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Attorneys for A&B Irrigation District

**BEFORE THE DEPARTMENT OF WATER RESOURCES
 OF THE STATE OF IDAHO**

)	CM-MP-2009-02
)	
IN THE MATTER OF DISTRIBUTION OF)	AFFIDAVIT OF TRAVIS L.
WATER TO WATER RIGHT NOS. 36-)	THOMPSON IN SUPPORT OF A&B
02356A, 36-07210, AND 36-07247)	IRRIGATION DISTRICT'S
)	RESPONSE TO UNIT A
(Blue Lakes Delivery Call))	ASSOCIATION'S MOTION FOR
)	SUMMARY JUDGMENT
_____)	

State of Idaho)	
)	ss.
Ada County)	

TRAVIS L. THOMPSON, being first duly sworn upon oath, deposes and says:

1. I am an attorney in the firm Barker Rosholt & Simpson LLP providing legal representation to the A&B Irrigation District in the above captioned matter. I am over the age of 18 and have knowledge of the documents and legal proceedings pertinent to this matter, and I make this affidavit based upon personal knowledge.

2. Attached hereto as **Exhibit A** is a true and correct copy of A&B Irrigation District's By-Laws approved August 21, 1968.

3. I served discovery requests upon Erika Malmen, counsel for the Unit A Association on February 5, 2010. Interrogatory No. 4 in those requests states "Please identify all members of the 'Unit A Association', including the Board of Directors, and state their names and addresses." To date, the Association has not responded to these requests. Accordingly, A&B does not have knowledge of the exact membership of Unit A at this point and therefore is unable to verify any claims of alleged individual water rights held by those members. Pursuant to I.R.C.P. 56(f) I cannot present complete information at this time to confirm whether individual Unit A members have any individual water rights in support of the opposition to the Association's motion. However, as to the Unit A Association I conducted a search of IDWR's on-line water right database on March 4, 2010. Attached hereto as **Exhibit B** is a true and correct copy of the results of that search which shows no water rights held by or claimed in the name of the "Unit A Association".

4. Attached hereto as **Exhibit C** is a true and correct copy of excerpts of the Milner Low Lift Irrigation District contracts with the United States Bureau of Reclamation dated January 7, 1955 and January 21, 1966.

DATED this 5th day of March, 2010.

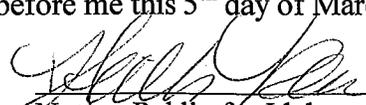
BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson
Attorney for A&B Irrigation District

SUBSCRIBED AND SWORN to before me this 5th day of March, 2010.

HEATHER REMM
NOTARY PUBLIC
STATE OF IDAHO



Notary Public for Idaho
Residing at: BOISE
Commission Expires: 12/10/2015

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of March, 2010, the above and foregoing **AFFIDAVIT OF TRAVIS L. THOMPSON** was sent to the following by e-mail at the listed e-mail addresses:

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Travis L. Thompson

Exhibit A

A&B IRRIGATION DISTRICT - RUPERT, IDAHO

AUGUST 21, 1968

BY-LAWS

INTRODUCTORY:

The purpose of printing this handbook is to provide a source of general information for distribution among the landowners and waterusers of the A&B Irrigation District, and among the employed personnel of the District, and other interested parties.

By-Laws are an effective set of rules and regulations for district operations; they are provided for but not specifically prescribed in detail by law, yet are quite necessary for efficient operation of the District. Policies are the result of experience in the equitable treatment of problems, and in the business procedures of the irrigation district.

The pattern of organization, conduct of the business, of irrigation districts in Idaho, outlined to a large extent in Title 43 Idaho Code, follows in many respects, other political subdivisions of the State of Idaho.

It is the desire of the Board of Directors of the A&B Irrigation District that each recipient of one of these handbooks will take the time to read it and become familiar with its contents; and that it will be found helpful to those who do.

BY-LAWS - A&B IRRIGATION DISTRICT

ARTICLE ONE - NAME, BOUNDARIES OF DISTRICT, DIRECTOR DIVISION:

Section 1. The name of the organization is the A&B IRRIGATION DISTRICT, its office, headquarters, and principal place of business are at 11th and E Streets in Rupert, Idaho.

Section 2. The boundaries of the District were established during the organizational proceedings in 1960 and are a matter of record in the offices of the Recorders of Minidoka and Jerome Counties, Idaho.

Section 3. The District is divided into five (5) director divisions, the boundaries of which are fixed as follows:

DIVISION ONE - all area lying in Range 25 East of the Boise Meridian.

DIVISION TWO - all area lying in Range 24 East of the Boise Meridian.

DIVISION THREE - all area lying in Range 23 East of the Boise Meridian.

DIVISION FOUR - all area lying in Ranges 21 and 22 East of the Boise Meridian north of the line common to Sections 25 and 36, Township 21 EBM.

DIVISION FIVE - all area lying in Ranges 21 and 22 East of the Boise Meridian south of the common line to Sections 25 and 36, Township 9 South, Range 22 EBM., and sections 25 and 36, Township 9 South, Range 21 EBM.

ARTICLE TWO - BOARD OF DIRECTORS:

Section 1. The Board of Directors of the District shall consist of five (5) members, one elected from each of the five director divisions.

Section 2. Subsequent to the election of the first Board of Directors after the organization of the District, directors shall be elected for 3-year terms of office, the terms to commence the first Tuesday of January following the date of their respective election.

Section 3. Qualifications of a director are that he shall be a qualified elector of the District, and shall reside in the director division which he expects to represent.

ARTICLE THREE - POWERS AND DUTIES OF THE BOARD OF DIRECTORS:

Section 1. The Board of Directors is the governing body of the irrigation district, and as such, responsible for the policy making, administration of the affairs, and the proper conduct of the business of the District, as prescribed by law.

Section 2. The organization of the Board of Directors, the duties of its elective and appointive officers, its meeting - both regular and special, and its powers, shall be as provided by law.

ARTICLE THREE - cont.

Section 3. Generally accepted legal responsibilities of the Board of Directors are as follows:

1. Directors cannot abdicate their responsibility to direct.
2. They must manage the business along lines imposed through articles of incorporation and by-laws.
3. They are responsible for appointing officers and delegating authority to them for carrying out the functions of the corporation.
4. Directors must be knowledgeable of District affairs to enable them to perform their duties effectively.
5. Directors must act in good faith and with reasonable care in handling the affairs of the District.
6. They are considered in law as representing a trusteeship of landowners or members.
7. They must attend board meetings on a regular basis. Absence from board meetings does not constitute freedom of a board member from responsibility of decisions by the board.
8. Directors may be held financially responsible for losses incurred by the District under certain specific circumstances, principally gross negligence.

ARTICLE FOUR - MANAGER:

Section 1. The Manager, appointed by the Board of Directors, shall have supervision of all activities and personnel engaged in the care, operation and maintenance of the project irrigation system, and in the administration of the affairs of the District; distribution of the water, maintenance, repair, and upkeep of all machinery, equipment and buildings.

Section 2. This officer shall be responsible to the Board of Directors for the proper conduct of the affairs entrusted to him.

Section 3. The Role of the Manager:

1. Maintains as high a standard as possible in operation and maintenance of the district facilities allowable under the authority granted by the Board.
2. Willingly carries out all specifically assigned duties as well as others that may be delegated from time to time by the Board.
3. Never attempts to assume the authority or responsibility of the Board.

ARTICLE FOUR - cont.

Section 3. cont.

4. Will always refer to the Board any items not covered by existing guidelines with particular attention being given those which are the full responsibility of the Board.
5. Insists upon equitable delivery to each wateruser with a continued emphasis on conservation practice as well as full compliance with State law.
6. Will provide a realistic, progressive program of all major current and future operation and maintenance needs of the district and will thoroughly discuss these with the Board with the activation being contingent upon their approval.
7. Provide the Board with the proper information related to current operation and maintenance costs with recommendations as to future needs to assist them in setting new assessments.
8. Is directly responsible to the Board at all times for any action taken relating to physical operation decisions of the district.
9. Will recruit and keep employed the best operating personnel available under the employment policies of the Board with delegation of proper authority to various employees, but always being personally responsible.
10. Will always promote the proper relationship between the Board and the wateruser, the Board and the employee, and the employee and the wateruser.
11. Will be dedicated to showing the best possible return for the dollar expended in operation and maintenance.
12. Will be prepared at all times to prudently make the dozens of small day-by-day decisions that are necessary in water delivery and maintenance of the district facilities.

ARTICLE FIVE - SECRETARY-TREASURER:

Section 1. The secretary-treasurer, appointed by the Board of Directors, with the approval of the Manager, shall have such duties and responsibilities as are prescribed by law, as a public officer under whose care and keeping are public funds and records, and is responsible under the law to the Board of Directors and the law.

Section 2. The secretary-treasurer under the direction of the manager shall supervise and perform work in the administrative functions of budgeting and programming, supply and property management, finance, personnel, wateruser's accounts, public relations, office personnel supervision, and such other duties as are pertinent to the office of secretary-treasurer.

ARTICLE SIX - MANAGEMENT OF DISTRICT AFFAIRS:

Section 1. It shall be recognized that the Board of Directors is the final authority in all matters of policy and administration of the affairs of the District; that the duties and responsibilities of the various officers and supervisory personnel of the District, whether established by law or otherwise assigned, shall be subject to that authority.

Section 2. It shall be the duty of such officers and supervisors to recognize and respect the scope of responsibility of each other, and to cooperate to promote harmony and efficiency in the administration and operation of the District.

Section 3. No member of the Board of Directors shall, except in cases of emergency, interfere with the supervisory functions of any appointed or employed personnel, nor with any District employee in the performance of that employee's duties.

Section 4. It is highly important that directors of an irrigation district maintain a proper relationship with the employees. Generally the director will not have any direct authority over the employee. The board as a unit will have complete responsibility for the affairs of their organization. They will select a manager to supervise operation and maintenance who will be responsible directly to them. The Manager will select and employ the best personnel available, who will be responsible to him for their actions.

A director must be attentive to complaints of waterusers about employees, but should refrain from any agreement. All information possible related to the complaint should be gathered so he can give a report to the full board and the manager.

The employee in conversation with waterusers should not be critical of the director, the board, or the manager. If each will stand in support of the other the public image of the directing-operating organization will be much better. A director should be careful about asking any consideration from an employee unless he feels that it falls within operating rules and the employee can rightfully do the same for all other waterusers. Issuing something that may sound like a direct order should be avoided by a director unless this happens to be permissible by organization rule.

The employee should recognize the director's position of responsibility, but should never ask any personal favors or assistance in the performance of his assigned tasks. Fair and equitable treatment of the director-wateruser, and no more, is absolutely essential. To mingle politically in the business of elections especially with regards to the seating or unseating of a director would be a breach of ethics for an employee.

If the proper relationship is maintained between the director and the employee, the Board-Manager team is assisted in its position. The right of the team to be able to arrive at the proper end result will be firmly protected.

ARTICLE SEVEN - FISCAL YEAR OF THE DISTRICT:

Section 1. The District shall, until such time as otherwise provided, operate on a fiscal year beginning November 1 and ending October 31 following, as provided in Idaho Code Section 43-304.

ARTICLE EIGHT - ASSESSMENTS AND CHARGES:

Section 1. The District is by law authorized and obligated to levy such assessments and charges against the lands of the District as are necessary to pay the costs of conducting the business affairs and operating and maintaining the irrigation system and works of the District.

Section 2. The District is also obligated by law and by the contract of February 9, 1962 between the United States of America and the A&B Irrigation District, to levy such annual construction charge assessments against the lands of the District as are required to meet the District's annual installment to the United States.

Section 3. On the statutory date of levying assessments against the lands of the District, the Board of Directors shall proceed to levy said assessments which shall include sufficient money for administration, operation and maintenance, and construction, and said assessments shall be payable as provided by law.

Section 4. The Board of Directors has the authority to set a toll charge, or a minimum operation and maintenance charge, or a minimum water charge, making the same payable on or before a stipulated date, and to affix a penalty for failure to pay on or before the due date; said charge shall, in any event, be payable in advance of delivery of water for the year for which the charge is due. Said charge shall become a part of the assessment for operation and maintenance which shall be levied each year. Additional water charges shall be payable by the wateruser to the District on or before December 20th of the year in which such water is delivered, unless otherwise provided.

Section 5. All assessments and charges payable on or before the statutory date of December 20, remaining unpaid, shall become delinquent and subject to the statutory delinquency penalty of 2% plus interest at the rate of 8% per annum until paid.

Section 6. Eligibility for delivery of water shall be contingent upon payments of all delinquent assessments and charges plus accrued penalty and interest, and the current year's advance payment of toll, minimum O&M, or minimum water charge.

ARTICLE NINE - WATER ALLOTMENT AND DELIVERY:

Section 1. Article 16 (b) of the Contract of February 9, 1962, states:

"The District shall, except as to lands in a development period status, levy a minimum annual operation and maintenance charge against each irrigable acre of land within the District, and the payment of such minimum charge shall be required whether or not water is used. The amount of water in acre-feet per acre which is to be delivered each year for the minimum annual charge shall be determined by the District's Board of Directors, but it may not be set in excess of three (3) acre feet. For water to be delivered each year in excess of the minimum amounts, the landowners or waterusers involved shall pay to the District an excess charge as follows: (The wording following has been condensed from the Contract wording.)

- (1) First acre foot per acre - 100% of the minimum rate.
- (2) Second acre foot per acre - 160% of the minimum rate.
- (3) Third acre foot per acre, and all additional acre feet per acre, 200% of the minimum rate.

ARTICLE NINE - cont.

Section 1. - cont.

When the District assumed operation and maintenance under Article 13, the Board of Directors were empowered to adjust the charges to be made for excess water so as to increase or decrease such charges as it determines to be necessary for the efficient operation of the project.

(c) To carry out the provisions of this article, the District, or the United States, whichever is operating the irrigation works, shall measure the water delivered to each farm turnout and shall keep individual farm turnout delivery records." (end of quote from Contract)

Section 2. In addition to the contractual provisions in Section 1, above, no change shall be made in the three (3) acre foot allotment of water under the minimum charge unless said charge shall first be approved by a majority favorable vote in the election for deciding such question by the waterusers of the District; said election shall be held only in conjunction with the regular election for director. (See Minutes of the Board of Directors, January 22, 1962, page 159 of Minute Book No. One.)

ARTICLE TEN - SALES OF LAND, CERTIFICATE OF SALE REQUIRED:

Section 1. The resolved clause, and the Order of the Board on November 6, 1962, as amended January 4, 1966, hereinafter quoted in full text, shall govern in instances of sales of land within the District.

(full text of Order to be quoted here)

ARTICLE ELEVEN - AMENDMENTS:

A & B IRRIGATION DISTRICT, RUPERT, IDAHO

January 4, 1966

TO: All landowners of the A & B Irrigation District

FROM: Board of Directors of the District

SUBJECT: Requirements in connection with sale of land lying within the District. By action of the Board of Directors of the A & B Irrigation District, meeting on January 4, 1966, the Resolution and Order of the Board, dated November 8, 1962, was amended to read as follows:

**RESOLUTION REGARDING SALES OF LANDS WITHIN
THE BOUNDARIES OF THE A & B IRRIGATION DISTRICT**

WHEREAS, Article 43 of the Contract of February 8, 1962 between the United States and the A & B Irrigation District provides for the termination of the recordable contracts between the United States and the entrymen and other owners of land lying within the boundaries of said district, on December 31, 1962; and,

WHEREAS, said recordable contracts provide certain regulatory measures regarding the sale, transfer, or trade of lands lying within the boundaries of said district, including that certain information which is required by the Bureau of Reclamation before issuance of a certificate of compliance showing compliance with said measures; and,

WHEREAS, said regulatory measures required of the vendor (seller) and the vendee (buyer) of lands within the boundaries of said district, among other things, an accurate description of the land involved; an accurate survey, description, and determination of irrigable area, and designation by tract (such as Area 1, Area 2, etc.) of each farm unit which may be in the process of being subdivided; and,

WHEREAS, information such as the foregoing, is equally essential to said District in order that it may maintain adequate and accurate records of the ownership of land lying within its boundaries;

NOW THEREFORE BE IT RESOLVED (as amended on January 4, 1966), and **IT IS HEREBY ORDERED**, by the Board of Directors of the A & B IRRIGATION DISTRICT, that the following shall be effective and in full force on and after January 1, 1963:

1. That for each any every sale, trade or transfer of lands lying within the boundaries of the A & B Irrigation District, whether by cash, contract in escrow, or contract secured by mortgage or otherwise, there shall be a statement of the details of said transaction, on a form prescribed by said district, filed with the Secretary of said district. Eligibility for subsequent delivery of any water to said lands from the irrigation system and works of said district, shall be contingent upon the filing of said statement.
2. That said statement, designated as a "Certificate of Sale", shall be signed by both the seller (vendor) and the buyer (vendee) in each instance, and their respective signing witnessed by a party or parties qualified to so witness; and shall be filed with the secretary of the district as soon as reasonably possible after the sale or transfer is made but in any event, prior to clearance for delivery of water for the farm unit or tract involved for the next succeeding irrigation season.
3. That said certificate of sale shall include, along with other information:
 - (a) The complete legal name and mailing address of both the seller and the buyer.
 - (b) An accurate legal description of the land involved in the transaction; and if the transaction involves the subdividing of an existing farm unit or tract, said certificate of sale be accompanied by four (4) copies of an acceptable plat of said subdivision (prepared on a scale of 1 inch equals 400 feet) which plat shall show a complete metes and bounds description of each area in said subdivision, designation of each area by number (such as Area 1, Area 2, etc.) and the irrigable acres contained within each area.
 - (c) Whether the sale, trade, or transfer is evidenced by a warranty deed, contract in escrow, or secured contract.
 - (d) Party responsible for payment of the irrigation district assessments and/or charges for the current year, and for prior years.
 - (e) Effective date of the transaction.
4. The surveying and describing of the subdivision of a farm unit or tract, and the preparation of the plat, shall be performed by an engineer or surveyor who is qualified to perform such work in the State of Idaho; and shall be without cost to the A & B Irrigation District. A copy of said plat will be filed by said district with the land assessor of the county in which the land is situated.

GENERAL INFORMATION - A&B IRRIGATION DISTRICT

ELECTIONS:

1. Elections for Directors are held on the second Tuesday of December of each year.
2. Special Elections may be held for various purposes, upon the call of the Board of Directors and after notice as required by law.
3. At District elections, both the landowner and spouse are entitled to vote. Proxy ballots are not permissible; absentee ballots may be arranged.
4. Voters, or electors as they are commonly called, in all District elections shall have the same qualifications as are required of voters under the general election laws of the State of Idaho; shall own land within the District, and live in either Minidoka or Jerome County...
5. Petitions to nominate a candidate for director of the District shall be signed by at least twelve (12) qualified electors of the District and filed with the Secretary of the District not less than ten (10) days nor more than thirty (30) days prior to the date of the election.

BOARD OF DIRECTORS, MEETINGS, OFFICERS, ETC.:

1. The Board of Directors, at its regular meeting of each January, shall reorganize itself by the election of a president and a vice-president, and shall appoint such other officers as may be subject to appointment.
2. The officers of the District shall have such duties as are pertinent to their respective office and in accord with the law.
3. Regular meetings of the Board of Directors are held the first Tuesday of each month, or such other date as may be provided by law, in the office of the District in Rupert. Special meetings may be held when necessity demands. All meetings of the Board are open to the public.
4. Disbursements of all funds of the District are upon authorization by the Board of Directors.

Exhibit B

IDWR Water Right and Adjudication Search

Note: This search tool identifies active water rights and active transfers. If you want to search both active and inactive water rights, please check the box below.

To view documents related to all existing Transfer applications, see [SEARCH Transfers](#) on the Water Right Transfer tab.

Search for both active and inactive water right records.

Search Results

Type of Query

USAGE INSTRUCTION

<input checked="" type="checkbox"/> All Adjudication & Water Rights	
Adjudication <input type="checkbox"/> Claims <input type="checkbox"/> Recommendations <input type="checkbox"/> Both	Water Rights <input type="checkbox"/> Applications <input type="checkbox"/> Permits <input type="checkbox"/> Decrees, Licenses and Statutory Claims <input type="checkbox"/> Transfers <input type="checkbox"/> All of the above

Basin

Who

What

When

Where

Clear

Search

Help

Query parameters:

OrganizationName = Unit A Association

Search for: active Records

Number of records = 0

Exhibit C

~~322 -~~

~~322 -~~

11755

Contract No. 14-06-W 92

CONTRACT BETWEEN

THE UNITED STATES OF AMERICA

and

MILNER LOW LIFT IRRIGATION DISTRICT

Concerning Storage Capacity in American Falls and
Palisades Reservoirs, and Related Matters

Minidoka and Palisades Projects - Idaho

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Reclamation

Minidoka and Palisades Projects
Idaho

Contract With
MILNER LOW LIFT IRRIGATION DISTRICT
Concerning Storage Capacity in American Falls and
Palisades Reservoirs, and Related Matters

THIS CONTRACT, Made this 7th day of January 19 55

pursuant to the Federal Reclamation Laws, between THE UNITED STATES OF AMERICA (hereinafter called the United States), acting through the Assistant Secretary of the Interior, and MILNER LOW LIFT IRRIGATION DISTRICT (hereinafter called the District), a corporation organized and existing under the laws of the State of Idaho and having its principal place of business at Murtaugh, 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 District, 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

"Advisory Committee" shall mean the committee defined by article 38 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.

"New lands" shall mean those lands within the jurisdiction of the District which were not irrigated prior to the 1953 irrigation season, excluding any of such lands as, at the beginning of that season, were within the outer boundaries of an ownership then entitled to water through the District's

canal system or had by transfer or otherwise an independent right to water from the Snake River.

"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.

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

Capacity to be Available to the District

6. (a) The United States will operate and maintain the existing American Falls Dam and Reservoir, and beginning with the 1953 irrigation season will make available to the District stored water accruing to two and six thousand eight hundred seventy-five ten thousandths per cent (2.6875%) of the active capacity of that reservoir within the limits and on the terms and conditions provided in this contract. This percentage shall, so long as the reservoir has an active capacity of 1,700,000 acre-feet, be treated as the equivalent of 45,687 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.

(b) The amount of active capacity defined in (a) of this article comprises a net amount of 45,687 acre-feet, which amount is derived

in full. It shall cease also as to any excess lands in any one ownership when the construction charge obligation hereunder allocable to such land has been paid in full to the United States.

Termination or Modification of Excess
Land Provisions

34. (a) In the event there is a repeal of the so-called excess land provisions of the Federal Reclamation Laws, article 33 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 District, negotiate amendments of that article in order to conform it to the excess land provisions of the law as so amended.

(b) Article 33 will no longer be of force or effect if there is a determination by a court of final jurisdiction, binding on all necessary parties, declaring the provisions of that article to be of no force or effect.

(c) For the purposes of this article, the provisions of article 33 are hereby agreed to be severable from the other provisions of this contract.

Limitation on Service to New Lands

35. (a) The total irrigable area of new lands to be provided irrigation service under this contract exceeding 1,500 acres, no part of the additional stored water made available to the District under this contract shall be delivered to or for any new lands except those new lands

whose owners, for themselves, their heirs, successors and assigns have, within the time hereinafter provided, executed and delivered recordable contracts in the form approved by the Secretary accepting the terms and conditions of this article. Each such contract shall be executed within the time required by a written notice to be given by the United States with respect thereto, such notice to require execution within ninety (90) days from the date thereof or such longer period as may, for cause, be granted by the Secretary.

(b) The amount in dollars by which the price fixed in any future sale, trade, or transfer of new lands in the District exceeds the sum of:

- (1) The appraised value of the land as established by the appraisal provided for in article 36,
- (2) The appraised value of the improvements thereon, if any, appraised as provided in article 36, and
- (3) The costs of sale, expressly limited to the cost of abstract of title or title insurance, attorney fees, recording fees and sales commission, the latter not exceeding five per cent (5%) of the sale price,

shall be deemed for the purpose of this article as the incremental value of said land.

(c) Upon the sale, trade, or transfer of any new land within the District, the vendor or vendee thereof shall file with the secretary of the District a statement executed under oath by either party to the

transaction describing the land and showing the amount of the purchase price of said land and giving the details of said transaction; and after any sale, transfer, or trade of such land, no water shall be furnished to said lands until such statement has been filed and any payments herein provided for have been made to the District. Any such sale, trade, or transfer shall not be made unless there shall be provided a sufficient money consideration to make any payments to the District as provided herein, and the right of such tract of land to receive water from the irrigation system shall be suspended until either the land shall be reconveyed to the former owner or payment made to the District, as herein provided.

(d) If any of the new lands of the District are sold, traded, or transferred at an increment in value, as herein defined, the vendor shall pay to the District, or the vendee shall pay to the District out of the money which would otherwise have been payable to the vendor, an amount equal to fifty per cent (50%) of such increment in value, but not in excess of the amount of the construction charge obligation allocable to such land as then remains unpaid. Such payment when made shall be credited on the books of the District to such tract of land so transferred as an advance payment of future construction charge instalments in the following manner:

On any construction charge assessments made by the District by reason of this contract, the credit to be applied on the assessments in the order in which they become due.

Any amounts collected or received by the District under this subarticle shall, prior to application on construction charge assessments, be kept separate and apart from other District funds.

(e) Any lease or crop-share contract, covering new lands in the District, containing an option to purchase or other provisions for transfer of title, will be treated as agreement to sell, and any rental payments or crop-share payments therein provided shall be considered as part of the purchase price at the time of said transfer.

(f) The District shall employ suitable means to determine by monthly inspections the transfer of lands and agreements to sell involving new lands of the District, and it shall refuse delivery of water to any such lands until the conditions of this article have been complied with in full. The District shall notify the United States of any such lands to which water should be refused, and shall furnish to the Secretary any information and reports requested by him under such rules and regulations as may be established by the Secretary.

(g) The provisions of this article shall continue in full force and effect and apply to any and all sales and contracts for the sale of new lands of the District until December 31 of the year following the first year for which there becomes due a construction charge obligation instalment under article 14. Following the termination of the provisions of this article, the Secretary shall, by appropriate recordable documents, announce the termination, and such recordable documents executed by the Secretary shall be filed in the office of the County Recorder of Twin Falls County, Idaho.

Appraisal of Excess and Nonexcess Lands

36. (a) An original appraisal of the new lands and improvements thereon shall be made by a board of appraisers. True copies of the appraisal shall be filed in the office of the District and in the office of the Regional Director, Bureau of Reclamation, Boise, Idaho. At the request of a landowner or the United States, new lands and improvements thereon may be reappraised by a board of appraisers on the payment of the cost thereof by the requesting party. Such a board shall comprise three members, one appointed by the Secretary, one by the District, and a third to be selected by the other two. The appraisal or reappraisal shall be on the following basis:

- (1) The land will be appraised at its current full fair market value, such appraisal to be exclusive of any value by reason of the prospect of water being available to it under this contract.
- (2) Improvements comprising buildings and other structures including fences; wells and springs; perennial plantings, such as trees, lawns, and shrubbery; plantings of clover and alfalfa; and other betterments considered by the board of appraisers to be of value to the lands being appraised shall be appraised on the basis of their current full fair market value in connection with the lands on which they are situated.

All such appraisals and reappraisals shall be furnished to the United States for approval by the Secretary under such rules and regulations as may be adopted by him.

(b) True copies of all reappraisals shall be filed with the original appraisal in the office of the District and in the regional office of the Bureau of Reclamation and they, together with the original appraisal, shall be made available for examination, during the usual office hours, by all persons who may be interested therein.

Penalty for Delinquency in Payment

37. 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 per cent (1/2%) per month from the date of delinquency. The District 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

38. (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

PALISADES CONTRACT
CONFIRMED COPY

No. 14-06-100-5395 DATED 1-21-66

44,500 AC. FT. OF SPACE

Draft of June 20, 1963
Revised July 1, 1963

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Minidoka and Palisades Projects, Idaho

Contract No.
14-06-100-5395

AMENDATORY AND SUPPLEMENTAL CONTRACT WITH MILNER LOW LIFT
IRRIGATION DISTRICT CONCERNING STORAGE CAPACITY IN
AMERICAN FALLS AND PALISADES RESERVOIRS
AND RELATED MATTERS

THIS CONTRACT, made this 21st day of January 1966, 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 MILNER LOW LIFT IRRIGATION DISTRICT (hereinafter called the District), a corporation organized and existing under the laws of the State of Idaho, and having its principal place of business at Murtaugh, Idaho,

WITNESSETH, THAT:

2. WHEREAS, the United States, under the Federal Reclamation Laws, has heretofore contracted with respect to the future operation of Jackson Lake, Island Park, American Falls, Lake Walcott and Palisades reservoirs, that contract being Contract No. 14-06-W-92, dated January 7, 1955, hereinafter called the storage contract, which superseded the American Falls Reservoir contract with the Murtaugh Canal Company, predecessor in interest to the District, dated June 1, 1920, Symbol and No. Ilr-125; and

3. WHEREAS, it has become desirable to amend the storage contract to conform to the actual space being exchanged in designated reservoirs and to provide for additional storage space in Palisades Reservoir for the irrigation of lands in the District;

litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

"(b) Inclusion of the Equal Employment Opportunity clause may be by reference to Section 202 of Executive Order No. 11246 dated September 24, 1965. Subcontracts below the second tier, other than subcontracts calling for construction work at the site of construction, are exempt from the requirements of the clause."

12. This amendatory and supplemental contract provides for the increase in the amount of storage capacity in Palisades Reservoir available to the District by 17,000 acre-feet with an appropriate increase in the District's obligations therefor. For the purpose of the District making collections to pay the United States the District's share of the construction of Palisades Dam and Reservoir and the District's share of all the operation and maintenance of the said Palisades Dam and Reservoir, it is understood that assessments for these purposes shall be made by the District on the lands of the District which first received water deliveries from the District after the year 1952. For purposes of the internal administration of the District, the water available to the District from this additional capacity, as well as the Palisades capacity initially provided under the storage contract, is confined to the new lands of the District, these being the lands within the District which first received water deliveries from the District after the year 1952.

Civil Rights Act of 1964

13. The District hereby agrees as follows:

(a) To comply with Title VI (Section 601) of the Civil Rights Act of July 2, 1964 (78 Stat. 241) which provides that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance," and to be bound by the regulations of the Department of the Interior for the effectuation thereof, as set forth in 43 CFR 17.

(b) To obligate his subcontractors, subgrantees, transferees, successors in interest, or any other participants receiving Federal financial assistance hereunder, to comply with the requirements of this provision.

14. Except as herein specifically amended or supplemented, the provisions of the storage contract shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written, with this amendment to be effective beginning with the year 1964.

UNITED STATES OF AMERICA

By /s/ H. T. Nelson
Regional Director, Region 1
Bureau of Reclamation
Box 8008, Boise, Idaho

MILNER LOW LIFT IRRIGATION DISTRICT

By /s/ Max Boley
President

(SEAL)

Attest:

/s/ Earl D. Sears
Secretary