through which storage supplies may be made available for rental by persons who need additional water for beneficial purposes.
- 3.2 Maintain adequate controls and priorities to ensure that (a) irrigation uses are provided an opportunity to obtain supplemental storage supplies ahead of non-irrigation uses, (b) existing water rights are not injured, and (c) the use of storage water obtained through the Rental Pool is consistent with the protection of the local public interest and the conservation of water resources within the state of Idaho.
- 3.3 Provide a source of revenue for the District to make improvements in distribution of water and aid in increasing the conservation of water in the Boise River Basin.

**RULE 4.0      MANAGEMENT & APPLICATION PROCESS**

4.1      **Committee.** The Committee, which shall decide all matters by majority vote, will exercise the following responsibilities:

- (a) Adopt, and amend as necessary, procedures for operation of the Rental Pool;
- (b) Provide direction to the Watermaster in the operation of the Rental Pool within the framework of the these procedures;
- (c) Set policies for the investment and disbursement of funds generated by the Rental Pool in conformity with the Public Depository Law, Chapter 1, Title 57, Idaho Code; and
- (d) Notify the Director and Watermaster of rentals where storage will be moved from the place of use authorized by the permit, license or decree establishing the storage water right.

4.2      **Watermaster.** The Watermaster shall serve as the manager of the Rental Pool and shall take all reasonable actions necessary to administer the Rental Pool consistent with these procedures, which include:

- (a) accepting assignments of storage into the Rental Pool on behalf of the Committee;
- (b) distributing storage rented through the Rental Pool;
- (c) accepting and disbursing funds generated through the rental of storage; and
- (d) taking such additional actions as may be directed by the Committee.

4.3      **Application to Assign Storage to the Rental Pool.**

4.3.101 *Contents.* Applications to assign storage to the Rental Pool shall be made upon forms approved by the Watermaster, which shall include:

- (a) the quantity of storage sought to be assigned to the Rental Pool;
- (b) an indication of whether the storage may be rented for out-of-basin uses; and
- (c) the date received in the Watermaster's office.

4.3.102 *Conditional Assignment.* For purposes of determining the priority of assigned storage under Rule 5.4, storage shall be deemed conditionally assigned to the Rental Pool on the date the application is received by the Watermaster subject to approval by the Committee pursuant to Rule 5.2.

4.3.103 *Subsequent Applications.* Any applicant, having once assigned storage to the Rental Pool, may make application to assign storage in subsequent accounting years by (a) providing written confirmation that the information on the prior assignment application is true and correct, and (b) indicating the quantity of storage sought to be assigned.

4.3.104 *Deadline for Application.* An application to assign storage must be received by the Watermaster and approved by the Committee pursuant to Rule 5.2 not later than October 31 in order for the storage identified in such application, provided it



is subsequently rented within the time limit prescribed in Rule 5.5.101, to be accounted for as having been diverted in the current accounting year.

**4.4 Application to Rent Storage from the Rental Pool.**

4.4.101 *Contents.* Applications to rent storage from the Rental Pool shall be made upon forms approved by the Watermaster, which shall include:

- (a) the amount of storage sought to be rented;
- (b) the purpose(s) for which the storage will be put to beneficial use;
- (c) the point of diversion identified by legal description and common name;
- (d) a description of the place of use; and
- (e) the date received in the Watermaster's office.

4.4.102 *Acceptance.* For purposes of determining a rental applicant's priority under Rule 6.1, applications are not deemed accepted until received by the Watermaster together with the appropriate rental fee.

4.4.103 *Subsequent Applications.* Any rental applicant, having once rented water from the Rental Pool, may make application for rental of storage in subsequent accounting years by (a) providing written confirmation that the information on the prior rental application is true and correct, (b) indicating the quantity of storage sought to be rented, and (c) tendering the appropriate rental fee.

**4.5 Rental Pool Account.** All monies submitted by rental applicants shall be deposited in the Rental Pool Account and maintained by the Watermaster on behalf of the Committee. Monies in the Rental Pool Account will be disbursed to the District, the Board, the Assignors in the proportions set forth in these procedures. Accrued interest to the Rental Pool Account shall be disbursed to the District for purposes consistent with Rule 3.3. Rental Pool funds shall be considered public funds for investment purposes and subject to the Public Depository Law, Chapter 1, Title 57, Idaho Code.

**RULE 5.0 ASSIGNMENT OF STORAGE TO THE RENTAL POOL**

**5.1 Assignment of Storage.** Any spaceholder may assign storage to the Rental Pool subject to approval by the Committee.

**5.2 Approval by Committee.** The Committee may approve or reject, in whole or in part, an application to assign storage to the Rental Pool and may impose conditions necessary to satisfy the purposes set out under Rule 3.2. All storage approved for assignment into the Rental Pool shall be under the control of the Committee and Watermaster during the term of the assignment.

**5.3 Reservoir Designation.** When an assignor has space in more than one reservoir, storage will be assigned to the Rental Pool from the assignor's space in the reservoir system in the following sequence: Lucky Peak, Anderson Ranch, Arrowrock, and Lake Lowell.

**5.4 Priority of Assigned Storage**

5.4.101 *Assignments Made On or Before July 1<sup>st</sup>.* All storage assigned to the Rental Pool on or before July 1 shall be rented on a pro-rata basis.

5.4.102 *Assignments Made After July 1<sup>st</sup>*. All storage assigned to the Rental Pool after July 1 will be rented on a first-in-first-out basis, but only after all storage assigned under Rule 5.4.101 has been rented.

5.5 **Term of Assignment**

5.5.101 *Unrented Storage*. All storage assigned to the rental pool, but not rented by October 31, shall revert to the assignor, unless the assignor executes a written extension and an extension is approved by the Committee.

5.5.102 *Unused Storage*. All storage assigned to and rented from the Rental Pool, but not put to beneficial use by January 31 of the year following the accounting year in which the storage was assigned to the Rental Pool, shall revert to the assignor unless the assignor executes a written extension and the extension is granted by the Committee; provided, however, any extension granted by the Committee shall not extend beyond March 1.

5.6 **Payment to Assignors.**

5.6.101 *Amount of Payment*. Payment to assignor will be made only if the storage assigned to the Rental Pool is subsequently rented. Assignors shall share pro-rata in the Net Rental Price from the rental of storage assigned on or before July 1 and shall receive one-hundred percent of the Net Rental Price from the rental of such storage assigned after July 1 based on a first-in-first-out basis.

5.6.102 *Calculation of Payment*. The Watermaster will calculate the payment due each assignor based on data published in the Annual Report of the Watermaster showing the actual quantity of storage rented from the Rental Pool.

5.6.103 *Timing of Payment*. Payments to assignors shall be due and payable after the Watermaster has calculated the payments under Rule 5.6.102 and after the final water accounting for the accounting year is completed by the watermaster.

**RULE 6.0 RENTAL OF STORAGE FROM THE RENTAL POOL**

6.1 **Priority of Rental Applicants.** Storage rented from the Rental Pool shall be pursuant to the following priorities:

6.1.101 *First Priority*. On or before June 1, rental of water by spaceholders for irrigation purposes within the District.

6.1.102 *Second Priority*. After June 1 through July 15, rental of water for irrigation purposes within the District and up to 500 acre-feet for all other beneficial purposes within the District upstream of Lucky Peak Dam.

6.1.103 *Third Priority*. After July 15, rental of water for irrigation and all other beneficial purposes.

6.1.104 *Sub-priorities*. Priorities among rental applicants within each of the three priority groups, identified above, shall be determined based on the date the rental application is accepted by the Watermaster pursuant to Rule 4.4; provided, however, during periods of drought or other extraordinary circumstances, the Committee may develop additional or alternative procedures for determining

sub-priorities among competing rental applications.

- 6.2 **Rental Price.** The Rental Price per acre-foot (af) of storage rented from the Rental Pool is \$20.00.
- 6.3 **Out-of-Basin Rentals.** Storage rented for use outside the hydrologic basin of the Boise River or below the confluence of the Boise River and Snake River shall subject the space from which the storage was rented to last to fill in the ensuing accounting year.
- 6.4 **Rentals for Greater than Five (5) Years.** Applications to rent water from the Rental Pool for a period of more than five (5) years shall be submitted to the Board, and separately to Reclamation, for review and approval as a condition of approval by the Committee.
- 6.5 **Arbitrage.** A spaceholder may not assign storage and rent storage in the same accounting year, unless an exception is granted by the Committee.
- 6.6 **Flow Augmentation.** Notwithstanding the foregoing provisions, Reclamation may assign and rent storage held in uncontracted space for flow augmentation purposes pursuant to the provisions contained in the Snake River Water Rights Agreement of 2004 (aka the Nez Perce Mediator's Term Sheet dated April 20, 2004) and Idaho Code § 42-1763B, in which case only an administrative fee shall be assessed pursuant to Rule 2.2.

# EXHIBIT D

**WATER DISTRICT 1**

**2023 RENTAL POOL PROCEDURES**

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**2023**  
**WATER DISTRICT 1**  
**RENTAL POOL PROCEDURES**

**PROCEDURE 1.0      LEGAL AUTHORITY**

- 1.1      These procedures have been adopted by the Water District 1 Committee of Nine pursuant to Idaho Code § 42-1765.
- 1.2      These procedures shall not be interpreted to limit the authority of the Idaho Department of Water Resources, the Idaho Water Resource Board, or the Watermaster of Water District 1 in discharging their duties as prescribed by statute or rule.
- 1.3      These procedures shall be interpreted consistent with Idaho Code, rules promulgated by the Idaho Water Resource Board, relevant provisions of spaceholder contracts with the United States, and the Mediator's Term Sheet of the 2004 Snake River Water Rights Agreement.
- 1.4      The operation of the rental pool shall in no way recognize any obligation to maintain flows below Milner or to assure minimum stream flows at the United States Geological Survey (USGS) gaging station on the Snake River near Murphy.
- 1.5      These procedures shall not be interpreted in any manner that is inconsistent with or would adversely impact or effect the rights of the Shoshone-Bannock Tribes as set out in the Fort Hall Agreement, the Blackfoot River Equitable Adjustment Settlement Agreement, and the 2015 Settlement Agreement between the Tribes and the Committee of Nine.

**PROCEDURE 2.0      DEFINITIONS**

- 2.1      **Accounting Year:** the Water District 1 accounting year that begins on December 1 and ends on November 30.
- 2.2      **Acre-foot:** a volume of water sufficient to cover one acre of land one foot deep and is equal to 43,560 cubic feet.
- 2.3      **Administrative Fee:** a fee per acre-foot assessed on the total quantity of storage set forth in any rental or lease application, disbursed to the District at the end of the irrigation season.
- 2.4      **Allocation:** the amount of stored water, including carryover that has accrued to a spaceholder's storage space on the date of allocation that is available for the spaceholder's use in the same accounting year.
- 2.5      **Applicant:** a person who files with the Watermaster an application, accompanied by the required fees, to rent or lease storage through the rental pool.
- 2.6      **Assignment:** storage provided by an assignor from the current year's storage allocation for rental through the assignment pool pursuant to Procedure 10.
- 2.7      **Assignment Pool:** storage made available to the Committee through assignor contributions for subsequent rental pursuant to Procedure 10.
- 2.8      **Assignor:** a participant who assigns storage to the assignment pool pursuant to Procedure 10 and subject to Procedure 7.5.
- 2.9      **Board:** the Idaho Water Resource Board (IWRB).



- 2.10 **Board Surcharge:** a surcharge equal to ten percent (10%) of the rental price or lease price assessed on the total quantity of storage set forth in any rental or lease application, disbursed to the Board at the end of the irrigation season.
- 2.11 **Bureau:** the United States Bureau of Reclamation (USBR).
- 2.12 **Committee:** the Committee of Nine, which is the advisory committee selected by the members of Water District 1 at their annual meeting and appointed as the local committee by the Board pursuant to Idaho Code § 42-1765.
- 2.13 **Common Pool:** storage made available to the Committee through participant contributions for subsequent rental pursuant to Procedure 5.
- 2.14 **Date of Allocation:** the date determined each year by the Watermaster on which the maximum accrual to reservoir spaceholders occurs.
- 2.15 **Date of Publication:** the date on which the Watermaster publishes on the District website the storage allocation for the current accounting year.
- 2.16 **Department:** the Idaho Department of Water Resources (IDWR).
- 2.17 **District:** The District is comprised of the Snake River and tributaries with Basins 01, 21, 22, 23, and 25 points of diversion.
- 2.19 **Impact Fund:** a fund maintained by the Watermaster for the mitigation of computed impacts to participants pursuant to 2021 rental pool procedures.
- 2.18 **Extraordinary Circumstances Pool:** Storage made available to the Committee through participant consignments for subsequent rental pursuant to Procedure 11.
- 2.20 **Infrastructure Fund:** a fund maintained by the Watermaster for the purposes outlined in Procedure 4.5.
- 2.21 **Lease:** a written agreement entered into between a lessor and lessee to lease storage through the rental pool pursuant to Procedure 6.
- 2.22 **Lease Price:** a price per acre-foot negotiated between a lessor and lessee as set forth in a lease agreement.
- 2.23 **Lessee:** a person who leases storage from a participant under a lease.
- 2.24 **Lessor:** a participant who leases storage to a person under a lease pursuant to Procedure 6 and subject to Procedure 7.5.
- 2.25 **Milner:** Milner Dam on the Snake River.
- 2.26 **Milner Spill:** water in excess to the amount that is captured in the reservoir system flowing past Milner Dam that is not storage being delivered under Idaho Power's American Falls storage water right or other storage that is otherwise authorized pursuant to these rules.
- 2.27 **Net Price:** the average price per acre-foot of all rentals from the common pool or assignment pool, including flow augmentation.

- 2.28 **Net Proceeds:** the net price times the number of acre-feet rented from the common pool or assignment pool.
- 2.29 **Participant:** a spaceholder who contributes storage to the common pool pursuant to Procedure 5.2.
- 2.30 **Participant Contributions:** storage made available to the common pool by participants, with computed impacts accounted from next year's reservoir fill, which forms the supply for large rentals, small rentals, and flow augmentation pursuant to Table 1, subject to the limitations in Procedure 5.2.
- 2.31 **Person:** an individual, corporation, partnership, irrigation district, canal company, political subdivision, or governmental agency.
- 2.32 **Rent:** the rental of storage from the common pool, supplemental pool, or assignment pool.
- 2.33 **Rental Pool:** the processes established by these procedures for the rental and/or lease of storage, mitigation of computed impacts to spaceholders, and disposition of revenues.
- 2.34 **Rental Pool Subcommittee:** a subcommittee composed of the Watermaster (advisor), a designated representative from the Bureau (advisor), and three or more members or alternates of the Committee who have been appointed by the chairman of the Committee.
- 2.35 **Rental Price:** the price per acre-foot of storage rented from the common pool, supplemental pool, or assignment pool, as set forth in Procedures 5.3, 8.0, and 10.7, excluding the administrative fee and Board surcharge.
- 2.36 **Renter:** a person who rents storage from the common pool, supplemental pool, or assignment pool.
- 2.37 **Reservoir System:** refers to American Falls, Grassy Lake, Henrys Lake, Island Park, Jackson Lake, Lake Walcott, Milner Pool, Palisades, and Ririe.
- 2.38 **Space:** the active capacity of a reservoir measured in acre-feet.
- 2.39 **Spaceholder:** the holder of the contractual right to the water stored in the space of a storage facility within the Reservoir System.
- 2.40 **Storage:** the portion of the available space that contains stored water.
- 2.41 **Supplemental Pool:** storage made available to the Committee through participant consignments for subsequent rental pursuant to Procedure 8.
- 2.42 **Watermaster:** the watermaster of Water District 1.
- 2.43 **Water Supply Forecast:** the forecasted unregulated runoff for April 1 to September 30 at the Heise USGS gaging station, referred to in Table 1.

### **PROCEDURE 3.0    PURPOSES**

- 3.1     The primary purpose of the rental pool is to provide supplemental irrigation water to spaceholders for the irrigation of District land with an existing primary irrigation water right and to maintain a rental pool with sufficient incentives such that spaceholders supply, on a voluntary basis, an adequate quantity of storage for rental or lease pursuant to procedures established by the Committee. These procedures are intended to: a) assure that participants have priority over non-participating spaceholders and non-spaceholders in renting storage through the rental pool; b) assure that non-participating spaceholders are not impacted; and c) rentals occurring through the assignment pool and supplemental pool do not impact other spaceholders .
- 3.2     To maintain adequate controls, priorities, and safeguards to insure that existing water rights are not injured and that a spaceholder's allocation is not impacted without his or her consent. To financially compensate an impacted participating spaceholder in the common pool as determined by the procedures developed by the District.
- 3.3     To provide storage water at no cost under Procedure 5.0 for the benefit of the Tribes consistent with the terms of the Blackfoot River Equitable Adjustment Settlement Agreement and the 2015 Settlement Agreement. Discussions are ongoing to identify the party responsible for mitigating impacts to the Tribes. Nothing in these Procedures should be construed as an admission of liability by Water District 1 or the Committee of Nine.
- 3.4     To prevent further declines in the Eastern Snake Plain Aquifer and tributary spring flows and reach gains, and to ensure new consumptive uses within the District do not further impact the storage supply and the primary purpose of the rental pool as described in Procedure 3.1, the following shall apply:
  - 3.4.101    A moratorium on all private leases, assignment and common pool rentals that deliver water to new lands or mitigate for diversion of water on new lands, except when:
    - (a) a water right was legally delivered to the lands from any source prior to 2019; or
    - (b) contracted storage water was delivered by the District prior to 2019 for mitigation for the use of water on new lands; or
    - (c) rented storage water was delivered to the lands from the District within the last 5 years.The moratorium also prohibits rentals for delivery to lands or providing mitigation for lands where a water right or storage use was transferred off said lands, inside or outside the District.
  - 3.4.102    The following exceptions apply to the above moratorium:
    - (a) Small rentals under Procedure 5.2.103;
    - (b) Domestic, commercial, municipal, and industrial uses authorized pursuant to a decreed or licensed storage water right and spaceholder contract; and
    - (c) Land that subsequent to the adoption of Procedure 3.4, is authorized for irrigation purposes under a water organization project's owned water right and other provisions of state law.

- 3.4.103 All private lessees or rental pool applicants shall certify that the respective private lease or rental pool application complies with the requirements set forth above. Lessees and Applicants that have had prior leases or rentals approved prior to 2019 that would otherwise be prohibited by this rule may present such information to the Watermaster and Committee to show why such lease or application should be approved. Further, the Watermaster and any spaceholder may raise any issues derived from this moratorium in regards to any private lease or rental application which shall be resolved by the Committee.

#### **PROCEDURE 4.0 MANAGEMENT**

- 4.1 **Manager.** The Watermaster shall serve as the manager of the rental pool and shall administer the rental pool consistent with these procedures, which include, but are not limited to:
- (a) Determining impacts pursuant to Procedure 7;
  - (b) Calculating payments to participating spaceholders as prescribed by Procedures 5.2 and 7.3;
  - (c) Accepting storage into the common pool, assignment pool, and executing rental agreements on behalf of the Committee;
  - (d) Disbursing and investing rental pool monies with the advice and consent of the Rental Pool Subcommittee; and
  - (e) Taking such additional actions as may be directed by the Committee.
- 4.2 **Rental Pool Subcommittee.** The Rental Pool Subcommittee shall exercise the following general responsibilities:
- (a) Review these procedures and, as appropriate, make recommendations to the Committee for needed changes;
  - (b) Review reports from the Watermaster regarding rental applications, storage assignments to the assignment pool, and leases of storage through private leases;
  - (c) Advise the Committee regarding rental pool activities;
  - (d) Develop recommendations for annual common pool storage supplies and rental rates;
  - (e) Assist the Watermaster in resolving disputes that may arise from the diversion of excess storage; and
  - (f) Assume such additional responsibilities as may be assigned by the Committee.
- 4.3 **Applications**
- 4.3.101 Applications to rent or lease storage through the rental pool shall be made each year upon forms approved by the Watermaster and shall include:
- (a) The amount of storage sought to be rented or leased;
  - (b) The purpose(s) for which the storage will be put to beneficial use;
  - (c) The lease price (for private leases);
  - (d) To the extent practicable at the time of filing the application, the point of diversion identified by legal description and common name; and a description of the place of use; and
  - (e) Certification that the rental or lease is not subject to moratorium under Procedure 3.4 above.
- 4.3.102 *Application Acceptance.* Applications are not deemed accepted until received by the Watermaster together with the appropriate fees required under Procedures 5.3 and 10.7 (rentals) or 6.4 (leases).

- 4.3.103 *Application Approval.* An application accepted under Procedure 4.3.102 shall be approved after the Watermaster has determined that the application is in compliance with these procedures and sufficient storage will be available from the common pool, assignment pool, and/or lessor to provide the quantity requested in the application. Upon approval of the application, the Watermaster shall send notice to the renter/lessor/lessee and entity owning the point of diversion designated in the application of such approval and allocation of storage; provided, however, no allocation of storage shall be made until the applicant designates the point of diversion and place of use of the rented and/or leased storage in the application or pursuant to Procedure 4.3.106.
- 4.3.104 *Deadline for Accepting Applications to Rent or Lease Storage.* All applications to rent or lease storage must be accepted by the Watermaster pursuant to Procedure 4.3.102 on or before November 30. Applications accepted after November 30 will be accounted for from storage supplies in the following calendar year, unless an exception is granted by the Rental Pool Subcommittee.
- 4.3.105 *Deadline to Designate Point of Diversion and Place of Use.* If the point of diversion and/or place of use of the rented and/or leased storage was not previously designated in the application, the renter and/or lessee must make such designation in writing to the Watermaster on or before November 30 of the same year, unless an extension is granted by the Rental Pool Subcommittee. Failure to comply with this provision shall cause any unused storage to automatically revert back to the common pool, assignment pool, and/or lessor, respectively.
- 4.3.106 *Deadline to Use Rental or Lease Storage.* Approved applications pursuant to Procedure 4.3 or water leased through a private lease, must be used and diverted on or before November 30 of the same year.
- 4.3.107 *Reporting Requirements for Leases and Assignments to Points of Diversion on Sources Not Regulated by the Water District #1 Watermaster.* To keep Water District #1 assessments, administrative fees, and regulation costs to a minimum, approved rental leases and assignments to points of diversion on sources not regulated by Water District #1 (e.g. Portneuf River, Wood River, Silver Creek, etc.) must have their daily cfs or acre-feet of rental diversions measured by the watermaster of the water district containing the points of diversion receiving the rental storage and then reported by the watermaster of that district to the Water District #1 Watermaster by November 30 of the year storage is rented. Daily diversion reports from individual renters in water districts other than Water District #1 will not be accepted by the Water District #1 Watermaster. Failure of the watermasters in other districts to report to the Water District #1 Watermaster the daily rental storage deliveries within their district by November 30 will result in the rental pool storage not being delivered in the Water District #1 final water right accounting. No refunds for rental prices or fees will be issued to lessors, lessees, or renters when daily deliveries are not reported by the watermaster responsible for the regulation of the points of diversion or re-diversion on the source rental storage is being injected or exchanged with sources from Water District #1.

#### 4.4 **Rental Pool Account**

4.4.101 All monies submitted by applicants shall be deposited in an interest-bearing account known as the “Rental Pool Account” and maintained by the Watermaster on behalf of the Committee. Monies in the Rental Pool Account will be disbursed to participants, the District, and the Board in the proportions set forth in these Procedures. Rental Pool Funds shall be considered public funds for investment purposes and subject to the Public Depository Law, Chapter 1, Title 57, Idaho Code.

4.4.102 Monies deposited in the Rental Pool Account are non-refundable to the extent the rental and/or lease application is approved pursuant to Procedure 4.3.103, regardless of whether the storage is used.

#### 4.5 **Infrastructure Fund**

4.5.101 Monies in the Infrastructure Fund may only be used to fund District costs of projects relating to improvements to the District’s distribution, monitoring, and gaging facilities, and other District projects designed to assist in the adjudication, which includes the cost of Blackfoot River Equitable Adjustment Settlement Water, if any is required, conservation, or efficient distribution of water.

4.5.102 Disbursements from the Infrastructure Fund are subject to two-thirds (2/3) Committee approval.

4.5.103 Monies in the Infrastructure Fund may be carried over from year to year.

4.6 **Diversions not Regulated by the District.** Water District #1 and/or its spaceholders will not accept responsibility or liability for any interference to natural flow or storage deliveries that result from rentals or leases to diversions within other water districts.

### **PROCEDURE 5.0 COMMON POOL**

5.1 **Scope.** The common pool consists of storage made available to the Committee through participant contributions. Participants make all of their storage available to the common pool pursuant to the terms of Procedure 5.2, with computed impacts accounted from next year’s reservoir fill.

#### 5.2 **Participant Contributions**

5.2.101 *Participants.* Any spaceholder may, upon submitting written notice to the Watermaster prior to March 15 of the current year elect to contribute storage to the current year’s common pool rentals to be deducted from the spaceholders subsequent year’s storage allocation when excess water does not spill past Milner in the subsequent year. Any spaceholder making such election shall be deemed a “participant” for the current year and every year thereafter until the spaceholder provides written notice to the Watermaster prior to March 15 of the year common pool rentals are purchased, rescinding its participation. Participants choosing to rescind their participation by the March 15 deadline shall receive their proportional share of the previous year’s common pool proceeds after having their current year’s storage allocation reduced to supply those previous year’s common pool rentals but shall cease receiving reductions to their future years’ storage allocations to supply common pool rentals and cease receiving common pool rental payments in future years following the rescindment. Upon election from a previous non-participant to begin participation, the new participant is eligible for all the benefits of a participant set forth in these procedures, excluding monetary payment associated with common pool rentals purchased in the year prior to participation election. If after March 15 less than seventy-five percent (75%) of the contracted storage space is committed to the common pool by participants, the Committee may revise the rental pool procedures as necessary prior to April 1.

- 5.2.102 *Non-Participants.* Spaceholders who are not participants shall not be entitled to supply storage to, or rent storage from, the common pool. Notwithstanding this restriction, the Bureau may rent flow augmentation water from the common pool in the amounts identified in Procedure 5.2.104.
- 5.2.103 *Small Rentals.* The common pool will make available from participant contributions 5,000 acre-feet for rentals of 100 acre-feet or less per point of diversion for diversions regulated by the Water District #1 Watermaster, subject to the priorities and limitations set forth in Rule 5. Rentals from the small pool shall only be considered for approval following submittal of written consent from the operator of the delivery system. The Committee may approve on a case-by-case basis the additional rental of storage under this provision to exceed the 100 acre-feet limitation. Small Rentals for recharge purposes are prohibited. Small Rentals shall be approved in the same order the rental applications are received by the watermaster beginning on April 5 of the year in which the storage is to be used.
- 5.2.104 *Flow Augmentation.* The amount of storage, from participant contributions to the common pool, available for rental for flow augmentation shall be determined by Table 1 shown in the Appendix of these procedures.
- 5.2.105 *Shoshone-Bannock Tribes.* The Tribes shall be treated as non-participants unless written notice is provided by the Tribes under Procedure 5.2.101.
- (a) *Blackfoot River Equitable Adjustment Settlement Agreement Water.* Storage water not to exceed 20,000 acre-feet shall be made available in accordance with the terms of the Blackfoot River Equitable Adjustment Settlement Agreement. The source and funding of the storage water shall be determined by the Committee at its June meeting. Administrative fees shall be paid by Water District 1.
- (b) *2015 Settlement Agreement.* Storage water not to exceed 10,000 acre-feet (except with the approval of the Committee of Nine) shall be made available in accordance with the terms of the 2015 Settlement Agreement from the current year's Common Pool. Administrative fees shall be paid by Water District 1. Discussions are ongoing to identify the party responsible for mitigating impacts to the Tribes. Nothing in these Procedures should be construed as an admission of liability by Water District 1 or the Committee of Nine.
- 5.2.106 *Supply Sources.* Common pool storage shall be deducted proportionally from all participants' storage allocations in the year following when the storage was used. If Milner Spill occurs between years, no deduction is necessary.
- 5.2.107 *Participant Payments.* Monies collected through the rental of the participant contribution portion of the common pool, including flow augmentation, shall be disbursed based on the amount each participant is reduced pursuant to Procedure 5.2.106. In years where no reduction is necessary due to Milner Spill, all monies collected shall be disbursed proportionally based on participant space. Payments will be made to participants within two weeks of the date of publication unless payment is less than \$5.00. Payments less than \$5.00 shall be applied as a credit to the participant's payment in the following year.

5.3 **Rental Prices**

- 5.3.101 *Tier 1:* If the storage system fills, the rental price for purposes above Milner shall be \$7.00 per acre-foot.
- 5.3.102 *Tier 2:* If the storage system does not fill but storage is provided for flow augmentation pursuant to Procedure 5.2.104, the rental price for purposes above Milner shall be \$17.00 per acre-foot.
- 5.3.103 *Tier 3:* If the storage system does not fill and no flow augmentation water is provided pursuant to Procedure 5.2.104, the rental price for purposes above Milner shall be \$25.00 per acre-foot.
- 5.3.104 *Determination of Tier1, 2 or 3 Rental Price:* Unless the storage system has filled, the Watermaster shall designate on or before April 5 either Tier 2 or Tier 3 as the rental price for above-Milner rentals. If at any time during the same accounting year, the storage system should subsequently fill, the Watermaster shall designate Tier 1 as the rental price for above-Milner rentals and refund any excess rental fees within 30 days after the date of publication.
- 5.3.105 *Tier 4:* The rental price for storage rented from for flow augmentation shall be \$19.73 per acre-foot.



5.3.106 *Fees & Surcharges.* There shall be added to the rental price for all rentals the Board surcharge and administrative fee, resulting in the following summed amounts charged for common pool rentals for the various tiers described in Procedures 5.3.101 through 5.3.105:

- (a) Tier 1: \$7.00 + \$0.70 + \$1.30 = \$9.00
- (b) Tier 2: \$17.00 + \$1.70 + \$1.30 = \$20.00
- (c) Tier 3: \$25.00 + \$2.50 + \$1.30 = \$28.80
- (d) Tier 4: \$19.73 + \$1.97 + \$1.30 = \$23.00

5.3.107 *Storage System Fill.* For purposes of Procedure 5.3 only, the storage system is considered full when all storage rights are filled in Jackson Lake, Palisades (except for powerhead), American Falls, and Island Park

5.4 **Limitations.** A participant cannot rent water from the Common Pool if the participant is replacing storage space or water which has been evacuated due to an assignment to or private lease through the Water District 1 Rental Pool, unless an exception is granted by the Committee.

## **PROCEDURE 6.0 PRIVATE LEASES**

6.1 **General.** All leases must be transacted through the rental pool. Only participants may lease storage to a Lessee subject to the provisions of these procedures, and non-participating spaceholders may not lease storage from participants.

6.2 **Purposes.** Storage may be leased through the rental pool only for beneficial use purposes above Milner. A participant may not lease storage to a lessee and rent storage from the common pool in the same accounting year unless an exception is granted by the Rental Pool Subcommittee.

6.3 **Payment to Lessor.** The lessor shall receive one-hundred percent (100%) of the lease price.

6.4 **Fees & Surcharges.** There shall be added to the lease price the administrative fee and the Board surcharge.

6.5 **Non-Applicability to Common Pool.** Storage leased pursuant to this procedure does not count against the participant contribution volumes set forth in Procedure 5.2.

6.6 **Recharge.** All storage used for the purpose of recharge must be transacted through the rental pool. Unless storage is rented pursuant to Procedures 5.0 or 10.0, storage used for recharge, whether diverted by the storage spaceholder or another person, will be treated as a lease of storage.

6.7 **Idaho Water Resource Board (IWRB) Storage.** Notwithstanding the limitations set forth in Procedures 6.1 and 6.2, the IWRB may lease its existing storage (up to 5,000 acre-feet) to Idaho Power and have it released past Milner for the purpose of mitigating minimum flows at Murphy. The administrative fee must be paid by the IWRB for any storage used for such purpose.

6.8 **Lease of Storage from Bureau Uncontracted Space.** Notwithstanding the limitations set forth in Procedures 6.1 and 6.2, the Bureau may lease storage from its uncontracted space for flow augmentation as identified in Appendix III of the – Mediator’s Term Sheet of the 2004 Snake River Water Rights Agreement.

- 6.9 **Lease of Storage from Bureau Powerhead Space.** Notwithstanding the limitations set forth in Procedures 6.1 and 6.2, the Bureau may lease storage from its powerhead space for flow augmentation as identified in III.C.7 of the Mediator's Term Sheet of the 2004 Snake River Water Rights Agreement.

## **PROCEDURE 7.0 IMPACTS**

- 7.1 **Determination.** In any year in which the storage rights in the reservoir system do not fill, the Watermaster will determine the actual computed impacts to spaceholders, if any, associated with the prior year's rentals and leases. In making this determination, the Watermaster will use a procedure which identifies the following:
- (a) What each computed reservoir fill would have been had the previous year's rentals and leases not taken place;
  - (b) The storage space from which rented or leased storage was actually supplied for the previous year's rental or lease; and
  - (c) The amount of storage each spaceholder's current allocation was reduced by the previous year's rental or lease activities.
- 7.2 **Milner Spill.** There are no computed impacts resulting from the previous and current year's rentals or leases used prior to Milner spill ceasing when the use of those rentals or leases result in reducing the spill from the reservoir system prior to the current year's Date of Allocation, as determined by the Watermaster.
- 7.3 **Impacts to Spaceholders resulting from all common pool, private leases, assignments, supplemental pool, and extraordinary circumstances pool rentals.** To avoid impacts to spaceholders caused by rental pool storage provided under Procedures 5, 6, 8, 9.3, 10, and 11 in years when storage is not spilled past Milner, the supplying spaceholder's storage allocation shall be reduced to ensure all other reservoir space receives a 100% fill to its storage allocation ahead of allocations to space evacuated to supply previous year leases, assignments, and rentals. If the amount of storage in the reservoir system exceeds the amount necessary to allocate 100% fill to space that wasn't evacuated to supply leases, assignments, and rentals but is insufficient to allocate 100% fill to all system spaceholders, allocations to lessors', assignors', and other space shall occur in the following priorities:
- (a) Storage supplied under Procedure 5. This reallocation will only occur in the year following the supply of storage.
  - (b) Assigned rental under Procedure 10.0, extraordinary circumstances rental under Procedure 11.0, private leases above Milner under Procedure 6.0, and IWRB storage used for mitigating minimum flows at Murphy under Procedure 6.7. This reallocation will only occur in the year following the lease of storage.
  - (c) Bureau uncontracted storage under Procedure 6.8 until the lessor's affected space fills.
  - (d) Supplemental Pool leases under Procedure 8.0 until the lessor's affected space refills.
  - (e) Bureau Powerhead storage under Procedure 6.9 shall be the last space to refill after all other space in reservoirs in Water District 1 until the lessor's affected space fills as identified in III.C.7.c. of the Mediator's Term Sheet of the 2004 Snake River Water Rights Agreement.
- 7.4 **Impacts to non-participants resulting from common pool rentals.** To avoid impacts to non-participant storage allocations caused by rental pool storage provided under Procedure 5 in years when storage is not spilled past Milner, the supplying participant's storage allocation shall be reduced to ensure all other reservoir space receives a 100% fill to its storage allocation ahead of allocations to space evacuated to supply common pool rentals.

## **PROCEDURE 8.0. SUPPLEMENTAL POOL**

- 8.1 **Purpose.** To provide a voluntary mechanism for the lease of storage water to a participant below Milner for hydropower generation within the state of Idaho when storage water supplies, as a result of hydrologic, climate and other conditions, are sufficient to satisfy above Milner uses and Water District 01 commitments for flow augmentation. A supplemental pool shall be created in order to mitigate for computed impacts associated with leases below Milner, consistent with the Idaho Water Resource Board's policy to establish an effective water marketing system consistent with state law and assuring the protection of existing water rights while accommodating the purchase, lease or conveyance of water for use at Idaho Power's hydroelectric facilities, including below Milner Dam.
- 8.2 **Annual Authorization.** In order to provide the opportunity to lease water to generate funding of aging infrastructure projects without impacting individual spaceholder fill, storage may be leased through the Supplemental Pool for the purposes described herein. However, no storage may be leased through the supplemental pool until the Committee on or after April 1 of each year authorizes use of the pool and the Committee is satisfied that the goals and terms of the Mediator's Term Sheet of the 2004 Snake River Water Rights Agreement are met to provide sufficient flow augmentation supplies for the year or that storage to be released past Milner will count toward flow augmentation.
- (a) Mitigation Inc. shall have the right to lease up to the first 10,000 ac-ft of supplemental pool storage under Procedure 8.0, as approved annually by the Committee. Mitigation Inc. shall provide to the Committee a report summarizing the expenditure of revenue from the annual lease(s) by December 31, 2023. If the Committee determines that the preference granted Mitigation Inc. is no longer justified, the Committee may terminate said preference. The preference granted Mitigation Inc. pursuant to this Procedure shall sunset on December 31, 2029. The 10,000 ac-ft preference shall only be applied once per year.
- (b) Additional leases of storage in excess of the amount provided in Procedure 8.2(a) may be authorized annually by the Committee pursuant to Procedure 8.0. Mitigation Inc. shall be permitted to supply a pro-rata share of any additional amount made available to the supplemental pool exceeding the initial 10,000 ac-ft in Procedure 8.2(a). If Mitigation Inc. does not supply storage pursuant to Procedure 8.2(a), Mitigation Inc. shall be permitted to supply a pro-rata share of its storage to the supplemental pool along with other spaceholders supplying storage to the supplemental pool.
- 8.3 **Quantity and Price Determinations.**
- 8.3.101 The maximum quantity of storage authorized to be leased through the supplemental pool shall be determined annually by the Committee taking into account the advice and recommendation of the Rental Pool Subcommittee, together with current and forecasted hydrological conditions and estimated demand on the rental pool for above Milner uses.
- 8.3.102 *Price Determination.* The Committee shall authorize the leasing of water, including price pursuant to Rule Procedure 8 after taking into account spaceholder needs and current market conditions for power generation. There shall be added to the rental price the board surcharge and a \$1.50 per acre-foot administrative fee associated with the development and implementation of the supplemental pool, assessed on the total quantity of storage set forth in any lease application approved or conditionally approved under Procedure 8.4.

8.3.103 *Subsequent Quantity and Price Determinations.* If within the same accounting year, the Committee subsequently determines based on the criteria set forth in Procedure 8.3.101 that additional opportunities exist for utilizing the use of water within Idaho through the supplemental pool consistent with Procedure 8.1, it shall designate such additional maximum quantity authorized to be leased through the supplemental pool and identify a separate lease price for such additional quantity pursuant to Procedure 8.3.102.

8.4 **Application to Lease Storage from the Supplemental Pool.**

8.4.101 Applications to lease storage from the supplemental pool for hydropower purposes shall be made upon forms approved by the Watermaster and shall include:

- (a) The amount of storage sought to be rented;
- (b) The rental price with associated fees as identified by the Committee under Procedure 8.3.102; and
- (c) The deadline for the Applicant to receive delivery of water through the Supplemental Pool.

8.4.102 *Application Acceptance.* Applications are not deemed accepted until received by the Watermaster together with the appropriate fees required under Procedure 8.4.101.

8.4.103 *Application Approval.* An application accepted under Procedure 8.4.102 shall be approved after the Watermaster has determined that the application is in compliance with these procedures and sufficient storage will be available from the supplemental pool to provide the quantity requested in the application; provided, however, if the date of publication has not yet occurred, approval of the application shall be conditioned on the ability of spaceholders who have contracted to rent storage through the supplemental pool to have a sufficient storage allocation during the accounting year to satisfy their contracts approved under Procedure 8.5.104. Upon approval or conditional approval of the application, the fees collected from the applicant shall be non-refundable to the extent of the total quantity of storage approved or conditionally approved in supplemental pool lease contract(s) under Procedure 8.5.104. The Watermaster shall provide notice of such approval.

8.4.104 *Deadline for Accepting Applications.* All applications to rent storage from the supplemental pool must be accepted by the Watermaster pursuant to Procedure 8.4.102 not later than November 30 in order for the storage identified in such applications to be accounted for as having been diverted as of November 30 of the same year. Applications accepted after November 30 will be accounted for from storage supplies in the following calendar year, unless an exception is granted by the Rental Pool Subcommittee.

8.5 **Supplemental Pool Supply.**

- 8.5.101 *Notice to Spaceholders of Opportunity to Consign Storage through the Supplemental Pool.* The Watermaster shall provide notice of the supplemental pool on the Water District 1 website, which shall include the following information:
- (a) The maximum quantity of storage authorized to be rented through the supplemental pool;
  - (b) The rental process, including price and deadlines as authorized by the Committee;
  - (c) Instructions for spaceholders interested in consigning storage through the supplemental pool, including instructions for executing a standardized supplemental pool rental contract; and
  - (d) The deadline, as set by the Committee, for the Watermaster to receive supplemental pool rental contracts from spaceholders interested in consigning storage through the supplemental pool.
- 8.5.102 *Supplemental Pool Rental Contracts.* Spaceholders interested in consigning storage through the supplemental pool shall execute a standardized supplemental pool rental contract, which shall be provided by the Watermaster and include provisions for the following:
- (a) Limit eligibility to consign storage through the supplemental pool only to spaceholders who qualify as participants under Procedure 2.29;
  - (b) The quantity sought to be consigned by the spaceholder may be any amount, except that the total amount of storage consigned pursuant to Procedure 8 may not exceed either the maximum quantity set by the Committee under Procedure 8.3.101 or 10% of the spaceholder's total reservoir system space, unless an exception is approved by the Rental Pool Subcommittee;
  - (c) The 10% limitation described in 8.5.102(b) does not apply to the first 10,000 ac-ft supplied by Mitigation Inc. under Procedure 8.2(a);
  - (d) The quantity actually consigned by the spaceholder may be reduced depending upon the number of spaceholders who elect to consign storage through the supplemental pool as provided in Procedure 8.5.103;
  - (e) That, in the event the spaceholder elects to sign a standard pool rental contract before the date of publication, the spaceholder assumes the risk that its storage allocation may be less than the spaceholder anticipated; and
  - (f) Notice to the spaceholder that if the spaceholder's consignment through the supplemental pool causes computed impacts, the mitigation required under Procedure 8.7 will result in an amount of the spaceholder's space, not to exceed the quantity of storage consigned by the spaceholder, being assigned a junior priority which may not fill for multiple consecutive years, an accounting commonly referred to as "last to fill."
- 8.5.103 *Distribution of Storage to the Supplemental Pool.* If, following the deadline for receipt of executed supplemental pool rental contracts, the Watermaster determines that the total quantity of storage sought to be consigned through the supplemental pool exceeds the quantity limitation established under Procedure 8.3, then the Watermaster shall reduce the quantity of each supplemental pool rental contract to a pro rata share based on the amount of storage sought to be consigned by each spaceholder. The Watermaster shall amend the supplemental pool rental contract(s) to reflect any reduced quantity required by this provision.
- 8.5.104 *Rental Contract Approval.* Following receipt of a supplemental pool rental contract, the Watermaster shall determine whether the contract is in compliance with these procedures, and, if so, shall approve the same; provided, however, if the date of publication has not yet occurred, approval of the contract shall be conditioned on the spaceholder having a sufficient storage allocation during the accounting year to satisfy the contract.

- 8.6 **Notice of Contract Approval and Payment to Consignors.** The consignors shall receive one-hundred percent (100%) of the lease price apportioned according to the quantity of storage each spaceholder consigned through the supplemental pool. The Watermaster shall notify spaceholder(s) who submitted supplemental pool rental contracts of the approved amount and distribute the funds to the lessors within 30 days following approval or conditional approval of an application under Procedure 8.4.103 and rental contract approved under Procedure 8.5.104.
- 8.7 **November 1 Carryover Unaffected.** For purposes of determining the amount of storage available for flow augmentation under Procedure 5.2.104, storage leased through the supplemental pool shall not affect the November 1 carryover quantity on Table 1.

**PROCEDURE 9.0 STORAGE ALLOCATED TO PALISADES WATER USERS, INC. (PWUI)**

- 9.1 **Background and Purpose.** PWUI is an entity originally organized at the specific request of the Bureau to group, under one entity, all individual water users who applied for an allocation of Palisades Reservoir storage because Reclamation's policy at that time was that it would not enter into repayment contracts with individual water users. PWUI does not own natural flow water rights, has no designated service area, and does not own a water delivery system. Instead, PWUI shareholders call for delivery of water allocated to their shares through their own delivery systems or the systems of other irrigation entities and have historically been able to change the location of PWUI storage deliveries upon simple notification to the District. The shares do not describe specific property where storage allocated to such shares are used. One share of PWUI stock is equivalent to one acre-foot of PWUI space in Palisades Reservoir, and allocations of water to PWUI shareholders are made upon that basis. The provisions of Procedure 9.0 are included herein to clarify, between PWUI and the District, how to properly categorize the delivery of PWUI storage to various points of delivery.
- 9.2 **Delivery of PWUI Storage Water.** Storage allocated to PWUI shares shall not be considered a private lease under Procedure 7.5 in the following circumstances:
- 9.2.101 The delivery of storage to an irrigation delivery system where the PWUI shareholder has an ownership interest or leasehold interest in property capable of receiving delivery of water through such system.
  - 9.2.102 The delivery of storage allocated to a PWUI shareholder which is assigned to another PWUI shareholder for an amount up to the assignee's unfilled PWUI allocation for the Accounting Year.
  - 9.2.103 The delivery of storage allocated to PWUI's treasury stock provided to a PWUI shareholder.
- 9.3 **Private Leases of PWUI Storage Water.** Storage allocated to PWUI shares shall be considered a private lease under Procedure 7.5 and subject to impacts under Procedure 7.5 in the following circumstances:
- 9.3.101 The delivery of storage allocated to PWUI's treasury stock provided to a non-PWUI shareholder for any purpose.
  - 9.3.102 The delivery of storage allocated to a PWUI shareholder which is assigned to another PWUI shareholder for an amount more than the assignee's unfilled PWUI allocation for the Accounting Year.
  - 9.3.103 The delivery of storage allocated to a PWUI shareholder provided to a non-PWUI shareholder for any purpose.
  - 9.3.104 The delivery of storage to a PWUI shareholder which is used for recharge.

- 9.4 **Applicability of Procedure 5.5 To PWUI Storage.**
- 9.4.101 Procedure 5.4 shall apply to private leases of PWUI storage described in Procedure 9.3.101.
- 9.4.102 Subject to Procedure 9.4.103, the Committee hereby grants PWUI an exception from the provisions of Procedure 5.4 such that PWUI shall not be prohibited from leasing water from the Common Pool because of private leases by PWUI shareholders under Procedures 9.3.102 through 9.3.104.
- 9.4.103 Water leased from the Common Pool by PWUI under Procedure 9.4.102 shall not be allocated to or used by PWUI shareholders who engage in private leases described under Procedures 9.3.102 through 9.3.104.
- 9.5 **Allocation of Impacts to PWUI.** The allocation of impacts described in Procedure 7.5 of these procedures for private leases described under Procedure 9.3 shall be made to PWUI as the spaceholder. PWUI shall thereafter internally allocate the impacts to the individual PWUI shareholders who participate in private leases described under Procedures 9.3.102 through 9.3.104.
- 9.6 **Information Provided to District.** PWUI shall provide sufficient information to the District to allow the District to verify PWUI's characterization of the assignment of PWUI storage under Procedure 9.0.
- 9.7 **Assignment of PWUI Shares to Canal Headings.** PWUI shareholders shall assign its shares to the canal heading where such PWUI shareholder is most likely to request delivery of storage. Water District 1 shall only account for the delivery of PWUI storage when (1) notified by the PWUI shareholder that such shareholder is taking delivery of storage through a canal; or (2) the manager of a canal reports the delivery of PWUI storage to Water District 1.

## **PROCEDURE 10.0 ASSIGNMENT POOL**

- 10.1 **Purpose.** To provide a voluntary mechanism for participating spaceholders to assign a portion of their storage allocation to be made available for flow augmentation rentals below Milner and also to be made available for other rentals diverted above Milner, including storage rental conveyance and/or exchanges of storage from Water District #1 to other water district diversions that are not regulated by the Water District #1 Watermaster.
- 10.2 **Assignors.** Any participant may assign storage. An assignment of storage shall be made in writing on forms approved by the Watermaster.
- 10.3 **Limitations.** A participant may not assign storage and rent storage from the common pool in the same accounting year unless an exception is granted by the Rental Pool Subcommittee. Non-participating spaceholders may not rent storage from the assignment pool.
- 10.4 **Distribution of Assigned Storage.**
- 10.4.101 *Dates of assignment.* Storage assigned by participants on or before June 1 shall be rented on a pro-rata basis until all such storage assigned by June 1 has been purchased. Storage assigned from June 2 through November 30 shall be rented to purchasers after all storage assigned by June 1 has been rented and shall be distributed in the order assignments are received by the District. For example, all storage assignments received on June 2 shall be rented in their entirety before storage assigned on June 3, and all storage assignments received on June 3 will be rented in their entirety before storage assignments received on June 4, and so on.

10.4.102 *Payment to Assignors.* Each participant assigning storage on or before June 1 shall be paid a pro-rata share of all net proceeds for assignment pool rental until 100% of the storage assigned on or before June 1 has been rented. Each participant assigning storage after June 1 shall receive 100% of the net price for any of their assigned storage rented.

10.4.103 *Rental Approval and Priority.* Applications to purchase assigned storage may be submitted at any time after April 5 but will not be approved until beginning June 2. If total applications exceed total assignments on June 1, applications will be approved according to the following priorities:

(a) *First Priority.* Rental for flow augmentation pursuant to Procedure 10.6.

(b) *Second Priority.* Water users that have purchased rental or leased storage from the Water District #1 Rental Pool for purposes above Milner in years prior to 2019.

(c) *Third Priority.* All other applicants to purchase assigned storage diverted for purposes above Milner.

If the assignment supply is insufficient to satisfy all purchase applications in a priority, applications in that priority shall be approved in the order they were received on or before June 1. Applications to purchase assigned storage received after June 1 will be approved in the order received after all purchase applications received on or before June 1 have been satisfied and remaining assigned storage is available to satisfy purchase applications received after June 1.

10.4.104 *Assignor Payments and Return of Unrented Assignment Storage.* Assignors will be paid the total amount of rental prices collected for assignment rentals. Any unrented assigned storage will be returned to assignors' carryover at the end of the year.

10.4.105 *Timing of Payments.* Payments will be made to assignors in December of the year in which proceeds were collected.

10.5 **Applications to Purchase Assigned Storage for Uses above Milner.** Applications to rent storage from the assignment pool shall be made in writing on forms approved by the Watermaster.

10.6 **Rental Supplied for Flow Augmentation.** If the storage supplied from Table 1 for flow augmentation is insufficient to meet the needs described in the Mediator's Term Sheet of the 2004 Snake River Water Rights Agreement, the Committee has approved providing extraordinary circumstances rental under Procedure 11.0, and the supply for the extraordinary circumstances pool is insufficient to provide the entire request from the Bureau, any remaining requested amount not supplied by the extraordinary circumstances pool shall come from the available assignment pool supply according to the priorities described in Procedure 10.4.103.

10.7 **Rental Prices for Assigned Storage**

10.7.101 *Tier 5.* If the storage system fills, the rental price for purposes above Milner shall be \$35.00 per acre-foot.

10.7.102 *Tier 6.* If the storage system does not fill but storage is provided for flow augmentation pursuant to Procedure 5.2.105(a), the rental price for purposes above Milner shall be \$45.00 per acre-foot.

10.7.103 *Tier 7.* If the storage system does not fill and no flow augmentation water is provided pursuant to Procedure 5.2.105(a), the rental price for purposes above Milner shall be \$55.00 per acre-foot.



10.7.104 *Determination of Tier 5, 6, or 7 Rental Price:* Unless the storage system has filled, the Watermaster shall designate on or before April 5 either Tier 6 or Tier 7 as the rental price for above-Milner rentals. If at any time during the same accounting year, the storage system should subsequently fill, the Watermaster shall designate Tier 5 as the rental price for above-Milner rentals and refund any excess rental fees within 30 days after the date of publication.

10.7.105 *Tier 8:* The rental price for storage rented for flow augmentation shall be \$19.73 per acre-foot.

10.7.106 *Fees & Surcharges.* There shall be added to the rental price for all rentals the Board surcharge and administrative fee, resulting in the following summed amounts charged for assignment pool rentals for the various tiers described in Procedures 10.7.101 through 10.7.105:

- (a) Tier 5:  $\$35.00 + \$3.50 + \$1.30 = \$39.80$
- (b) Tier 6:  $\$45.00 + \$4.50 + \$1.30 = \$50.80$
- (c) Tier 7:  $\$55.00 + \$5.50 + \$1.30 = \$61.80$
- (d) Tier 8:  $\$19.73 + \$1.97 + \$1.30 = \$23.00$

10.8 **Application Approval and Deliveries to Diversions in Water Districts other than Water District #1.** Applications submitted with the appropriate forms, rental prices, fees, and surcharges for purchasing assignment pool storage shall be approved according to Procedure 10.4.103 as assignment pool storage becomes available. However, application approval does not guarantee delivery and/or exchange of assignment pool storage to diversions that are not measured or regulated by Water District #1 unless the daily diversion of rental storage is reported by the Watermasters of those districts to the Water District #1 Watermaster to facilitate the proper accounting of storage rental exchanges and deliveries to water districts outside of Water District #1.

10.9 **Rental Refunds.** Funds collected for approved rental applications will not be refunded regardless of whether or not the rental storage was used by the assignee. Applications that were not approved, or a written request to withdraw the application prior to its approval is received by the district from the applicant, shall have their application monies refunded in December of the year in which the proceeds are collected.

## **PROCEDURE 11.0 EXTRAORDINARY CIRCUMSTANCES POOL**

11.1 **Purpose.** To provide flow augmentation rentals in excess of the amount provided in Procedure 5.2.104, upon a request by the Bureau for additional Water District 1 rentals consistent with the terms of the 2004 Snake River Agreement and these Procedures to further flow augmentation reliability as modeled in the 2007 Biological Assessment, the Committee shall consider making available a greater amount of storage rental if it determines on or before July 1 that extraordinary circumstances justify an additional amount of storage be made available for flow augmentation and existing uses (legal and equitable title to storage rights) are protected consistent with the Mediator's Term Sheet of the 2004 Snake River Water Rights Agreement. The Bureau and Committee will also consider on years when Milner spill occurs, the preservation of Uncontracted and Powerhead storage for use in subsequent years; provided, the Bureau exercises sole discretion over whether to use storage in its Uncontracted and Powerhead space for flow augmentation, so long as such use is consistent with the Mediator's Term Sheet of the 2004 Snake River Water Rights Agreement and applicable law.

- 11.2 **Quantity.** The maximum quantity of storage authorized to be leased through the extraordinary circumstances pool shall be determined annually by the Committee taking into account the advice and recommendation of the Rental Pool Subcommittee, together with current and forecasted hydrological conditions and estimated demand on the rental pool for above Milner uses.
- 11.3 **Price, Fees, & Surcharges.** The rental price for storage rented for flow augmentation shall be \$19.73 per acre-foot plus a \$1.97 Board surcharge plus a \$1.30 administrative fee, resulting in a total \$23.00 per acre-foot charge.
- 11.4 **Extraordinary Circumstance Pool Supply.**
- 11.4.101 *Notice to Spaceholders of Opportunity to Consign Storage through the Extraordinary Circumstance Pool.* The Watermaster shall provide notice of the extraordinary circumstance pool on the Water District 1 website, which shall include the following information:
- (a) The maximum quantity of storage authorized to be rented through the extraordinary circumstance pool;
  - (b) The rental supply deadline as authorized by the Committee;
  - (c) Instructions for spaceholders interested in consigning storage through the extraordinary circumstance pool, including instructions for executing a standardized circumstance pool rental contract; and
  - (d) The deadline, as set by the Committee, for the Watermaster to receive extraordinary circumstance pool rental contracts from spaceholders interested in consigning storage through the extraordinary circumstance pool.
- 11.4.102 *Extraordinary Circumstance Rental Contracts.* Spaceholders interested in consigning storage through the extraordinary circumstance pool shall execute a standardized extraordinary circumstance pool rental contract, which shall be provided by the Watermaster and include provisions for the following:
- (a) Limit eligibility to consign storage through the extraordinary circumstance pool only to spaceholders who qualify as participants under Procedure 2.28;
  - (b) The quantity sought to be consigned by the spaceholder may be any amount, except that the total amount of storage consigned pursuant to Procedure 11 may not exceed either the maximum quantity set by the Committee under Procedure 11.2 or 10% of the spaceholder's total reservoir system space, unless an exception is approved by the Rental Pool Subcommittee;
  - (d) The quantity actually consigned by the spaceholder may be reduced depending upon the number of spaceholders who elect to consign storage through the extraordinary circumstance pool as provided in Procedure 11.4.103;
  - (e) That, in the event the spaceholder elects to sign a standard pool rental contract before the date of publication, the spaceholder assumes the risk that its storage allocation may be less than the spaceholder anticipated; and
  - (f) Notice to the spaceholder that if the spaceholder's consignment through the extraordinary circumstance pool causes computed impacts, the mitigation required under Procedure 7 will result in an amount of the spaceholder's space, not to exceed the quantity of storage consigned by the spaceholder, being assigned a junior priority, an accounting commonly referred to as "last to fill."

- 11.4.103 *Distribution of Storage to the Extraordinary Circumstance Pool.* If, following the deadline for receipt of executed extraordinary circumstance pool rental contracts, the Watermaster determines that the total quantity of storage sought to be consigned through the extraordinary circumstance pool exceeds the quantity limitation established under Procedure 11.2, then the Watermaster shall reduce the quantity of each extraordinary circumstance pool rental contract to a pro rata share based on the amount of storage sought to be consigned by each spaceholder. The Watermaster shall amend the extraordinary circumstance pool rental contract(s) to reflect any reduced quantity required by this provision.
- 11.4.104 *Rental Contract Approval.* Following receipt of an extraordinary circumstance pool rental contract, the Watermaster shall determine whether the contract is in compliance with these procedures, and, if so, shall approve the same; provided, however, if the date of publication has not yet occurred, approval of the contract shall be conditioned on the spaceholder having a sufficient storage allocation during the accounting year to satisfy the contract.
- 11.5 **Notice of Contract Approval and Payment to Consignors.** The consignors shall receive the lease price apportioned according to the quantity of storage each spaceholder consigned through the extraordinary circumstance pool. The Watermaster shall notify spaceholder(s) who submitted extraordinary circumstance pool rental contracts of the approved amount and distribute the funds to the lessors within 30 days following approval or conditional approval of a request under Procedure 11.1 and rental contract approved under Procedure 11.4.104.
- 11.6 **Using Extraordinary Circumstances Pool Supply for Flow Augmentation Ahead of Assignment Pool Supply.** If the amount supplied by participants to the extraordinary circumstance pool exceeds the amount requested by the Bureau for extraordinary circumstances rental, all extraordinary circumstances rental shall be supplied through the extraordinary circumstances pool. If the amount supplied by participants to the extraordinary circumstance pool is less than the amount requested by the Bureau for extraordinary circumstances rental, the extraordinary circumstance rental shall be first supplied by the extraordinary circumstance pool and any remaining amount of extraordinary circumstance rental shall be supplied from the amount available to flow augmentation in the assignment pool pursuant to Procedure 10.0

| TABLE 1: Water District 1 Flow Augmentation Rental Chart |  |        |        |        |         |  |
|--|--|--------|--------|--------|---------|--|
|  |  |        |        |        |         |  |
| October 31st<br>Midnight<br>Carryover<br>1000s AF        | April 1 to Sept 30 Heise Forecast (1000s AF) |        |        |        |         |  |
|  | 0  | 2,920  | 3,450  | 4,208  | 5,042   |  |
|  | to   | to     | to     | to     | or      |  |
|  | 2,919  | 3,449  | 4,207  | 5,041  | greater |  |
| 0 - 599  | 0  | 0      | 0      | 150000 | 185000  |  |
| 600 - 899  | 0  | 0      | 60000  | 150000 | 185000  |  |
| 900 - 1499   | 0  | 60000  | 60000  | 150000 | 185000  |  |
| 1500 - 2099  | 0  | 100000 | 150000 | 185000 | 185000  |  |
| 2100 - 2599  | 0  | 100000 | 150000 | 205000 | 205000  |  |
| 2600 - 2999  | 0  | 185000 | 185000 | 205000 | 205000  |  |
| 3000 - 3199  | 60000  | 185000 | 185000 | 205000 | 205000  |  |
| > 3199   | 100000                                       | 185000 | 185000 | 205000 | 205000  |  |

# EXHIBIT E

Contract No.  
14-06-100-1825

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Bureau of Reclamation

Minidoka and Palisades Projects  
Idaho

Contract With  
CITY OF POCAHELLO  
Concerning Storage Capacity in Palisades Reservoir,  
and Related Matters

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Contract No.  
14-06-100-1825

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Bureau of Reclamation

Minidoka and Palisades Projects  
Idaho

Contract With  
CITY OF POCA TELLO  
Concerning Storage Capacity in Palisades Reservoir,  
and Related Matters

THIS CONTRACT, made this 8th day of January 1960, pursuant to the Federal Reclamation Laws, between THE UNITED STATES OF AMERICA (hereinafter called the United States), acting through the Secretary of the Interior, and the CITY OF POCA TELLO (hereinafter referred to as the City unless otherwise indicated), a municipal corporation organized and existing under the laws of the State of Idaho,

WITNESSETH, That:

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

3. WHEREAS, the City, desiring to cooperate with the United States and the various other water users organizations that enter into like contracts in the water conservation program that will be made possible with the construction of Palisades Reservoir and its operation in conjunction



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

4. WHEREAS, the United States and the City have not heretofore entered into any contracts with respect to storage rights in reservoirs on the Snake River above Milner Dam, but the City, securing water for all municipal uses by pumping from underground and from surface flows that would, if not intercepted by the City, flow into the Snake River below Palisades Dam, desires to replace in the Snake River by means of storage at Palisades Reservoir water in volume approximately the equivalent of that removed by pumping from Snake River tributary underground and surface flows, and it having been determined that 50,000 acre-feet of active capacity in Palisades Reservoir will furnish such approximate equivalent volume;

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

Definitions

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

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

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

"Advisory Committee" shall mean the committee defined by article 30 of this contract or its duly authorized representative.

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

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

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

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

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

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

"Delivery" when used herein in relationship to stored water, shall mean direct delivery from the reservoir system and delivery accomplished in the manner provided in article 16.

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

United States to Construct Works

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

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

#### Capacity to be Available to the City

7. The authorized dam will provide a reservoir with an estimated active storage capacity of 1,200,000 acre-feet and, based on that estimated capacity, the use and benefit of four and one thousand six hundred sixty-seven ten thousandths percent (4.1667%) of that capacity is allocated hereby to the City. 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 City the stored water accruing to that percentage of the active capacity of that reservoir, within the limits and on terms and conditions provided in this contract. That percentage shall, so long as the reservoir has an active capacity of 1,200,000 acre-feet, be treated as the equivalent of 50,000 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 City shall pay to the United States for the use of space as provided in article 7, as the construction charge obligation, the sum of four hundred fifty thousand dollars (\$450,000), this being determined at the rate of nine dollars (\$9.00) per acre-foot of capacity and on the assumption that the reimbursable construction costs of the Palisades Project finally allocated to joint facilities equal or exceed the sum of twenty-three million two hundred one thousand one hundred dollars (\$23,201,100). If the reimbursable joint facility construction costs, as

finally determined, are less than twenty-three million two hundred one thousand one hundred dollars (\$23,201,100), and, as a result, the amount of joint facility costs allocated to irrigation is less than the amount expected so to be allocated according to the Secretary's report of July 1, 1949<sup>1/</sup>, the amount of the reduction shall be proportioned between irrigation construction costs assigned to be repaid by the water users and those assigned for repayment from power revenues on the basis of the amounts of estimated irrigation construction costs so assigned in the Secretary's report of July 1, 1949. The amount of reduction, if any, when determined by the Secretary, shall be distributed equally as a credit against the construction charge obligation of all space the costs of which are allocated to irrigation. The total amount of credit and the portion thereof to which the City 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 City's total construction charge obligation to less than three hundred eighty-seven thousand five hundred dollars (\$387,500), this being at the rate of seven dollars and seventy-five cents (\$7.75) per acre-foot of capacity as initially stated in article 7.

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

(b) The construction charge obligation under this article shall be repaid by the City to the United States in forty (40) successive annual instalments to be as nearly equal as is practicable. The due date of the initial instalment, established in relation to the date announced by the Secretary as the date that the dam is substantially complete and ready for storage, will be as follows: (i) if, on the announced date, the provisions of (d) of article 21 are still in effect, the first instalment shall be payable on or before December 31 of the third full calendar year after that date, the project for repayment purposes being treated as incomplete during the first two years; and (ii) if, on the announced date, the provisions of (d) of article 21 are no longer in effect, the first instalment shall be payable on or before December 31 of the first full calendar year after that date. In the event there is, under the operation of (a) of this article, a reduction in the City's total obligation after the payment of instalments has started, the amount of credit available shall be distributed evenly over the remaining unaccrued instalments as of the time the amount of the credit is announced.

Operation and Maintenance Obligation - Palisades

9. (a) The City, beginning as provided in (b) of this article and continuing during the period of operation and maintenance of the Palisades Dam and Reservoir by the United States, shall pay to the United States in advance four and seventeen hundredths percent (4.17%) of the costs of operating and maintaining that dam and reservoir, including whatever costs may be incurred in the delivery of water therefrom, which are apportionable

to the irrigation storage rights therein. There shall be determined from time to time by the Secretary, after consultation with the Advisory Committee, the basis for distributing among the various purposes which by law are to be served by the dam and reservoir the costs of operation and maintenance thereof and the basis for assigning those costs for repayment. In determining the total costs annually apportioned to the irrigation storage rights there shall be deducted from the total annual cost of operation and maintenance of the dam and reservoir, those costs which are determined to be properly chargeable to other purposes served by the reservoir and for which other provision for repayment, in whole or in part, is made pursuant to law. The costs apportionable to the irrigation storage rights shall be distributed annually to all storage space that is made available for irrigation purposes.

(b) Beginning with January 1 of the year in which the use and benefit of Palisades space is first available to the City as provided in article 7, payment of the City's share of Palisades Dam and Reservoir operation and maintenance costs shall be made for each calendar year on the basis of annual estimates by the Secretary. The notice of these annual estimates, hereinafter referred to as the operation and maintenance charge notice, shall contain a statement of the estimated cost of operation and maintenance of the dam and reservoir to be incurred in the calendar year involved and the amount of the City's share of those estimated costs. The operation and maintenance charge notice shall be furnished to the City on or before February 1 of the calendar year for which the notice is issued,

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

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

#### Nature and Extent of Palisades Storage Right

10. (a) Beginning with the storage season indicated in article 7, the City 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 six hundred sixty-seven ten thousandths percent (4.1667%) of all water stored in Palisades Reservoir during that season under the Palisades storage right.
- (2) The right to have held over from one irrigation season to the next, stored water to which it is entitled.



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

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

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

(c) Under the provisions of the Act of September 30, 1950, the active capacity of Palisades Reservoir will be used jointly for irrigation and flood control storage in accordance with the operating plan set forth in House Document No. 720, 81st Congress, and attached hereto as Exhibit A, as that plan is implemented by rules and regulations issued pursuant to section 7 of the Act of December 22, 1944 (58 Stat. 890). All the City's storage rights are subject to the operation of the reservoir in accordance with this subarticle. In the event Palisades Reservoir fails to fill during any storage season by reason of such flood control operations, the amount of shortage so attributable shall be prorated equally over all space allocated to storage of water for irrigation, municipal, or other miscellaneous purposes and shall be charged against all stored water including that, if any, carried over from prior irrigation seasons.

Saving of Winter Water; Special Storage Right

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

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

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

to curtail storage season diversions substantially as provided in (a) of this article within these maxima, as to total special storage rights:

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

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

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

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

Twin Falls Canal Company ..... 150,000 acre-feet

within this limitation:

If, taking account of all storable water whether stored or not, Palisades and American Falls reservoirs fail to fill during any storage season, any water diverted during that storage

season by the North Side Canal Company in excess of 126,000 acre-feet (but not to exceed the amount of deficiency in fill), and by the Twin Falls Canal Company in excess of 150,000 acre-feet (but not to exceed the amount of deficiency in fill), will be charged as of the end of that storage season against the allotment of American Falls storage to these respective companies.

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

Provisions Relating to Exchange and Redefinition of  
Existing American Falls and Jackson Lake Storage  
Rights; Winter Power Operations at the Minidoka  
Powerplant  
(Articles 12 through 13)

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

12. Certain upper valley water users organizations owning storage rights in American Falls Reservoir have agreed or will agree in connection with the acquisition of Palisades Reservoir rights to accept in exchange for a portion of their American Falls rights certain storage rights in Jackson Lake Reservoir below elevation 6752 feet above sea level (U.S.G.S. datum), the provisions for such exchange being substantially as set out in the revised document entitled "Basic Provisions Incorporated

or to be Incorporated in Contracts With Upper Valley and Lower Valley Water Users Organizations to Govern the Permanent Exchange of Certain American Falls and Jackson Lake Storage Rights", attached hereto as Exhibit B, and these and other water users organizations have agreed or will agree to permit the United States to operate all space in Jackson Lake Reservoir on a holdover basis. The City hereby consents to such exchange and to such holdover operating arrangements.

Winter Power Operation; Minidoka Powerplant

13. (a) The United States, in its operation of American Falls and Minidoka dams during the storage season of each year is required to pass through enough water to satisfy existing diversion rights in the stretch of river down to and including Milner Dam and certain power rights below Milner Dam, and has the privilege under an existing decree to use at Minidoka Dam 2,700 cubic feet per second of water for the development of power. While the United States must operate the American Falls and Minidoka dams so as not to interfere with these third-party rights, it will be the objective of the United States in the operation of both its American Falls and Minidoka powerplants to curtail the release of additional water from American Falls Reservoir for power production at those powerplants during the storage season of any year whenever operation of those powerplants to the full extent of their respective water rights for power production would result in loss of irrigation water otherwise storable in the reservoir system. Accordingly, except as it is determined by the Secretary that additional water may be passed through American Falls and Minidoka dams without the

loss of water that could be stored for irrigation in the reservoir system, the United States will, during each storage season beginning October 1, 1952, and continuing so long as the provisions of (c) of this article remain operative, limit the release of water through those dams as follows:

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

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

(b) Curtailment of releases as provided in (a) of this article will result in there being, in some years, additional water available for storage for irrigation purposes in American Falls, Island Park, and Palisades reservoirs. In any storage season when these reservoirs fail to fill, the saved water attributable to such curtailment shall be credited, first, to Island Park Reservoir to the extent of 45,000 acre-feet without regard

to the priority of the storage permits held for that reservoir, and thereafter to American Falls, Island Park, and Palisades reservoirs in the order of priority of their respective storage permits, the crediting to Island Park Reservoir and to any storage right in any other reservoir (except the lower valley exchanged space in American Falls Reservoir) being contingent on the owners of these rights obligating themselves for their share of the annual payments for power replacement in keeping with the provisions of (e) of this article.

(c) For the purposes of this contract and without relinquishment of any part of the power rights herein described, it is assumed that but for curtailment of operations as provided in (a) of this article, units 1 through 6 of the Minidoka powerplant would be operated during the storage season of each year to the maximum extent practicable within the limits of the power rights therefor (2,700 second-feet as decreed by the District Court of the Fourth Judicial District of Idaho on June 20, 1913, in the case of Twin Falls Canal Company v. Charles N. Foster et al.) and that in consequence of operations under this article there may be losses in the production of power and energy at that plant. To offset such losses, the United States will, as nearly concurrently as practicable, make replacement by the delivery of power and energy into the Minidoka power system at the Minidoka powerplant from other interconnected Federal powerplants being operated under the Federal Reclamation Laws. Payment for such replacement power and energy shall be made by the City and all other contractors having

reservoir rights benefiting from the water savings resulting from operations under the provisions of (a) of this article in annual amounts determined as follows:

- (i) Prior to the date when either the American Falls powerplant or Palisades dam powerplant is first in service, the payment for any year shall be the product, in dollars, of the then controlling average annual replacement requirement, in kilowatt-hours, times four mills (\$0.004).
- (ii) Beginning with the date when either the American Falls powerplant or Palisades dam powerplant is first in service, the payment for any year shall be the product, in dollars, of the then controlling average annual replacement requirement, in kilowatt-hours, times the price per kilowatt-hour, figured at 100 percent load factor, under the then existing rate schedule for the sale of firm power and energy from the plant or plants involved.

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

(d) The replacement requirements for the year ending September 30, 1953, shall be 5,699,000 kilowatt-hours, being the average annual replacement requirement for the period beginning October 1, 1931, and ending



September 30, 1951. The average annual replacement requirement under either (i) or (ii) of (c) above for the year ending September 30, 1954, shall be the average of the annual replacement requirements for each year of the 20-year period ending September 30, 1953, and for each 12-month period after September 30, 1954, shall be the average of the annual replacement requirements of each year of the 20-year period ending on September 30 of the prior year. In deriving this average there shall be used, as annual net power production losses for each year, the annual figures for the years through September 30, 1951, as shown in Table 1 of the document entitled "Criteria and Method for Determination of Certain Minidoka Powerplant Production Losses From Restrictions on Use of Water Rights"<sup>2/</sup>, and for each year thereafter, a net power production loss calculated on the basis of the comparison of (1) the total energy that could have been produced by units 1 through 6 of the Minidoka powerplant based on the water flows actually recorded at the U.S.G.S. Minidoka gaging station (hereinafter called the Minidoka gage), corrected as hereinafter provided, and (2) the energy which theoretically could have been generated at those units with the flows at the Minidoka gage without a curtailment in winter power operation as provided in this article and exclusive of irrigation storage releases. Using conclusions reached as to flows and heads, the power loss calculations will be made by utilizing the power production curves shown in drawing No. 17-100-139 incorporated by reference in the document identified above, but increases in energy in any year by reason of taking American Falls

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

storage into account as provided in subparagraph (iii) of this subarticle (d) shall be accounted for as compensating offset up to but not exceeding energy losses accruing in that year by reason of curtailment in power operations under this article.

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

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

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

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

The foregoing criteria for determinations of annual net power production losses may be changed from time to time but only if the changes are made in writing with the approval of the Secretary, the Advisory Committee, and the boards of directors of both the Burley and Minidoka irrigation districts. Determinations as to net power production losses for each year and the average annual replacement requirement under this article shall be made by a committee of three comprising the state water-master of District No. 36, a representative to be selected jointly by the Burley and Minidoka irrigation districts and the North Side Canal Company, Ltd., and the officer of the United States in charge of the Minidoka

project, but, should that committee fail to make a determination for any year by January 1 of the year for which the determination is required, it may be made by the Secretary.

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

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

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

(Articles 14 through 37)

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

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

(b) During any storage season, the United States, after consultation with the Advisory Committee may release stored water from Palisades Reservoir for the maintenance of power production at Palisades dam powerplant and may store such water in American Falls Reservoir. The release of such water will be confined, however, in storage seasons when it appears that American Falls, Palisades, and Jackson Lake reservoirs will fail to fill, to water required for the maintenance of a minimum firm power production (estimated to be about 11,000,000 kilowatt-hours per

month at an average production of 15,000 kilowatts) and which can be stored in American Falls Reservoir; and no such release shall be made that will preclude the later delivery of water, by exchange or otherwise, to the upper valley entities entitled thereto.

Rental of Water; Sale of Space

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

Delivery of Water; Measurement and Losses

16. (a) To the extent that water is pumped from wells and from surface streams that flow into American Falls Reservoir, actual measurements at the well heads and at the discharge lines of other pumping plants delivering water for the City shall be made during each irrigation season. One-half of all water provided through the City's system for the use of its water users from any and all sources in any irrigation season shall be accounted for as water stored for the City as provided in article 10 and charged thereto, except an amount of 7,000 acre-feet of water in

each irrigation season until the first irrigation season beginning after a consolidation or merger has been made by the City with the water system of the City of Alameda when the amount shall be increased to 10,000 acre-feet of water to reflect prior uses of that city and other nearby communities. Delivery of water to the City that as above provided in this article is chargeable to stored water for any irrigation season, shall be limited, however, to the quantities of stored waters available as provided in article 10.

(b) The water chargeable to City stored water as provided in this article shall be determined during the irrigation season of each year. Corresponding credits shall be given by the watermaster to the water rights, whether natural flow or storage rights, that have been infringed on by pumping for the City. The amounts represented by such infringements, to whomsoever they shall accrue, shall be made up out of stored water available to the City under this agreement as necessary. The determination of the charges and the credits hereunder shall be under a formula to be devised by the watermaster, after consultation with the Advisory Committee, taking account as one factor the so-called Newell formula with respect to the inflow into American Falls Reservoir, as this formula is affected in the judgment of the watermaster, by the operation of this contract and by other factors that affect the formula. Departures from that formula shall be called to the attention of the Advisory Committee from time to time.

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

#### Ordering of Water

17. Under the plan of water use of the City, there will normally be no direct delivery from the Snake River of stored water. Therefore, the provisions of article 16 will govern as to the rights to water, whether charges therefor shall be against natural flow or stored water, matters of replacement of water from storage, and related problems. If the City should, however, construct facilities which would permit the direct delivery of stored water to it from the Snake River, such delivery shall be effected by the City giving notification to the watermaster, a reasonable period in advance, of the amount of water within its entitlements as stated in this agreement to be delivered for diversion by the City.

#### Complaints Regarding Water Supply

18. The United States and its officers, agents and employees in charge of reservoirs in the reservoir system and the watermaster will use their best efforts and best judgment to deliver to the City its proportionate share of the water to which it is entitled under this contract. Should the City feel aggrieved because of an alleged mistake or inaccuracy in the delivery of water or in the division of stored water among the parties



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

Payment of Costs in Delivery and Distribution of Stored Water

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

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

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

#### Computation of Costs

20. The costs which enter into the cost of operation and maintenance of the various reservoirs and the costs of delivery and distribution of water, portions of which costs are to be paid by the City, shall embrace all expenditures of whatsoever kind in relation to the function for which the charge is made, including, but without limitation by reason of this enumeration, cost of surveys and investigations, labor, property, material and equipment, engineering, legal, superintendence, administration, overhead, general expenses, inspection, special services, and damage claims of all

Minds whether or not involving the negligence of officers, agents or employees of the United States, but shall be exclusive of amounts which the law does not require to be repaid and which the Secretary determines as a matter of policy are to be treated as nonreimbursable.

Title to and Operation of Powerplant; Power Revenues

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

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

(c) The United States, in its operations of the Palisades dam powerplant, will be governed by the provisions of article 14 and these criteria, among others: That the plant shall be operated so as to hold to a practicable minimum the loss of water that would otherwise be available for storage in the reservoir system for irrigation purposes; and that, until such time as a reregulating reservoir has been put into operation, wide fluctuations in the release of water to meet peak power loads will, during irrigation seasons, be confined to periods when this can be done without substantial variation from the flows that would otherwise be present in the river below the dam.

(d) Notwithstanding provisions to the contrary in this contract, the City consents to the operation of the Palisades dam powerplant, during a five-year period (but not beyond the end of the national defense emergency

as declared by Proclamation of the President No. 2914 dated December 16, 1950, 3 CFR 1950 Supp., p. 271), beginning with the date when the first unit of that plant is first placed in service, in the following manner:

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

Title to Storage Works; Miscellaneous Revenues

22. (a) Title to Palisades Dam and Reservoir and all works incidental and appurtenant thereto, built or to be built by the United States, shall remain in the United States until otherwise provided by the Congress.

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

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

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

Priority of Certain Existing and Future Water Rights

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

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

American Falls Reservoir District No. 2 to have the right to divert as natural flow during each irrigation season under water license No. 15134, having a March 30, 1921 priority, as follows: From May 1 of each irrigation season continuing during that season so long as there is natural flow

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

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

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

(c) If the United States, under the Federal Reclamation Laws, hereafter constructs storage facilities on the Snake River or its tributaries above Milner Dam in addition to those now constructed or authorized to be constructed to provide water for irrigation purposes, the City hereby agrees that, notwithstanding the establishment of a storage right for such additional facilities with a priority subsequent to that assigned to Palisades Dam and Reservoir, the United States may hereafter contract with water users organizations which then have storage rights in Palisades Reservoir, to

operate not to exceed 300,000 acre-feet of such capacity for the storage of water for irrigation for the benefit of such organizations as though that capacity had a storage right of identical priority with that held for Palisades Dam and Reservoir.

#### Protection of Water Rights

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

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

25. No water available to the City under this contract shall be delivered to or for the City if the City is in arrears in the advance payment of operation and maintenance charges owed to the United States, if any, or more than twelve (12) months in arrears in the payment of construction charge obligation instalments, or more than twelve (12) months in arrears in the payment of any other amount owed to the United States under this contract. The City 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 City, 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 City to the United States under this contract. The provisions of this article are not exclusive and shall not in any manner prevent the United States from exercising any other remedy given by this contract or by law to enforce the collection of any payments due under the terms of this contract.

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

26. (a) The City shall cause to be levied and collected all necessary assessments and charges against water users and will use all the authority and resources of the City (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 City to the United States under this contract.

(b) Should the City fail to levy the assessments and other charges against any land or the owners thereof as required by this contract, or, having levied, should the City be prevented from collecting such assessments or other charges by any judicial proceedings or otherwise fail to collect them, such land and owners shall not be entitled to receive water made available under this contract and the City, except as otherwise ordered by a court of competent jurisdiction, shall not deliver such water to such lands or the owners thereof unless and until arrangements for its delivery satisfactory to the Secretary have been made.

(c) All construction charge obligations to the United States assumed by the City under this contract shall be and remain a lien on the City's storage rights in the reservoir system as defined in this contract

until paid or otherwise satisfied. Whenever the City is in default in the payment of any instalment of such charges, the Secretary may declare the entire construction obligation due and the lien therefor may be foreclosed in the manner provided by law for the foreclosure of a mortgage.

Lands for Which Water is Furnished;  
Limitations on Area

27. Pursuant to the provisions of the Federal Reclamation Laws, water made available to the City from space in the reservoir system for which the City is obligated to the United States for construction charges under the terms of this contract shall not be delivered to more than one hundred sixty (160) irrigable acres in the ownership of any one person or other entity nor more than three hundred twenty (320) irrigable acres held by a husband and wife as community property, except that delivery may be made to lands held in excess of this limitation pursuant to the provisions of section 46 of the act of May 25, 1926 (44 Stat. 649), as amended by the act of July 11, 1956 (70 Stat. 524). These limitations shall cease to operate when the construction charge obligation under this contract has been paid in full.

Termination or Modification of Excess  
Land Provisions

28. In the event there is a repeal of the so-called excess land provisions of the Federal Reclamation Laws, article 27 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 City, negotiate amendments of these articles in order to conform them to the excess land provisions of the law as so amended.

Penalty for Delinquency in Payment

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

Advisory Committee

30. (a) In its operation and maintenance of the various dams and reservoirs of the reservoir system, the United States, acting through the Regional Director of the Bureau of Reclamation or his designee or such other officer as may be designated in writing by the Secretary, shall consult from time to time with the Advisory Committee on the various matters specifically requiring consultation under the terms of this contract and on such other matters as will have a substantial bearing on the determination of the amount of stored water to be available in the various

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

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

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

#### Rules and Regulations

31. The Secretary reserves the right, after consultation with the Advisory Committee, to make such rules and regulations consistent with the provisions of this contract, as are proper and necessary to carry out its true intent and meaning, and as are proper and necessary to cover any

details of the administration or interpretation of the contract which are not covered by its express provisions. The City shall observe such rules and regulations.

Representative of the Secretary

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

Notices

33. 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 City Manager, City of Pocatello, Municipal Building, 220 East Center, Pocatello, Idaho, on behalf of the City. The designation of the person to be notified or the address of such person may be changed at any time by similar notice.

Discrimination Against Employees or Applicants  
For Employment Prohibited

34. (a) In connection with the performance of work under this contract, the City agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following:

employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The City agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Secretary setting forth the provisions of the nondiscrimination clause. The City further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

(b) In the performance of any part of the work contemplated by this contract, the City shall not employ any person undergoing sentence of imprisonment at hard labor.

Contingent on Appropriations or Allotment of Funds

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

Assignments Prohibited;  
Successors and Assigns Obligated

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

Officials Not to Benefit

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

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

THE UNITED STATES OF AMERICA

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

CITY OF POCATELLO

BY ITS BOARD OF COMMISSIONERS

/s/ H. B. Yearsley  
Commissioner

/s/ F. A. Burton  
Commissioner

/s/ W. R. Hearne  
Commissioner

/s/ Ivern C. Johnson  
Commissioner

/s/ Arilla Blackhurst  
Commissioner

/s/ J. Oren Clark, Jr.  
Commissioner

/s/ Margaret F. Paulsen  
Commissioner

(SEAL)

Attest:

/s/ Josephine Ball  
Clerk of the City of  
Pocatello

STATE OF IDAHO       )  
                          : ss.  
County of Bannock    )

On this 9th day of June 1959, before me personally appeared  
H. B. Yearsley, F. A. Burton, W. R. Hearne, Luvern C. Johnson,  
Arilla Blackhurst, J. Oren Clark, Jr., and Margaret F. Paulsen, to me  
known to be the members of the Board of Commissioners of the City of  
Pocatello, the corporation that executed the within and foregoing instru-  
ment. They acknowledged said instrument to be the free and voluntary act  
and deed of said corporation, for the uses and purposes therein mentioned;  
and on oath stated that they were authorized to execute said instrument  
and that the seal affixed is the seal of said corporation.

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

(SEAL)

/s/ B. D. Reese  
Notary Public in and for the  
State of Idaho  
Residing at Pocatello, Idaho

My commission expires July 21, 1960



STATE OF IDAHO        )  
                              ) ss.  
County of Ada        )

On this 8th day of January 1960, personally appeared before me H. T. Nelson, to me known to be the official of The United States of America that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act of said United States, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

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

(SEAL)

/s/ R. H. Harris  
Notary Public for Idaho  
Residing at Boise  
My commission expires: 6/18/61