

Contract No.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Palisades Project, Idaho

REPAYMENT CONTRACT WITH THE STATE OF WYOMING FOR STORAGE
CAPACITY IN PALISADES RESERVOIR

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THIS contract, made this day of , 1990, between the UNITED STATES OF AMERICA, hereinafter called the United States, acting through the Secretary of Interior or his duly authorized representative, represented by the Contracting Officer executing this contract, and pursuant to the Federal Reclamation Laws, and THE STATE OF WYOMING, hereinafter called the Contractor or Wyoming, ~~acting through the Wyoming State Engineer's Office,~~ represented by the Governor of Wyoming.

WITNESSETH, THAT:

Explanatory Recitals

a. WHEREAS, The United States has constructed the Palisades Project, including Palisades Dam and Reservoir, under the Act of Congress of September 30, 1950 (P.L. 864, 81st Congress) which reauthorized the Palisades Project, hereinafter called the Project, as a participating project of the Minidoka Project, Idaho-Wyoming. The United States operates the Project for the authorized purposes of irrigation, power, flood control, recreation, and fish and wildlife; and

b. WHEREAS, there is currently uncontracted space in Palisades Reservoir; and

c. WHEREAS, the States of Idaho and Wyoming have agreed to allocate the waters of the Snake River under terms of the Snake River Compact, hereinafter called the Compact, signed October 10, 1949; ~~including the provision that Idaho and Wyoming interact to carry out the administration of public water supplies under terms of the Compact;~~ and

d. WHEREAS, under the Compact, four percent of the waters of the Snake River, measured at the common boundary, exclusive of established Wyoming rights and other specified uses, are allocated to Wyoming; ~~for storage or direct diversion. Such four percent representing approximately 200,000 acre feet;~~ and

e. WHEREAS, under the Compact, one-half of the four percent, or two percent, ~~representing approximately 100,000 acre feet~~ may be used in Wyoming without requirement for replacement storage space; and

f. WHEREAS, under said Compact, ~~to the extent~~ in order for Wyoming to use or store the remaining two percent, ~~representing approximately 100,000 acre feet, is used for Federal irrigation projects in Wyoming,~~ replacement storage in the amount of one-third of such use is to be provided for the benefit of existing Idaho water users; ~~Such replacement storage amounting to 33,000 acre feet;~~ and

g. WHEREAS, the UNITED STATES has estimated that four percent of the waters of the Snake River, at the Idaho-Wyoming border, is approximately 200,000 acre-feet in any given year, and one-third of one-half of four percent amounts to about 33,000 acre-feet of water; and

h. WHEREAS, the United States has administratively set aside 33,000 acre-feet of space in Palisades Reservoir as replacement storage; and

i. WHEREAS, The State of Wyoming desires to contract for the purchase of 33,000 acre-feet of uncontracted space in Palisades Reservoir to provide long term security to Wyoming for basin-wide management of the allocated water resources for both consumptive and nonconsumptive uses;

NOW, THEREFORE, in consideration of the mutual and dependent covenants and conditions contained herein, it is agreed hereto as follows:

GENERAL DEFINITIONS

2. The following terms, whenever used in this contract, shall have the following meanings:

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

(b) "Federal Reclamation Laws" shall mean the Act of June 17, 1902 (32 Stat. 388), and act amendatory or supplemental thereto, including the Acts of September 30, 1950 (Public Law 864, 81st Congress, 2d Session), and the Reclamation Reform Act of 1982 (Public Law 97-293).

(c) "Advisory Committee" shall mean the committee defined by article 24 of this contract.

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

(e) "Storage season" shall mean the period beginning October 1 of one year and ending during the next year when no more water is available for storage.

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

Recital i
Article 2

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

(h) "Lower valley" shall mean the irrigated acres 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.

(i) "Watermaster" shall mean the designated official of the State of Idaho who represents Water District No. 1.

PURPOSE AND SCOPE OF CONTRACT

3. (a) The purpose of this contract is to provide Wyoming 33,000 acre-feet of space authorized for storage of water in Palisades Reservoir, which Wyoming may use, ~~pending such time as the space is needed to meet the provisions of the Snake River Compact and~~ insofar as can be accomplished through coordinated project operations, to provide instream flows below Jackson Lake Dam, ~~increase storage water in Jackson Lake~~ to maintain higher lake levels in Jackson Lake, to provide replacement storage as required by the Compact, or for such other purposes as Wyoming may desire.

(b) This contract is intended to provide Wyoming rights, as near as possible, identical to those provided to other Palisades Reservoir spaceholders, ~~excepting~~ with the exception being the purpose of use to which the yield may be put as described in this article and in article 9.

(c) Nothing in this contract shall diminish the contract rights of other Palisades Reservoir space holders.

PALISADES RESERVOIR CAPACITY AVAILABLE TO WYOMING

4. The United States operates and maintains Palisades Dam and Reservoir. Beginning with the first irrigation season following execution of this contract the United States will make available to Wyoming the stored water accruing to two and seven hundred and fifty thousandths percent (2.750%) of the active capacity of Palisades 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 33,000 acre-feet of active capacity. The 33,000 acre-feet of space 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.

INVESTMENT CHARGE OBLIGATION

5. (a) Wyoming shall pay to the United States for the use of the space as provided in article 4, as the total investment charge obligation, the sum of five hundred sixty seven thousand two hundred and seventy dollars (\$567,270). This obligation is comprised of the Palisades Project allocated irrigation construction cost at the rate of sixteen dollars and forty cents per acre-foot (\$16.40), plus the allocated interest during construction cost at the rate of seventy nine cents (\$.79) per acre-foot. Such rates, determined by the Secretary, when applied to the 33,000 acre-feet of space are equivalent to an irrigation construction obligation of five hundred forty one thousand two hundred dollars (\$541,200), and an interest during construction obligation of twenty six thousand and seventy dollars (\$26,070).

(b) The total investment charge obligation shall be paid to the United States prior to ~~December 31, of the year this contract is executed~~ June 30, 1991, contingent upon approval by the Wyoming Legislature. If the Legislature does not approve this contract by that date it shall become null and void. Such payment shall constitute full repayment of the ~~capital~~ investment obligation associated with the 33,000 acre-feet of Palisades Reservoir space.

(c) In the event the Secretary determines that additional investments are required to insure and sustain the operation and use of Palisades Dam and Reservoir, including any costs which might be required under various safety-of-dams programs, Wyoming shall repay its appropriate share. Such requirements shall be in addition to obligations specified in article 5(a) of this contract.

OPERATION AND MAINTENANCE OBLIGATION

6. (a) Wyoming, during the period of operation and maintenance of Palisades Dam and Reservoir by the United States, shall pay to the United States in advance two and seven hundred and fifty thousandths percent (2.750%) of the costs of operating and maintaining Palisades Dam and Reservoir, including whatever costs may be incurred in the delivery of water therefrom, which are apportionable to the storage rights therein. In determining the total costs annually apportioned to the storage rights there shall be deducted from the total annual costs 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 and policy. The costs

apportionable to the storage rights shall be distributed annually to all storage space that is made available for use.

(b) Beginning with the first irrigation season following execution of this contract, payment of Wyoming's share of operation and maintenance costs of Palisades Dam and Reservoir shall be made for each calendar year on the basis of annual estimates by the Secretary. The notice of these annual estimates, hereinafter referred to as the operation and maintenance charge notice, shall contain a statement of the estimated cost of operation and maintenance of the dam and reservoir to be incurred in the calendar year involved, and the amount of Wyoming's share of those estimated costs. The operation and maintenance charge notice shall be furnished to Wyoming on or before February 1 of the calendar year for which the notice is issued, but, when requested by Wyoming, a preliminary estimate shall be given at such earlier date as is agreed in writing. Wyoming 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 Wyoming's share of the cost of operating and maintaining the dam and reservoir, a supplemental operation and maintenance charge notice will be given, stating therein the amount of Wyoming's share of the additional funds required, and Wyoming shall advance the additional amount on or before the date specified in the supplemental notice. If funds advanced by Wyoming under this article exceed Wyoming's share of the actual costs of operation and maintenance of the dam and reservoir for the year for which advanced, the surplus shall be credited on the operation and maintenance charges to become due for succeeding years.

UNITED STATES NOT LIABLE FOR WATER SHORTAGE

7. In the event that there is a shortage of project water resulting from inadequate precipitation, inaccuracy in distribution, hostile diversion, prior or superior claims, or other causes, no liability shall accrue against the United States, or any of its officers, agents, or employees for any damage, directly or indirectly arising therefrom, and the payment to the United States provided for herein shall not be reduced because of such shortage. In the event of such shortages, uses of reservoir capacity, and water uses will be in accordance with priorities established by the Secretary.

TITLE TO PALISADES PROJECT TO REMAIN WITH UNITED STATES

8. (a) Title to the Palisades Project, including all works incidental and appurtenant thereto, shall remain with the United States.

(b) All revenues derived from the use or sale of power and energy developed at Palisades, including the existing as well as any future powerplants, as well as miscellaneous revenues realized in connection with the operation of the project shall be and remain the property of the United States.

RIGHT TO USE OF STORAGE CAPACITY

9. (a) For uses within the State of Wyoming, Wyoming shall have the sole and perpetual right to use the storage capacity purchased by it under this contract and to subcontract with others for use of said storage capacity. ~~Contracts~~ Agreements made by Wyoming with others shall be subject to the provisions of this contract, and a copy shall be filed with the Secretary, prior to being executed by Wyoming.

(b) Any use of water within the State of Idaho shall be according to the provisions of article 15 herein.

NATURE AND EXTENT OF PALISADES STORAGE RIGHT

10. (a) Beginning with the irrigation season indicated in article 4, Wyoming 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, two and seven hundred and fifty thousandths percent (2.750%) of all stored water 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 Wyoming's credit at any time shall not, however, exceed the total amount of space in Palisades Reservoir available to Wyoming under this contract, and Wyoming'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 Wyoming within these limitations:

Deliveries shall be limited at any time to the amount which can be delivered by means of Wyoming'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, as that plan is implemented by rules of and regulations issued pursuant to section 7 of the Act of December 22, 1944 (58 Stat. 890). All of Wyoming's storage rights are subject to the operation 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.

(d) Water ordered for use by Wyoming ~~and~~ can be exchanged and delivered from Jackson Lake pursuant to this contract and shall be under the control of Wyoming from the point of release immediately below Jackson Lake Dam only to the Wyoming-Idaho border. *Below this point, WY relinquishes all rights to use of this water in Idaho.*

OBLIGATION UNDER SNAKE RIVER COMPACT

11. (a) The 33,000 acre feet of space hereby contracted for by Wyoming was space heretofore held as uncontracted by the United States to meet replacement requirements under article III A.2. of the Snake River Compact, signed October 10, 1949.

(b) This contract shall not relieve Wyoming of its Compact obligations, and water accruing hereunder shall be used to meet replacement requirements under terms of the Compact as required if other arrangements are not made.

SAVING OF WINTER WATER; SPECIAL STORAGE RIGHT

12. (a) 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 diversions 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 Fall Dam and 8,000 acre feet below that point. Wyoming, not participating 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 Wyoming that are junior to the American Falls rights. Wyoming 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 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) Wyoming 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 became effective the date Palisades became operative, but in the case of the Twin Falls Canal Company became operative in the first year in which that company exercised the special storage provision to which consent is here given.

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 dams to curtail the release of additional water from American Falls Reservoir for power production at the Minidoka Powerplant during the storage season of any year whenever operation of the powerplant to the full extent of the 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, and continue 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 advanced 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, or any replacement units 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 Wyoming 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) 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 average annual replacement requirement 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, 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, or any replacement units, 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 as shown in the document entitled "Criteria and Method for Determination of Certain Minidoka Powerplant Production Losses from Restrictions on Use of Water Rights," but increases in energy in any year by reason of taking American Falls storage into account as provided in subparagraph (iii) of this subarticle (d) shall be accounted for as compensating offset up to but not exceeding energy losses accruing in that year by reason of curtailment in power operations under this article.

To correct flows under (1) above, all storage releases except American Falls shall be excluded and the measure of American 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 "Annual Report, Watermaster's Report of Water District No. 1, Snake River and Tributaries above Milner" ^{1/}, 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, or any replacement units, of the Minidoka powerplant:

^{1/} Previously referred to as the "Water Distribution and Hydrometric Work, District 01, Snake River, Idaho."

(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 watermaster of District No. 1, 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) 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 Wyoming'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.

RULES, REGULATIONS, AND DETERMINATIONS--COMPLIANCE WITH RECLAMATION LAWS

14. (a) The parties agree that the delivery of water or the use of Federal facilities pursuant to this contract is subject to Reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary under Reclamation law.

(b) The Secretary shall have the right to make determinations necessary to administer this contract that are consistent with the expressed and implied provisions of this contract, the laws of the United States and the States of Idaho and Wyoming, and the rules and regulations promulgated by the Secretary.

~~(c) Should Wyoming enter into any contracts for delivery of water from the heretofore identified space in Palisades Reservoir to subcontractors for the purpose of irrigation the parties agree that the United States will be a party to any subcontracts between Wyoming and the subcontractors, and that the subcontractors will be responsible for compliance with the provisions of the Reclamation Reform Act of 1982 (Public Law 97-293).~~

(c) Contracts made by Wyoming with others shall be subject to the provisions of this contract, and a copy shall be filed with the United States. The United States shall be afforded an opportunity to review all contracts prior to execution by Wyoming.

RENTAL OF WATER

15. For use in Idaho, Wyoming may rent stored water ^{only} through the Idaho Water Bank (Idaho Code, Section 42, 1761-1766) which has accrued to its credit in Palisades Reservoir, but such rentals shall be for terms not exceeding 20 years and at rates to be approved in advance by the Secretary and the Advisory Committee. Annual rates shall not exceed Wyoming's contractual obligation, when computed on an annual basis, to the United States which are properly apportionable to such water, plus an amount sufficient to cover other annual costs of Wyoming which are properly apportionable thereto.

POINTS OF DELIVERY OF WATER MEASUREMENT AND LOSSES

16. (a) Stored water to which Wyoming is entitled under this contract will be delivered and measured at the outlet of the reservoir from which the water is actually delivered, without regard to whether it is water accruing to storage rights in the reservoir. Wyoming will bear all losses chargeable to such water between the outlet of the delivering reservoir and Wyoming's point of diversion from the river.

(b) In addition to other specific provisions as to the distribution of losses chargeable to stored water, there shall be charged against stored water held under this contract to the credit of Wyoming in any reservoir of the system at the end of any irrigation season one and one-half percent (1.5%) to offset evaporation losses. Such charge shall be made as of not later than the end of the ensuing storage season.

PAYMENT OF COSTS IN DELIVERY AND DISTRIBUTION OF STORED WATER

17. (a) Wyoming shall pay, in addition to its proportionate share of the costs of operation and maintenance of the Palisades Reservoir as provided under article 6 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 Wyoming 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 6 of this contract.

(b) Wyoming 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 20 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.

SYSTEM RESERVOIR OPERATIONS FLEXIBILITY

18. (a) The United States operates and maintains a reservoir system on the Snake River including Jackson Lake, Palisades, American Falls, Minidoka, Island Park, Ririe, and Grassy Lake Dams and has certain operational flexibilities with respect to water storage, reservoir releases, and river flows.

(b) To the extent possible, the United States will operate the reservoir system to deliver water ordered pursuant to this contract. Daily accounting of storage ownership and use will assure that flow releases are properly charged to Wyoming storage and that nonparties to this agreement are not charged.

TEMPORARY STORAGE AND EXCHANGE OF WATER: RELEASE OF JACKSON LAKE
AND PALISADES WATER FOR POWER PRODUCTION

19. (a) It is the purpose of the United States and the water users having storage rights in the reservoir system (including Wyoming) to have the reservoir system so operated as to effect the greatest possible conservation of water. In keeping with this purpose, the endeavor will be to hold stored water in reservoir system space that is farthest upstream. Water in storage in any of the reservoirs of the system may, however, when the watermaster, and the Advisory Committee determine this to be in the interest of water conservation, be held temporarily in unoccupied space in any other reservoir of the system. And Wyoming 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, 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.

ORDERING OF WATER

20. (a) The ordering of stored water shall be effected by Wyoming by notifying the Superintendent, Minidoka Project, giving notice a period in advance, of the amount of water, within the limits of its water entitlements, to be delivered during each day. At the beginning of each calendar year Wyoming shall designate in writing to the Superintendent, Minidoka Project, the Wyoming official responsible for ordering water under this contract. ~~as well as for other matters involving Jackson Lake Reservoir operations.~~ The District 1 watermaster will be responsible for determining from day to day the amount of stored water required to be released from the various reservoirs of the system to comply with the requirements of Wyoming and all other entities entitled to the delivery of stored water only in response to orders from the watermaster. The watermaster shall be responsible for the accounting of all diversions. Diversions by Wyoming in excess of entitlements shall be charged

against stored water subsequently accruing to Wyoming's credit under this contract or any other contract with respect to storage in the reservoir system.

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

COMPLAINTS REGARDING WATER SUPPLY

21. 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 Wyoming its proportionate share of the water to which it is entitled under this contract. Should Wyoming 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, then Wyoming shall immediately report such alleged mistake or inaccuracy to the watermaster and to the Superintendent, Minidoka Project. If it is subsequently determined that Wyoming's proportionate share of stored water is not being delivered, the error will be corrected 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 to other similar causes of whatsoever kind. Nor shall Wyoming's obligations to the United States under this contract be reduced by reason of such shortages or interruptions.

PROTECTION OF WATER RIGHTS

22. 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 Wyoming in connection with its rights under this contract, the United States may, independently of Wyoming, 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 protection may be brought and prosecuted by Wyoming.

REFUSAL TO DELIVER WATER IN CASE OF DEFAULT

23. No water available to Wyoming under this contract shall be delivered to or for Wyoming if Wyoming 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 any other amount owed 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.

ADVISORY COMMITTEE

24. (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 these reservoirs which are required to be borne by the space allocated to irrigation storage. The representative of the United States will meet with the Advisory Committee from time to time, but not less often than two times each year, 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) 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. 1, 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.

NOTICES AND DESIGNATION OF RESPONSIBLE AGENCIES

25. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the Contractor; with the exception of the ordering of water provision in article 20, when mailed, postage prepaid, or delivered to the Regional Director, PN Region, Bureau of Reclamation, Box 043, 550 West Fort Street, Boise ID 83724-0043, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Wyoming Water Development Commission, State of Wyoming, Herschler Building,

Cheyenne, Wyoming 82002, for funding and repayment matters; and to the State Engineers' Office, State of Wyoming, Herschler Building, Cheyenne, Wyoming 82002, for all other matters. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

STANDARD PROVISIONS

The Standard Provisions applicable to this contract are listed below. the full text of these articles is attached as Exhibit A and is hereby made a part of this contract.

- A. Charge For Delinquent Payments
- ~~B. Confirmation Of Contract~~
- ~~C. Notices~~
- B. Officials Not To Benefit
- C. Assignment Limited--Successors And Assigns Obligated
- D. Books, Records And Reports
- ~~E. Changes In Contractor's Organization~~
- E. Quality Of Water
- F. Water And Air Pollution Control
- G. Water Conservation
- H. Equal Opportunity
- I. Compliance With Civil Rights Laws and Regulations
- ~~J. Clean Air And Water~~

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

UNITED STATES OF AMERICA

By _____
Regional Director, PN Region
Bureau of Reclamation
Box 043 - 550 West Fort Street
Boise, Idaho 83724

CONTRACTOR

By _____
Mike Sullivan
Governor, State of Wyoming

ATTEST:

STATE OF WYOMING)
County of _____) : ss

On this _____ day of _____, 19____, before me,
_____, a Notary Public, personally appeared,
_____, the individual(s) described in
~~and who executed the within and foregoing instrument.~~

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

(SEAL) _____
Notary Public in and for the
State of ~~Wyoming~~
Residing at:
My commission expires:

* * * * *

STATE OF IDAHO)
County of Ada) : ss

On this _____ day of _____, 19____, personally appeared
before me _____, known to me to be the official
of the United States of America that ~~executed the within and foregoing~~
~~instrument and acknowledged said instrument to be the free and voluntary act~~
and deed of said United States, for the uses and purposes therein mentioned,
and on oath stated that he was authorized to execute said instrument.

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

(SEAL) _____
~~Notary Public in and for the~~
State of Idaho
Residing at:
My commission expires:

The Following Documents Are
Part of This Contract

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

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