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Memorandum

To: Regional Director, Boise ID
From: Regional Supervisor of Water, Power, and Lands, Boise ID
Subject: Sale of 33,000 Acre-Feet of Space in Palisades Reservoir to Wyoming, Palisades Project (Repayment Contract)

The enclosed subject repayment contract (No. 1-07-10-W0823) was signed by you on October 22, 1990, and by Wyoming Governor, Mike Sullivan on October 31, 1990. A similarly signed original contract has been retained by Wyoming. Because the contract has been executed, this approval memorandum merely completes the contracting process and documents the various issues and changes made during contract negotiations with the State of Wyoming.

Background:

The contract provides Wyoming 33,000 acre-feet of space in Palisades Reservoir, which Wyoming may use, insofar as can be accomplished through coordinated project operations, to provide instream flows below Jackson Lake Dam, to maintain higher levels in Jackson Lake, to provide replacement storage as required by the 1949 Snake River Compact, or for other purposes as Wyoming may desire.

Palisades Dam and Reservoir is a Reclamation constructed multipurpose development serving irrigation, power, flood control, recreation, and fish and wildlife. The project was reauthorized by Congress on September 30, 1950. Construction was initiated in 1951 and completed in 1957. The reservoir has a total capacity of 1,401,000 acre-feet with active capacity of 1,200,000 acre-feet. With the execution of this contract, Reclamation has contracted with 53 spaceholders for 1,180,520 acre-feet.

In a July 13, 1989, letter to the Regional Director, the Commissioner approved the Basis of Negotiation submitted by the Region on May 9, 1989.

Contract Terms And Conditions:

The contract was written with the intent of treating Wyoming, as near as possible, the same as other existing Palisades spaceholders. Accordingly, this contract utilizes articles and language that are identical to those that appear in contracts with other Palisades spaceholders. Obviously, due to the nature of the proposed use of water accruing to Wyoming's space and due to the

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operational exchange of space between Palisades and Jackson Lake reservoirs, additional language and conditions apply to this contract while certain other standard Palisades contract articles were deleted.

Explanatory Recitals: The recital reiterates the more important concepts and requirements of the 1949 Snake River Compact. Under the Compact, four percent of the waters of the Snake River measured at the common boundary, exclusive of established rights, are allocated to Wyoming. Under the Compact, one-half of the 4 percent, or 2 percent may be used by Wyoming without requirement for replacement storage space. And in order for Wyoming to use or store the remaining 2 percent, replacement storage in the amount of one-third of such use is to be provided for the benefit of existing Idaho water users. It has been estimated that 4 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 4 percent amounts to about 33,000 acre-feet. Reclamation administratively set aside 33,000 acre-feet of space in Palisades Reservoir as replacement storage should the need arise to compensate Idaho water users.

Article 3: The contract provides Wyoming the water accruing to 33,000 acre-feet of space in Palisades Reservoir for uses as previously described. If development in Wyoming occurs which triggers the replacement provision of the Compact, then Wyoming can utilize the 33,000 acre-feet of storage in Palisades Reservoir to provide replacement storage to Idaho water users. See further discussion on article 9.

Article 4: The 33,000 acre-feet purchased by Wyoming represent 2.750 percent of the active capacity of the reservoir. The United States will make available to Wyoming the stored water accruing to such space in Palisades Reservoir.

Article 5: This article establishes the investment obligation at \$567,270 (\$17.19 per acre-foot). The sale is considered an interest bearing function. Accordingly, the investment obligation includes Wyoming's proportionate share of the construction cost allocated to irrigation amounting to \$541,200 (\$16.40 per acre-foot), plus a proportionate share of interest during construction amounting to \$26,070 (\$.79 per acre-foot). The construction cost component is based on the full Palisades project construction cost allocated to the irrigation function, less an adjustment for the cost of the Michaud Flats - Fort Hall Project which is included with Palisades for accounting purposes. Consequently, Wyoming will not receive "financial assistance to irrigation" from power revenues as is authorized for Palisades irrigation spaceholders. Construction costs were taken from the Cost and Repayment Statement, Palisades Project, as of September 30, 1989. The interest during construction component is based on the proportionate share of IDC allocated to the irrigation function as developed in the Final Cost Allocation Report approved March 1970. Documentation of the construction and IDC charges are included in the enclosure.

Article 5 also specifies that the investment charge obligation will be paid to the United States in full, prior to June 30, 1991, contingent upon approval by the Wyoming Legislature. If the Wyoming Legislature fails to approve the contract by that date (including funding), the contract shall be voided.

Article 6: Wyoming is also obligated to pay its proportionate share (2.750 percent) of the operation and maintenance (O&M) cost of Palisades Dam and Reservoir. Such costs shall include appropriate overhead charges associated with the Minidoka Project Office. Wyoming, like other Palisades spaceholders, will pay its share of operation and maintenance cost on or before April 1, of the year for which it is issued or such other date as may be agreed upon. Operation and maintenance charges will start with the 1991 irrigation season.

If funds advanced by Wyoming exceed Wyoming's share of the actual costs of operation and maintenance of the dam and reservoir, the surplus will be credited to the succeeding year. Wyoming had requested that interest be paid on surplus O&M collected in a given year. It is standard practice to credit surplus funds to the following year without the payment of interest. Conversely, if operation and maintenance funds are under-collected, spaceholders fund the deficit in the following year.

Article 7: Wyoming suggested alternative language regarding the liability of the United States. They suggested language from the Buffalo Bill contract. However, after discussions with Wyoming, the original language was modified slightly and retained.

Article 9: Agreements made by Wyoming with others for uses of water in Wyoming are subject to other provisions in the contract, including article 14, which provides the United States an opportunity to review all contracts prior to execution by Wyoming. However, the United States will not require that it be a party to these contracts.

Article 10(e): Article 10(e) stipulates that an operating agreement will be developed between Reclamation and Wyoming to cover the operation of Jackson Lake and Palisades Reservoirs and the delivery of Wyoming's water. As per existing operating arrangements, the District 1 Watermaster will also be involved. The Project Superintendent, Minidoka Project Office will be the responsible party for Reclamation.

Article 10(d) and Article 18: Article 10(d), in conjunction with article 18, is the foundation of the agreement between the United States and Wyoming, whereby Palisades water can be of benefit to Wyoming. Article 10(d) provides that water ordered by Wyoming can be exchanged and delivered from Jackson Lake. Because Palisades is downstream, it is only through exchange with Jackson Lake water that Wyoming's water in Palisades can be put to use in Wyoming. Once water ordered by Wyoming and released from Jackson Lake passes into Idaho, Wyoming then relinquishes all rights to the use of that water. Accordingly, water ordered by Wyoming and released from Jackson Lake can not also be placed in the Idaho Water Bank. However, to the extent that once such water ordered by Wyoming and released from Jackson Lake returns into Idaho, it essentially becomes natural flow and can be used to fill spaceholder's rights in Palisades (including Wyoming's) once the prior senior water rights are met (i.e., winter water savings, American Falls, etc.).

Article 11: This article is not a standard Palisades contract article. It was included to confirm the fact that this contract does not affect the Snake River Compact.

The 33,000 acre-feet was space previously held as uncontracted space in Palisades by Reclamation to meet replacement requirements under article III A.2. of the Compact.

This contract does not relieve Wyoming of its Compact obligations and water accruing hereunder will be used to meet replacement requirements under terms of the Compact unless other arrangements are made.

Article 12: Wyoming is not part of the winter water savings provision and will not be entitled to special storage rights in Palisades Reservoir by reason of the program set out in this article.

The winter water savings provision is a means to curtail and thereby save water from November 1 to April 30 of each storage season. Certain water user organizations have contracted with the United States to not divert during this period. Those participating receive an earlier priority storage right in exchange for contracting to curtail these winter diversions. The reason the winter water savings provision was included in the contract is that Wyoming thereby recognizes the priority rights of other spaceholders in Palisades.

Article 13: It is the objective of the United States in the operation of American Falls and Minidoka Dams to curtail the release of additional water from American Falls 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.

Such operation can result in the loss of power and energy in certain years. Wyoming, along with the other spaceholders benefiting from the water savings resulting from the operations specified in this article, will pay for the replacement power and energy.

Article 14: Wyoming is subject to Reclamation law, including the Reclamation Reform Act of 1982. Full repayment of the investment obligation removes the excess lands provision of the RRA. However, the water conservation provisions remain in effect.

Contracts made by Wyoming with others for the use of water accruing to its space shall be subject to this contract, including the right of the United States to review all contracts prior to execution by Wyoming.

Article 15: Like other Palisades spaceholders, Wyoming may place water accruing to its credit in Palisades Reservoir in the Idaho Water Bank for rental to other entities. Rentals shall not exceed 20 years. The usual Water Bank rules will apply to such placement. Although the rental rate is established by the Idaho Water Bank (Advisory Committee), the articles language, like other Palisades water rental articles, specifies that the rate cannot exceed Wyoming's annual obligation to the United States when computed

on an annual basis, plus an amount to cover other costs of Wyoming that are properly apportionable to the water. Wyoming will pay off the investment obligation up-front, hence the addition of the phrase "when computed on an annual basis."

Article 15(b) emphasizes the point that water stored in Palisades Reservoir and ordered by Wyoming and released by exchange from Jackson Lake, cannot be placed in the Idaho Water Bank for rental. This confirms previous contract language that specifies that Wyoming relinquishes all rights to contract water (ordered and released from Jackson Lake) once it crosses the Idaho-Wyoming border.

Article 17 (b): The State of Wyoming requested explanation and clarification regarding the contract provision that Wyoming shall pay its proportionate share of the costs incurred by the District 1 Watermaster in the delivery and distribution of water. Discussions with the District 1 Watermaster have indicated that there may be annual costs chargeable to Wyoming, the amount of which is unknown at this time. The watermaster indicated that in some cases the obligation may be met by other than direct cash payment --- such as by having the entity participate in construction of a stream gauging station or other measures. This information was passed on to Wyoming via letter and in negotiation meetings.

Article 18: This article was included to confirm the fact that through the Federal reservoir system on the Snake River, the United States will operate the system, to the extent possible, to deliver water ordered pursuant to this contract. Accordingly, to the extent possible, Reclamation will deliver water ordered by Wyoming from Jackson Lake by exchange with water rights held in Palisades. A formal exchange of rights between spaceholders in Palisades and Jackson Lake will not be necessary.

Article 20: This article specifies that the actual ordering of water will be affected by Wyoming notifying the Superintendent, Minidoka Project, in advance, of the amount of water to be delivered within the limits of its entitlement. Also, 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. This last provision was added in order to avoid confusion over the possibility of different Wyoming State agencies requesting flow releases or reservoir operating conditions that may conflict with each other.

The standard Palisades contract article stating that "actions by the watermaster under provisions of this article shall be as agent of Wyoming" was deleted. Wyoming felt that this language raised several legal issues, including the issue of an Idaho official acting as agent for Wyoming for uses in Wyoming. Wyoming would benefit from the services of the watermaster, as discussed in article 20, but it was agreed by both parties that the deleted language was unclear in this case.

Article 22: During negotiations, Wyoming inquired about the potential cost incurred should the Federal government bring legal proceedings or take other measures towards the defense and protection of its water rights as described in this article. Reclamation responded that there was no known pending litigation. Furthermore, Wyoming asked whether this included the ongoing adjudication of the Snake River by the State of Idaho. Specifically, they inquired if there will be a charge to each of the system reservoir spaceholders for the cost of the adjudication. Discussions with the Field Solicitor's office indicate that this issue is still unresolved.

Article 24: During the negotiation phase, Wyoming asked for representation on the Advisory Committee. Reclamation replied that the Advisory Committee, being the Committee of Nine was formed April 23, 1919, under the authority of the State of Idaho and that Reclamation has no authority to unilaterally add members to the committee. Wyoming can attend committee meetings and approach the committee on various matters. Wyoming would be a spaceholder like the 53 other spaceholders in Palisades Reservoir.

Standard Provisions:

The Confirmation of Contract article was deleted from the contract as requested by Wyoming. Wyoming stated that since the Governor of Wyoming (rather than an individual irrigation district) would be signing the contract, he is legally binding the State to the terms of the contract, thus negating the need for a court confirmation.

The Notices article was revised and placed in the main body of the contract (article 25). The new article was titled "Notices and Designation of Responsible Agencies." Notices on behalf of the United States are to be mailed or delivered to both the Wyoming Water Development Commission and to the State Engineer's Office.

The Water Conservation article was modified slightly as per Wyoming's suggestion. The article, as modified, applies only to consumptive uses of water in Wyoming rather than to the delivery or conveyance of "all" water, whatever the use, from or through Federal facilities. The modification recognizes that Wyoming's intent for the purchased water is for instream flows and/or to maintain reservoir levels.

The Changes In Contractors Organization article was deleted as per Wyoming's suggestion.

Legal And Policy Considerations:

The proposed contract complies with Reclamation and State laws. The Field Solicitor, Boise, Idaho, has found the contract to be legally sufficient. The State of Wyoming has authority to contract with the United States. The proposed contract fulfills NEPA compliance by a Finding Of No Significant Impacts, signed by the Regional Environmental officer on October 12, 1990. Notice of the contract negotiations was published in newspapers (Jackson Hole, Twin Falls, Burley, Pocatello, Idaho Falls) in October and November 1989, and in the Quarterly Status Tabulation of Proposed Contractual Actions in the

Federal Register. There was not any known public concerns or controversy that required additional consideration prior to contract execution. The State of Idaho and various Idaho irrigation interests were informed of the terms of the contract, and of issues raised during negotiations.

Findings And Recommendations:

We believe the executed contract is in the best interest of the United States and the State of Wyoming.

Max E. Van Den Berg

Enclosure

Concur:

John W. Keegan III

Regional Director

FEB 15 1991

Date

APREINERS bc 1/9/91 Palisades-Wyoming approval memo - PALI