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Am 3/2 REPLACEMENT OF THE AMERICAN FALLS DAM,
UPPER SNAKE RIVER PROJECT, IDAHO

GOVERNMENT

Storage

DOCUMENTS

JUL 12 1975

THE LIBRARY HEARING
KANSAS STATE UNIVERSITY BEFORE THE

SUBCOMMITTEE ON
ENERGY RESEARCH AND WATER RESOURCES
OF THE

COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

S. 1152

A BILL TO AMEND THE ACT OF DECEMBER 28, 1973 (87
STAT. 904) TO CLARIFY THE RELATIONSHIP OF THE PRO-
VISIONS OF SAID ACT TO THE PROVISIONS OF SECTION 103
OF TITLE 26, UNITED STATES CODE

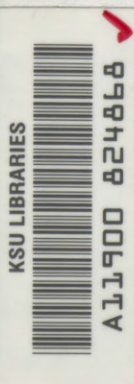
APRIL 24, 1975



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CONTENTS

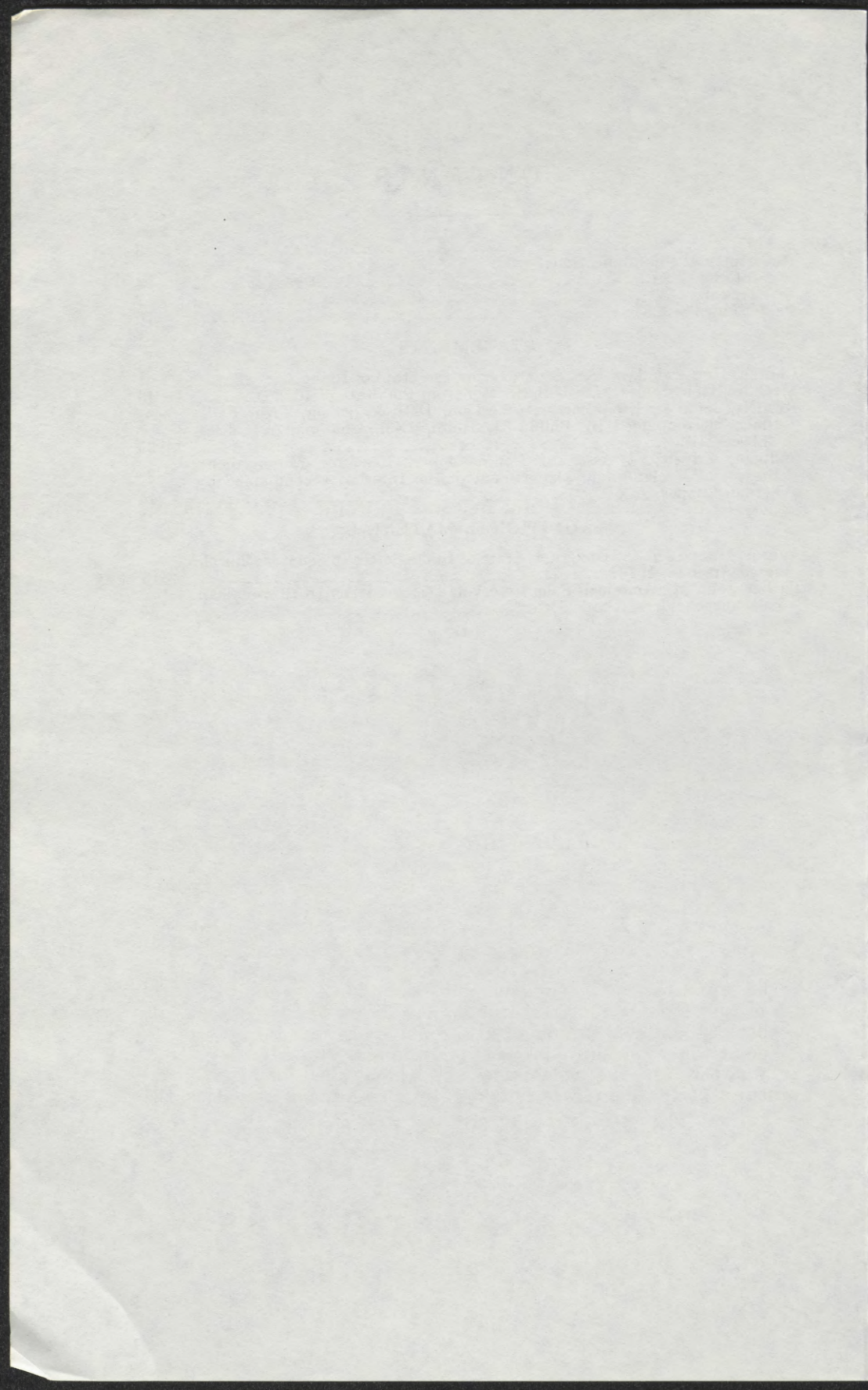
S. 1152-----	Page
Departmental communications:-----	3
Interior-----	4
Treasury-----	7
Public Law 93-206-----	10

STATEMENTS

Church, Hon. Frank, a U.S. Senator from the State of Idaho-----	1
McClure, Hon. James A., a U.S. Senator from the State of Idaho-----	13
Rosholt, John A., Esq., Parry, Robertson, Daly & Larson, Twin Falls, Idaho, accompanied by Phillip H. Holm, Esq., Chapman & Cutler, Chicago, Ill.-----	14, 25
Sullivan, Edwin F., Assistant Commissioner, Resource Management, Bureau of Reclamation, Department of the Interior, accompanied by Vernon Cooper-----	44

ADDITIONAL MATERIAL

Andrus, Hon. Cecil D., Governor, State of Idaho, letter to Senator Church dated April 16, 1975-----	13
Barker, John M., American Falls Reservoir District, letter to all American Falls spaceholders-----	15



REPLACEMENT OF THE AMERICAN FALLS DAM, UPPER SNAKE RIVER PROJECT, IDAHO

THURSDAY, APRIL 24, 1975

U.S. SENATE,
SUBCOMMITTEE ON ENERGY RESEARCH
AND WATER RESOURCES,
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The Subcommittee met at 2:30 p.m., in room 3302, Dirksen Office Building, Hon. Frank Church, presiding.

Present: Senators Church and McClure.

Also present: Ben Yamagata, counsel.

Senator CHURCH. The hearing will please come to order.

OPENING STATEMENT OF HON. FRANK CHURCH, A U.S. SENATOR FROM THE STATE OF IDAHO

The purpose of this hearing before the Energy Research and Water Resources Subcommittee this afternoon is to take testimony on S. 1152, a bill to clarify the relationship of the provisions of the American Falls Dam Replacement Act, to provisions of section 103 of the Internal Revenue Code.

Passage of 1152 will assure tax-exempt status for the bonds to be issued by the American Falls Reservoir District in financing replacement cost of the American Falls Dam.

It was the expectation of those of us who offered the replacement dam bill and the administration that the bonds to be issued by the American Falls Reservoir District would be tax exempt. Prior to final adoption of the bill that assumption was not challenged by anyone in the executive bureaucracy. In fact, speaking for the administration in 1973, Assistant Secretary Jack Horton noted in a letter to the chairman of the Senate Interior Committee that the spaceholders would obtain financing for the new dam by the issuance of tax-exempt bonds. Tax-exempt status was always contemplated.

However, since passage of the act in December 1973, the Internal Revenue Service has challenged the exempt status and thus delayed startup construction of the project. Two years have slipped by.

The initial cost of a new dam was estimated to be approximately \$20 million. The delay in construction has meant an increase in costs to about \$40 million. Administrative redtape has shot the cost up to the point where the entire project is now in real jeopardy.

Two years ago, the replacement act, which called for private construction of the dam, was heralded by the Administration as the

most acceptable method to minimize Federal costs. Yet the spaceholders have confronted one delay after another. If economy was the guiding principle in supporting the earlier legislation, the Executive has lost sight of that objective through the road blocks that Federal agencies have put up.

We hope, speaking for Senator McClure and myself, that this bill will resolve the problem that has arisen between the Internal Revenue Service and the proponents of the legislation thereby permitting replacement of the American Falls Dam to go forward.

I have a letter from the Governor of Idaho, Cecil D. Andrus, addressed to me, and endorsing the bill that is the subject of this hearing.

At this point in the record I will ask to have printed the text of S. 1152, departmental communications, Public Law 93-206, and the letter from Governor Andrus.

[The material referred to above follows:]

94TH CONGRESS
1ST SESSION

S. 1152

IN THE SENATE OF THE UNITED STATES

MARCH 12, 1975

Mr. McCLURE (for himself and Mr. CHURCH) introduced the following bill;
which was read twice and referred to the Committee on Interior and Insular
Affairs

A BILL

To amend the Act of December 28, 1973 (87 Stat. 904) to
clarify the relationship of the provisions of said Act to the
provisions of section 103 of title 26, United States Code.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 4 of the Act of December 28, 1973 (87 Stat.
4 905) is hereby amended by changing the final period to
5 a colon and adding the following language: "*And provided*
6 *further, That the dam and related facilities to be financed*
7 *and constructed by the constructing agency as provided in*
8 *this Act shall for all purposes of section 103 (c) (4) of title*
9 *26, United States Code, constitute facilities solely for the*
10 *furnishing of water, available on reasonable demand to*
11 *members of the general public."*



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

April 23, 1975

Dear Mr. Chairman:

This is in response to your request for the views of the Department concerning S. 1152, "To amend the Act of December 28, 1973 (87 Stat. 904) to clarify the relationship of the provisions of said Act to the provisions of section 103 of Title 26, United States Code."

The purpose of S. 1152 is to assure tax-exempt status for the bonds that may be issued by a non-Federal agency to provide for the replacement of the American Falls Dam. S. 1152 is based upon uncertainties that have arisen in the proposed implementation of Public Law 93-206, the Act which this bill would amend.

That Act, (87 Stat. 904), forms the basic legal framework for the replacement of American Falls Dam. The Act authorizes the Secretary of the Interior to enter into agreements with the American Falls Reservoir District, a non-Federal agency, or some other appropriate agency representing the reservoir spaceholders, to finance and provide for the construction of a dam and related facilities to replace the existing dam, which is part of the Minidoka Project, located in the upper Snake River basin, Idaho.

The plan upon which the Act was based was a joint proposal, by the spaceholders in the American Falls Reservoir, and by the Idaho Power Company, to provide for non-Federal financing for the new dam through a bond issue by the spaceholders. The Idaho Power Company would pay the spaceholders an amount equal to the annual requirement for amortization and interest on the bonds over a 40 year period, up to \$19 million. The spaceholders would pay the remaining cost of the dam and would receive the use of the total storage in the reservoir. The power company would have the benefit of the falling water. The spaceholders and the Federal Government were to pay certain additional costs, and the spaceholders would help Idaho Power obtain a Federal Power Commission license for construction of a power plant at the dam. [The license has not been issued.]

At the time of the passage of Public Law 93-206, it was the expectation among those involved with the project and with the Act that the proposed bonds would be tax exempt. That understanding went unchallenged throughout the proceedings leading to passage of the Act. Since that time,

however, the Internal Revenue Service has challenged the exempt status. This challenge is evidently based on a determination that the proposed bond issue would not fall within the exemption provision of Internal Revenue Code found at section 103, 26. U.S.C. That section provides, in subsection (a)(1), that (with regard to the gross income computed by a taxpayer for income tax purposes) "gross income does not include interest on the obligations of a State....or any political subdivision" thereof. Section 103 was subsequently amended by adding provision "(C)", which excluded industrial development bonds from the exemption status provided in subsection (a)(1). Subsection (C) further provided, however, that certain industrial development type bonds would qualify for exempt status if "issued as part of an issue substantially all of the proceeds of which are used to provide...." [A number of facilities listed here.]"(G) facilities for the furnishing of water, if available on reasonable demand to members of the public." S. 1152 is specifically directed at taking advantage of this provision.

While we support the purpose of the Act of December 28, 1973, and have consistently supported it in prior legislative reports, the bill at hand, S. 1152, concerns a tax issue with which the Treasury Department has the primary expertise and authority. Accordingly, we must defer to the Treasury Department insofar as their tax views are concerned.

It should be pointed out the plan adopted represented a deliberate choice over alternative legislation, proposed and considered simultaneously with Public Law 93-206, which would have placed full responsibility for the replacement dam project with the Federal government. The plan adopted was favored because it avoided total Federal involvement, it favored the utilization of private enterprise and non-Federal governmental agencies, and it appeared to offer the advantage of more rapid implementation of the replacement program. The benefits to the United States and the taxpayer are considerable in that the burden of financing the reconstruction project have been removed. Upon satisfactory completion of the project, title to the dam will vest in the United States.

The ability of the spaceholders to carry out their plan to finance the replacement dam may depend upon obtaining a favorable interest rate on the bonds they issue. Obviously the rate will be substantially less if the bonds are afforded tax-exempt status. The spaceholders estimate that a saving of \$23.5 million in interest costs could be achieved if their bonds are tax-exempt.

The dam was originally constructed by the Bureau of Reclamation in 1927. It has provided substantial benefits to the region since that time, particularly for irrigation, and the regional economy is highly dependent on the dam and reservoir, and on replacement of the dam. Other important benefits are provided by the dam in terms of flood control, fish and wildlife conservation, and recreational facilities open to the public.

The present dam must be replaced because substantial deterioration has occurred since its construction in 1927. The dam in its current condition presents a potential safety hazard and the use of the space behind the dam has been diminished by 1/3 due to the deteriorated condition of the dam. The need for replacement was documented in a Bureau of Reclamation report that was published in 1972 after thorough study.

The basic plan for replacement has been approved and enacted through legislation. Although it is unfortunate to further delay the implementation of that plan, with respect to the legislation before us, S. 1152, we must defer to the views of the Treasury Department.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

Raymond C. Hughes

Assistant

Secretary of the Interior

Honorable Henry M. Jackson
Chairman, Committee on
Interior and Insular Affairs
United States Senate
Washington, D. C. 20510



THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

MAY 7 1975

Dear Mr. Chairman:

Reference is made to your request for the views of this Department on S. 1152, "To amend the Act of December 28, 1973 (87 Stat. 904) to clarify the relationship of the provisions of said Act to the provisions of section 103 of title 26, United States Code."

The Act of December 28, 1973 (P.L. 93-206) authorizes the Secretary of the Interior to enter into agreements with the American Falls Reservoir District or other agency to provide for the construction of a dam to replace the existing American Falls Dam of the Minidoka Federal reclamation project. P.L. 93-206 provides that upon completion of construction the United States shall take title to the dam and the Secretary shall operate and maintain the replacement dam as a feature of Minidoka project. S. 1152 would amend P.L. 93-206 to provide that for purposes of section 103(c) (4) of the Internal Revenue Code obligations issued to finance construction of the dam shall not be considered industrial development bonds on which the interest is taxable. Thus, construction of the dam could be financed by the issuance of tax-exempt obligations.

From the standpoint of debt management policy, the Department sees no justification for financing this Federal project through tax-exempt obligations. The proposal would be contrary to long-standing Federal policy against financing Federal activities in the tax-exempt bond market. The obvious attraction of the tax-exempt borrowing rate has prompted a number of similar proposals in other areas, but such financing would involve excessive costs to the Federal Government, because of the revenue losses, and would also result in higher borrowing costs to States and local governments because of the added burden on the tax-exempt bond market. Attached for the convenience of the Committee is a list of twelve statutes enacted in recent years in which Congress has precluded Federal guarantees of tax-exempt obligations and provided other means of achieving the program and budget objectives without resort to this undesirable and unnecessarily costly method of financing.

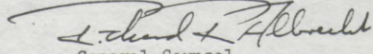
In view of the foregoing, the Department is strongly opposed to the proposal.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the

-2-

Administration's program to the submission of this report to your Committee.

Sincerely yours,



General Counsel

Richard B. Albrecht

The Honorable
Henry M. Jackson, Chairman
Committee on Interior and
Insular Affairs
United States Senate
Washington, D. C. 20510

Enclosure

Statutes which preclude Federal guarantees of
tax-exempt obligations

1. Loans for modernization and construction of hospitals and other medical facilities; P.L. 91-296, June 30, 1970, 42 U.S.C. 291j-7(e).
2. New Community debentures; P.L. 91-609, December 31, 1970, 42 U.S.C. 4514.
3. Water and waste facility loans sold out of the Agricultural Credit Insurance Fund; P.L. 91-617, December 31, 1970, 7 U.S.C. 1929(a)(1).
4. Farm Credit Administration member institution guarantees; P.L. 92-181, December 10, 1971, 12 U.S.C. 2204.
5. Academic facilities loan insurance, P.L. 92-318, June 23, 1972, 20 U.S.C. 1132c-5.
6. Washington Metropolitan Area Transit Authority obligations; P.L. 92-349, July 13, 1972, D.C. Code 1-1441 note.
7. Loans sold out of the Rural Development Insurance Fund; P.L. 92-419, August 30, 1972, 7 U.S.C. 1929a(h).
8. Vocational rehabilitation facilities mortgages; P.L. 93-112, September 26, 1973, 29 U.S.C. 773(c).
9. National Railroad Passenger Corporation guaranteed obligations; P.L. 93-146, November 3, 1973, 45 U.S.C. 602(g).
10. Loan guarantees for initial operating costs of health maintenance organizations; P.L. 93-222, December 29, 1973, 42 U.S.C. 300e-7(c)(3).
11. Loan guarantees to assist the economic development of Indians and Indian organizations; P.L. 93-262, April 12, 1974.
12. State housing finance and State development agency obligations; section 802 of P.L. 93-383, August 22, 1974.



Public Law 93-206
93rd Congress, S. 1529
December 28, 1973

An Act

87 STAT. 904

To authorize the Secretary of the Interior to enter into agreements with non-Federal agencies for the replacement of the existing American Falls Dam, Minidoka project, Idaho, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior (hereinafter called the Secretary) is authorized to negotiate and enter into agreements with the American Falls Reservoir District or other appropriate agency representing the present spaceholders (hereinafter called the constructing agency), which agreements shall authorize the constructing agency to finance and provide for the construction of a dam and related facilities to replace the existing American Falls Dam of the Minidoka project, Idaho-Wyoming. The United States shall take title to the dam upon a determination by the Secretary that construction of the dam is substantially completed, and the dam shall be a feature of the Minidoka reclamation project and shall be considered to be a "Government dam" as defined by the Federal Power Act (Act of June 10, 1920, 41 Stat. 1063, as amended). The Secretary shall operate and maintain the replacement dam as a feature of the Minidoka project. The construction and operation of the replacement dam shall not result in an increase in the elevation of the reservoir water surface above that maintained for the original dam, and provision shall be made for the correction and prevention of erosion related to the reservoir or for the full and adequate compensation of adjacent landowners (including owners of land subject to a flowage easement for the reservoir) if such erosion cannot be corrected or prevented.

American Falls
Dam, Minidoka
project, Idaho,
Replacement.

49 Stat. 863.
16 USC 791a.

SEC. 2. (a) Replacement of the existing dam as authorized in section 1 hereof shall in no way alter or change the present proportionate storage rights of present spaceholders in the American Falls Reservoir and shall constitute a reaffirmation of existing contract rights between the Secretary and the spaceholders except as otherwise provided in this Act.

Storage and
contract rights,
protection.

(b) The constructing agency shall: (i) include as a part of the project, a river crossing meeting the then current Department of Transportation standards for Federal-aid secondary highway two-lane traffic, which crossing shall be located on top of the replacement dam or immediately downstream from the dam, and which crossing shall be financed by State, Federal, and constructing agency funds, or any combination thereof as the parties deem appropriate; and (ii) design and construct an additional two lanes on top of the replacement dam, which additional two lanes may be funded with State, Federal, or constructing agency funds, or any combination thereof. For the purposes of subpart (ii) of this subsection, the constructing agency shall be considered an "agency" within the meaning of section 320(a) of title 23, United States Code.

River crossing
construction.

(c) The plans and specifications for the construction of the dam shall require that an adequate two-lane, two-way crossing shall be maintained at or near the site of the dam during construction.

72 Stat. 917.

Repayment con-
tracts with
spaceholders.

SEC. 3. The constructing agency may enter into repayment contracts with the spaceholders in the existing American Falls Reservoir providing for the repayment by the spaceholders of proportionate shares of the total project costs incurred by the constructing agency for engineering, financing, designing, and constructing the replacement dam, and the Secretary shall be a party to said contracts and the delivery of water to the spaceholders shall be contingent upon the execution of such contracts and the fulfillment of the obligations thereunder: *Provided*, That said contracts shall be consistent with the terms of existing contracts between the Secretary and the spaceholders for repayment of the costs of the existing American Falls Dam.

Leasing con-
tract for hy-
droelectric
power produc-
tion.

SEC. 4. The constructing agency may contract with an appropriate non-Federal entity for the use of the falling water leaving the dam for power generation, which contract shall provide for a monetary return to the constructing agency to defray the costs of construction of the replacement dam. The constructing agency may enter into agreements with an appropriate non-Federal entity to coordinate the construction of hydroelectric power facilities with the construction of the replacement dam. The contract and agreements for use of the falling water shall not be subject to the limitations of section 9(c) of the Reclamation Project Act of 1939 (53 Stat. 1194), or any similar limitations in any other applicable Acts of Congress: *Provided*, That said contract for falling water shall be approved by the Secretary and shall not impair the efficiency of the project to serve the other purposes of the Minidoka project.

43 USC 485h.

Designs and
specifications,
approval.

SEC. 5. Construction of the replacement dam shall not be initiated until the Secretary has approved the designs and specifications of the dam and the plan of construction of the dam and of the proposed operation of the dam and reservoir. Construction of each related facility shall not be initiated until the Secretary has approved the designs and specifications thereof. Costs incurred by the Secretary in reviewing such designs, specifications, plans, and construction shall be included as project costs allocated to beneficiaries of the replacement dam and shall be reimbursable to the Secretary.

Costs, reim-
bursement to
Secretary of
Interior.

Recreational,
fish, and wild-
life facili-
ties.

16 USC 460j-
12 note.

SEC. 6. The Secretary is authorized to provide specific facilities for public recreation and fish and wildlife enhancement in connection with the replacement dam, and the costs of such facilities shall be repaid in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213). In addition, specific facilities for public recreation may also be provided in accordance with the Land and Water Conservation Fund Act of 1965 (78 Stat. 897), as amended (16 U.S.C. 460, et seq.).

Appropriations.

SEC. 7. There is hereby authorized to be appropriated for construction of specific facilities for public recreation and fish and wildlife enhancement the sum of \$400,000 (July 1972 prices) plus or minus such amounts, if any, as may be required by reason of the changes in the cost of construction work of the type involved therein as shown by engineering cost indices. There are also authorized to be appropriated such funds as may be necessary to meet the prorated construction cost apportionable to the irrigation storage rights of the Michaud

Fort Hall
Indian Reser-
vation, irri-
gation storage
rights costs.

December 28, 1973

- 3 -

Pub. Law 93-206

87 STAT. 905

Division of the Fort Hall Indian Reservation for space in the reservoir behind the American Falls Replacement Dam and such cost shall be subject to the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 368a). There are also authorized to be appropriated such funds as are required for the operation and maintenance of the dam and related facilities.

Approved December 28, 1973.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 93-701 (Comm. on Interior and Insular Affairs).
SENATE REPORT No. 93-223 (Comm. on Interior and Insular Affairs).
CONGRESSIONAL RECORD, Vol. 119 (1973):

June 19, considered and passed Senate.

Dec. 17, considered and passed House, amended.

Dec. 18, Senate concurred in House amendments.

STATE OF IDAHO, OFFICE OF THE GOVERNOR,
Boise, April 16, 1975.

Senator FRANK CHURCH,
*Chairman, Subcommittee on Energy Research and Water Resources, Committee on
Interior and Insular Affairs, United States Senate, Washington, D.C.*

DEAR SENATOR CHURCH, I am pleased to submit the following brief supportive comment through you for the hearing record on S. 1152, a bill to amend P.L. 93-206, relating to the replacement of the American Falls Dam, Upper Snake River Project, Idaho:

In the past, I have testified before you encouraging swift Congressional action to authorize the replacement of American Falls Dam utilizing not federal funds, but the resources of the American Falls spaceholders. During the past two years, they have expended more than \$1 million preparing the necessary engineering and legal groundwork leading to the actual start of construction. It has been a herculean endeavor and I commend the water users for their efforts.

Although I had hoped that additional legislative action would not be required, it now appears necessary to clarify P.L. 93-206 for the purposes of 26 U.S.C. Sec. 103(c)(4). To this end, I urgently request your favorable consideration of S.1152.

Best wishes.

Sincerely,

CECIL D. ANDRUS,
Governor.

Senator CHURCH. Now, I would like to turn to my colleague, Senator McClure.

STATEMENT OF HON. JAMES A. McCCLURE, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator McCCLURE. Mr. Chairman, it is unfortunate that this hearing is necessary to clarify the law which authorizes the replacement of American Falls Dam, the act of December 28, 1973. However, it now appears that S. 1152 must be passed to assure the construction of the project as contemplated.

The project still has the support of essentially everyone in Idaho, and early construction is still the prime motivation. Many accomplishments have been attained since the bill was signed into law. The spaceholders are anxious to protect themselves from a possible economic disaster which could result from inadequate irrigation water supplies in the American Falls Reservoir.

When the authorization legislation was considered, Federal construction was considered as an alternative. The decision was made by Congress to allow private financing of the reconstruction of the Federal project. The completion of the project was contemplated to be accomplished in the exact manner which S. 1152 will now clarify. The question has been decided and this alternative is desirable and should be allowed.

It has been suggested that S. 1152 might create a precedent for other projects. In my judgment, S. 1152 would clarify the situation for only the American Falls dam reconstruction and would not set a precedent for any other project. Any precedent that was set, was set when the original Act was passed. I urge early consideration and passage of S. 1152.

Construction of a new dam at American Falls is absolutely essential to Idaho. The economic well-being of the people of an entire region, their farms, their communities, and their industries, depend on abundant and available water. And without reconstruction of the American Falls dam, there simply is not enough water to go around.

We are holding these hearings today to set the tone of urgency, and we cannot stress enough the need for fast congressional action on our Idaho delegation bill to clear the way for construction of this new dam at American Falls. Idaho cannot afford further delay. And this bill will cut the red tape.

Senator CHURCH. Thank you, Senator.

I would like to call as our first witness this afternoon Mr. John A. Rosholt, who represents the American Falls Reservoir District. John is a practicing attorney in Idaho, in Twin Falls, Idaho.

I might explain that we have reversed the order of witnesses here, partly because I have a conflicting meeting. I am supposed to be attending the conference which is now underway on the Vietnam Bill. I will not be able to stay for the whole hearing, but Senator McClure will be here to complete the hearing.

I thought that I would like to get a few questions on the record before I leave, and for that purpose, I want to call Mr. Rosholt.

John, if you would withhold your testimony for the moment.

Mr. ROSHOLT. Yes, sir.

Senator CHURCH. Let me ask those questions, then I would be able to turn the hearing to Senator McClure.

STATEMENT OF JOHN A. ROSHOLT, ESQUIRE, PARRY, ROBERTSON, DALY & LARSON, TWIN FALLS, IDAHO, ACCOMPANIED BY PHILLIP H. HOLM, ESQUIRE, CHAPMAN & CUTLER, CHICAGO, ILL.

Senator CHURCH. With costs what they are for the American Falls Dam, can you tell the committee what the additional approximate costs would be were this project judged not to be tax-exempt?

Mr. ROSHOLT. Mr. Chairman, before I begin, I also have with me Mr. Phil Holm, a bond counsel for the American Falls Reservoir District, with the firm of Chapman & Cutler of Chicago. He is here to assist me on technical questions.

To answer that question, it can only be an estimate, as you know, because the interest rate as determined at the time of the bond sale, assuming that taxable bonds were the only alternative and the route pursued and the tax-exempt interest was not available, just taking a comparison of 10 percent taxable interest as opposed to 8 percent, I think the numbers are somewhere in the neighborhood of \$25 million additional cost to the water users.

Under the program as originally proposed and as in the record of Public Law 93-206, our company proposal provided that the spaceholder would assume the difference between the tax-exempt interest and taxable interest, if that were the final outcome, which, of course, complicates it for the spaceholders and increases that burden. In other words, the sharing would not fall equally upon the \$19.5 million that the power company has agreed to retire and the amount and the \$25 million estimated budget cost to be \$40 million. All of the additional interest would be borne by the water users.

Senator CHURCH. In your judgment, would the water users holding a space in the reservoir continue to support this project as presently structured if the interest on the bonds are not tax-exempt?

Mr. ROSHOLT. Mr. Chairman, the reading I have been getting from the people I represent and the rest of the spaceholders in the American Falls Reservoir Dam, the answer to that has to be no.

I am not foreclosing the possibility, certainly, but I would think that as the people in Idaho feel that they are willing to finance and pay for the replacement of the Federal project to obtain its completion in a more expeditious manner, they should be afforded the preferred interest rate.

Senator CHURCH. As you know, John, the original bill, which we passed in the Congress with record speed, has not yet been implemented. There have been numerous delays, and one of the compelling reasons for passing the bill in the first place was that private financing could greatly facilitate the replacement of the dam and would not entail the kind of delay which we have been accustomed to in Federal projects. So that was certainly one of the most important reasons why everyone agreed that this was the best way to go, given the hazardous state of the dam and the fact that the present reservoir is drawn down and can't be fully used.

Yet we have been faced with the problem of getting the dam's construction underway ever since December 1973. During that time, the inflation has grown more serious.

I wonder if you could give the committee some estimate of the additional costs that this delay has occasioned by reason of the inflation?

Mr. ROSHOLT. Mr. Chairman, to summarize by way of capital costs—and I have dealt with this to some extent in my prepared remarks—we had contemplated at the time of the original Senate hearing on the bill, the project may run as high as \$25 million. Current estimates will place us somewhere in the area of \$40 million. That is just in the capital cost of putting the structure together. The bricks, mortar, concrete, and some of the things that were not contemplated at the time that will be constructed as a part of the project.

We hope that that figure will be a ceiling figure, but, as we know, inflation continues, and it is possible, by the time the construction work is initiated, that figure could even be higher.

Senator CHURCH. John Barker has supplied the committee with some very interesting figures—I should say alarming figures—that relate to a cost of this delay. I think they should go into the record of these hearings and without objection I would ask that Mr. Barker's letter be inserted in the record at this point.

[The letter referred to above follows:]

AMERICAN FALLS RESERVOIR DISTRICT,
OFFICE OF THE SECRETARY,
Twin Falls, Idaho.

To all American Falls spaceholders:

Gentlemen, On December 18, 1973, the U.S. Congress passed S.B. 1529, authorizing the American Falls Reservoir District and the Spaceholders to proceed toward the earliest possible replacement of the American Falls dam. On December 28, 1973, the President signed that Bill into law. Since that time, many things have happened toward beginning construction on the American Falls dam replacement.

The engineering work for completion of the dam has been essentially completed. Some minor items are being worked out following a final review session in October between Bechtel and the Bureau. The majority of the contract work and all other preparations have been completed to the extent possible. Word is anticipated in the near future from the Federal Power Commission on the license for the power plant at American Falls. An application is pending for a tax exempt ruling with the IRS. The EPA is reviewing the Water Quality Standard, which has previously been approved by the State. It is hoped that decisions from these agencies will be obtained within the next 15 to 30 days.

The hour of decision for the American Falls project has arrived. It is difficult to summarize the situation because it is so complicated. However, recent cost estimates (following negotiations with the Idaho Power Company) indicate that the project can probably be built with a construction start in 1975 for \$35.5 million. If the IRS and EPA rulings are favorable, it would mean that the Idaho Power Company would retire \$19.5 million in bonds and that water users would be responsible to retire \$16.0 million in bonds. Based on a 40 year payback and 8 percent tax exempt interest, and the O and M and water quality estimated at 7¢ the annual cost per acre foot of American Falls water under this replacement proposal would be approximately 86¢ annually. Given the same set of circumstances, and the interest rate only 7 percent, the project could be built for an annual cost per acre foot of 78¢, including water quality and operation and maintenance expense. (See Exhibit "A" attached hereto.)

At Spaceholder meetings in November, each Spaceholder organization was asked to respond to the Bureau of Reclamation as to whether or not they wished to proceed with this project. The cost analysis at that point indicated that the project cost was \$40.4 million. Unfortunately, the response that came from the Spaceholders to the Bureau of Reclamation indicates that about 77.8 percent of the space favors the present replacement program. About 20.8 percent indicated they were not in favor of proceeding, and approximately 1.8 percent did not vote. Since that time, the Idaho Power Company has agreed to make their initial payment earlier so that interest during construction could be eliminated. That agreement dropped the total project cost \$5 million.

Several of the reasons given by Spaceholders for not being willing to call an election on a contract were as follows:

1. Some of the decisions had not been finalized.
2. We should wait for interest rates to decline.
3. That there may be other cheaper alternatives.
4. The Idaho Power Company should increase their participation.

In answer to the above questions, let me assure you that the American Falls Reservoir District has done everything possible to expedite decisions from the Federal Power Commission, the Internal Revenue Service, and the Environment Protection Agency. Indications are that those decisions will be forthcoming in the next month. Hopefully, the final decisions will be favorable.

It is difficult to project whether interest rates will increase or decrease. We are hopeful that if the project were to go ahead, that the interest on the bonds would be at the lowest possible rate. However, the American Falls Reservoir District Board feels that it is not possible to say that the project will be cheaper if we wait for the interest to go down. We know that the national inflation rate is approximately 10% and in the past two years has been higher in the construction industry. Let's assume a 10% inflation rate and that we delayed from 1975 until the same time in 1976 to initiate construction. Because the Idaho Power Company's offer is to finance a fixed amount of bonds, the 10% inflation rate or \$3.5 million would become the responsibility of the water users. If we used the same example of 8% tax exempt interest as indicated above in this letter, the cost per acre foot would increase from 86¢ per acre foot per year to \$1.05 per acre foot per year. Even if we assume that the interest would decline during that year a total of 1% to a figure of 7%, figuring a 10% inflation in the cost of the project, the repayment figure at that 7% would be 93¢ an acre foot or 7¢ higher than the cost would be if we initiate construction in 1975. The loss of one year at 10% inflation, even assuming a 1% better interest rate, would cost the water users an additional 7¢ an acre foot per year. Figuring this over the 40 year repayment period, it becomes an additional cost of \$4.9 million to the water users. Consequently, time continues to be of the essence, and even if the interest rate does decline in future years, because of inflation in the cost of construction, the water users may well face additional, rather than lesser costs. (See attachment "A".)

The point has also been made that other alternatives should be explored. At this point, a Congressional Bill has been passed authorizing reconstruction of the dam under this plan. To now scrap this plan and re-approach the Congress seeking their support and the nation's money, might well be difficult. When we advanced the private financing alternative to Congress, it was done so on the recommendation of our Senators Church and McClure, and our Representative Orval Hansen. Their best information was that it could take as long as 12 years to obtain Federal authorization and funding and complete the project. Because the water users were in nearly unanimous support, we advanced the alternative of proceeding on our own to replace the dam in the shortest possible time. Most of the people who hold space in American Falls need it. The effect of the present

reduction in the storage has been minimized only because of record water years. A possibility exists that the net loss to the agricultural community in southern Idaho in one, short water year, could well exceed the \$16 million water users' share of the present replacement program. A series of such years could cause financial disaster for portions of the Snake River Valley. For these reasons, we elected to proceed to help ourselves so that we could act in the shortest possible time. If we were to now scrap the program, and go back to Congress, it is possible that if we had the same base of support that we originally had for the present plan, that Congress would act. If, however, it took the estimated 10 to 12 years to complete the project, we have exposed ourselves to water shortages and crop losses for that many additional years. The Directors of the American Falls Reservoir District were not willing to take that chance on behalf of their farmers. This is especially true since the farmers can now build the project for a reasonable amount. The 86¢ per acre foot per year is well below any farmer's annual cost for gasoline, fertilizer, seed, and harvest for each acre. All other costs become meaningless if there is no water available for the irrigation of the crops. The American Falls Reservoir District Board does not think there are alternatives to the present financing scheme which are realistic. To now approach Congress will be difficult indeed because two of the largest water users in the reservoir, who each own approximately 25% of the storage, are nearly totally dependent upon American Falls water. Their tracts are also located above the Snake River Aquifer, and so they do have the alternative of drilling wells and pumping to supplement the present storage loss and future storage losses. If these companies were to elect to proceed to help themselves, then a future approach to Congress would probably also require someone to buy a larger share of the American Falls space.

Rod Vissia, Regional Director for the Bureau, had indicated in recent Spaceholder meetings, that it would cost the Bureau approximately \$35 million to build the project today. Assuming that the water users repayment would be interest free, but that it took some 8 to 10 years to complete the project, at 10% inflation per year, the cost of a \$35.0 million project would be \$92.4 million. Assuming that the water users were repaying approximately 63% of the total Bureau project cost, the water users would be repaying \$58.8 million. Over a 40 year period, the water users would be repaying approximately \$1.47 million per year or approximately the same as today's estimates for private financing. In the 10 years in the interim, the water users would be risking further restrictions in the reservoir capacity, short water years, and an economic disaster. Having the water available in one marginal year would more than pay for the water users share. An exposure for more than one year or a series of years, shows the relative insignificance of the project cost.

It has also been suggested that the Idaho Power Company increase their contributions. Approaches have been made to the Idaho Power Company for some two years. Presently they have agreed to repay \$19.5 million plus tax exempt interest on that amount of bonds, guarantee interim defaults of water users, pay for one-half of the water quality cost if the six parts per million standard is obtained, cooperate to eliminate interest during construction, and to lend their credit and expertise in selling the bonds of the District. They indicate that they cannot increase their present offer. Their offer is a generous one, and had inflation not occurred in record percentages during the last two years and instead remained at zero, perhaps the project could have been completed for \$25 million or \$26 million. However, inflation indicates that a safe estimate for the project completion with an April, 1975 construction start, is \$35.5 million. Incorporating the facts from previous paragraphs, even though increased Idaho Power Company participation might be obtained, it is likely that inflation would more than eat up any such increase. On the other hand, the Idaho Power Company faces the same inflationary costs in the construction of their power plant, which is estimated at approximately the same price as the dam. They have indicated that they need the power in 1977. Additional delays in the project may well result in the withdrawal of the Idaho Power Company offer in favor of the construction of steam, plants or some other alternative type power plant.

The Directors of the American Falls Reservoir District are not willing to jeopardize the water supply of their farmers for an estimated cost of 86¢ per acre foot per year. In fact, the Directors feel strongly that a "do-nothing-position" may well result in more personal exposure and liability to them if water shortages, crop losses, and economic chaos were the result of such a position. It is our opinion that based upon all of the facts, that the best approach at this point in time is to proceed as expeditiously as possible with the completion of the American Falls project under the present plan.

We ask each of you to analyze the contents of this letter and to cooperate in supporting this project so that the Spaceholders' exposure to water shortages can be minimized. Your Boards of Directors have been asked whether or not they will support and call elections on the acceptance of assessments and the execution of contracts to repurchase space in American Falls. Without nearly unanimous support, the project may well fail in its present form. We need your help and ask that each of you advise your representatives on the American Falls Spaceholder Executive Committee and Rod Vissia of your willingness to proceed and call elections on the project.

If you have questions concerning this letter, do not hesitate to call me or any of the American Falls Directors listed on this letterhead.

Sincerely,

JOHN M. BARKER.

EXHIBIT "A"

American falls replacement

I. 1975 construction cost estimate:

	(Millions)
IPC share-----	\$19.5
Waterusers-----	16.0
Total project cost-----	35.5

A. 1975 construction start—\$16.0 million

- (1) At 8 percent tax exempt—40 years—annual payment equals \$1,341,920 equals 79 cents A/F per year. Plus 7 cents WQ and O. & M. equals 86 cents per A/F per year.
- (2) At 7 percent tax exempt—40 years—annual payment equals \$1,200,160 equals 71 cents A/F per year. Plus 7 cents WQ and O. & M. equals 78 cents per A/F per year.

II. 1976 construction cost estimate with 10 percent inflation:

	(Millions)
IPC share-----	\$19.5
Waterusers-----	19.55
Total-----	39.05

A. 1976 construction start—\$19.55 million

- (1) At 8 percent—40 years—annual payment equals \$1,639,658 equals 97 cents per A/F per year. Plus 7 cents WQ and O. & M. equals \$1.05 per A/F per year.
- (2) At 7 percent—40 years—annual payment equals \$1,466,445 equals 86 cents per A/F per year. Plus 7 cents WQ and O. & M. equals 93 cents per A/F per year.

III. CONCLUSION—result of 1-year delay

The loss of 1 year at 10 percent inflation in cost even assuming 7 percent interest rather than 8 percent will cost the waterusers \$124,525 per year or \$4,981,000 net dollars over 40 years.

Senator CHURCH. John, as you know, the upper valley spaceholders have expressed concern over interpretations that may be given to language of the bill that Senator McClure and I have produced.

Specifically, there is a question as to whether language in the bill about water being, "available on reasonable demand to members of the public," does not somehow jeopardize the water rights of the spaceholders.

Let me say for the record that the intent of the authors of the bill is not to question or to change, modify or alter in any way the ownership rights of the spaceholders, but I think that for the record, I should ask you this question.

As I understand it, there is a relevant IRS regulation interpreting the phrase, "making water available upon reasonable demand to the

general public," that is, a term of art that was used in the drafting of the bill. I wonder if you would elaborate somewhat on the meaning of that term?

Mr. ROSHOLT. Mr. Chairman, first of all, I think the question raised relates to water rights and certainly it would be a stretch of an interpretation to in any way jeopardize the water right by reason of a proposed amendment or a clarification to a tax section. But essentially the question is one of whether or not the project as contemplated fits within that section of the Code, the exemption and the regulations and the interpretations of the Internal Revenue Service.

In our interpretation, we would qualify for local furnishing of water, if, in fact, the farms within the water service areas, that received American Falls water—Let's say a farmowner on one of those farms presumed to sell his farm with the water. In other words, if someone wants that water, he can buy that farm with the water right, or the farmer could sell the water right to another farm and leave his farm dry.

Within that question you raised, the IRS has not given us any problem. In fact, one of the regulations defines within local furnishing of water, the terms, "water facilities", includes artesian wells, reservoirs, dams and related equipment pipelines and other facilities used to furnish for domestic and industrial irrigation.

I think it is clear within their own regulations that we qualify in that regard. The question that was raised, I think is a moot question at this point.

Senator McCURE. Could the Senator yield at this point?

Senator CHURCH. Yes.

Senator McCURE. A very high proponent of the total water used in the area immediately around the dam, or immediately downstream, does receive water from the facilities of this dam, or facilities associated with this.

Is that not true? It is not 100 percent, of course, but a very high proportion of all the irrigation is associated with this?

Mr. ROSHOLT. Yes, Mr. Chairman and Senator McCure. I don't know what the total acreage is, percentages, of all lands irrigated; the total acres irrigated with water from American Falls in varying extent is about 934,000 acres; about, I would say, one-tenth to one-fifteenth of the lands lying above the reservoir may obtain their water through an exchange with the other reservoirs in the project.

Senator CHURCH. If the relationship between the original dam replacement act in section 103(c)(4)(g) of the Internal Revenue Code can be clarified as provided by this bill, how soon do you think actual construction can start at American Falls?

Mr. ROSHOLT. Mr. Chairman, we are limited to some extent on construction schedules by the nature of hydrology and spring and runoffs and whatever. Our engineers tell us that we must be in a position to bid the major equipment that would be embedded in the dam the following year, on any construction schedule. We are hopeful that we could get to that point to bid an award contract for that equipment in November of 1975; then we could award a general construction contract in the spring of 1976, and that equipment would be available because it must first be in place before the structure of the dam goes up. But we could award those bids, we must—put two-thirds of the spaceholder entities so that we are in a position

to confirm those votes and those contracts and get court confirmation of the contracts before we could commit ourselves to approximately \$3 to \$5 million worth of embedded equipment.

Senator CHURCH. Is there anything else that is holding up the project besides this problem of the Internal Revenue Service relating to tax-exempt bonds?

Mr. ROSHOLT. Mr. Chairman, we had semifinal drafts, I think they could be called, with three contracts required to put this project together, the water contract, the contract between the district and the Secretary of Interior concerning future operation of the dam, and then a repayment contract, as it were, between the district, who has an interest as a constructing agency.

The Secretary, of course, will operate the project for each of the spaceholders. Those, although in semifinal form, have not been finalized for final Secretary of Interior review, until these unknowns were resolved. This appears to be the last remaining unknown.

We are, once again, willing to roll and dice and proceed to finalize these contracts on the basis that S. 1152 would be successful. Hopefully, that process would take us about 2 months. We could be in a position to vote on those this summer.

The Federal Power Commission license, of course, was a great deterrent, until March 31, at which time that license was issued.

Senator CHURCH. What about EPA? Any problem there?

Mr. ROSHOLT. Mr. Chairman, I hope you know better than I, but at this point, at least, the requested State Water Quality Standard change has been approved by region 10 of the Environmental Protection Agency. That has been forwarded to the EPA head Office in Washington for endorsement. I am hazy on their procedures, but informed that it is generally a matter of course once the regional people have approved it.

Senator CHURCH. Inasmuch as this bill, that is to say, the original bill that authorized the replacement of the dam, had the general approval, not only of all the Idaho people but also of the united Idaho Congressional Delegation and the administration, I would hope that these various agency barriers would not prove insurmountable, but that we could get on with the construction of this dam before rising inflationary costs make the whole thing unfeasible. We are moving on the verge. I am sorry that it is going to take a passage of another statute to get the Internal Revenue Service to treat these bonds as tax-exempt.

We had conferences with the Internal Revenue Service 6 months ago. We thought we had satisfied every question that was raised. We fell within the criteria in such a way that the Internal Revenue Service would oblige us with a ruling, and we still are waiting.

So, it looks as if the only way we can cut the Gordian knot, is to pass legislation.

Now, I would like to turn the balance of the hearing over to Senator McClure. I am sorry that I cannot stay for the complete hearing.

Senator McCLURE. Senator Church, I think we all understand your reason for having to participate in that conference on legislation that won't wait.

Senator CHURCH. Thank you.

Senator McCLURE. Mr. Rosholt, why don't you go ahead and make the statement that you wish to make. Then I will proceed from that point.

Mr. ROSHOLT. Senator McClure, I have—for the record, I presume, my name is in. I am a lawyer from Twin Falls. I represent the American Falls Reservoir District, and I have an original of my written testimony that I would like to be submitted for the record and included as a part of the record.

Senator McCLURE. That statement, together with the attachments to the statement, will be made a part of the record.

Mr. ROSHOLT. Thank you, sir.

As I indicated earlier, Mr. Holm is with me. Every lawyer must have a lawyer, and he is mine. So he is available here for any questions you may have as we proceed.

I would like to just touch on a couple of the items that I think are significant. The Chairman, I thought, summarized well, and you in your remarks summarized well with the dilemma we find ourselves in.

We are concerned about replacing a dam, about 1,700,000 feet of water, that supplies some 934,000 acres of land in Idaho.

It is complicated by the fact that we have some 36 different water user entities involved.

We thought our problems were solved with the act of December 28, 1973. The Chairman mentioned the statement of Assistant Secretary Jack O. Horton in the hearings. We have proceeded on the basis that that was the way we would proceed, and the tax-exempt bonds would be available to us.

The Bond Counsel determined that we would need a ruling before we could go to market with those bonds to assure their salability and marketability, but since that, I just want to emphasize, since the act of December 28, 1973, we have done a few things.

First of all, we have all participated in drafting some agreements under which the project would operate following completion drafts of those contracts, include some other features. The bill included a provision that a four-lane highway crossing would be obtained at American Falls. Presently, I am pleased to advise that that problem was resolved with the State of Idaho, and two-lane bridges more than three-quarters completed at American Falls eliminates the problem. In the interim, as we reconstruct the dam, an additional two lanes will be placed on top of the structure to complete the four-lane crossing and the two lanes going each direction.

We settled our differences with our local fish and wildlife agencies. We have contracted with them for the payment of a substantial amount of money to mitigate any environmental problems that may be ramifications of the reconstruction of the project.

Our major thrust has been putting together a design for the replacement structure. The district has spent in excess of \$1 million in engineering fees to obtain these final plans, designs, and specifications. To date, all substantial submittals to the Bureau of Reclamation and Secretary of the Interior have been approved, except, of course, for the construction schedules, which can't be obtained until the final starting and target date is selected.

One of the problems we have been confronted with was oxygen injection in the water by reason of the release of water in the dam, since under the new dam water would be released through pen stocks. This problem was not contemplated at the time of the legislation, December 28, 1973.

However, we have been able, we think, to mitigate that situation and the spaceholders are willing to pay for the cost of oxygen to inject, to enable us to meet the amended State Water Quality Standard.

The Bureau of Reclamation cooperated and in great haste, and with very much work put together the comprehensive environmental impact statement on behalf of both the dam replacement project and on behalf of the power company for the Federal Power proceeding. That received approval by the Council on Environmental Quality.

In regard to the Federal Power Commission license I mentioned that had been issued, that was, again, no small effort on behalf of the Governor of our State, the Idaho Public Utilities Commission and all the water users who intervened in favor of the Idaho Power Co. application.

We have coordinated closely with local agencies to obtain recreational plans which will be implemented by the State agencies in conjunction with the replacement project.

Finally, we get down to where the contracts, which must be approved by election and finally executed by the parties involved, must be completed.

And, of course, the problem of S. 1152 resolved before any bonds can be marketed.

As the Chairman indicated, we did file a request for ruling with the Internal Revenue Service in June of 1974. To date, and that is, as of a minute, as best I know, no ruling has been received.

We have talked about the increased cost that these delays precipitate, and I indicated, as I indicated in my written remarks, that in my best judgment, the spaceholders may not be willing to proceed with the replacement of this project with money from their own pocket if they are not at least entitled to the advantage of the interest if differential.

In our talks with the Internal Revenue Service, it was indicated that in their opinion, we would qualify for local—under the local furnishing of water exemption, but because of the Idaho Power Co. arrangement, that, in fact, we would not qualify under local furnishing of electrical energy, which is an additional section in this same 103(c) section.

The amendment which we propose today is one which we think, or that the committee has proposed, is one which we think will qualify the situation.

I might note that the contracts which we have drafted include very, very strong language prohibiting the purpose of the project from being in any way taken away from the primary use of the irrigation users. It is, in fact, a water project, and I am certain that the benefits of that water brings to the farmers in southern Idaho exceed in every regard any income that could be derived from the generation of electricity by the power company.

I noted with some interest that the Federal Power Commission inserted in their license, which was issued on March 31 of this year, and I may quote from one of those, with your permission:

The use of falling water releases for power generation is so thoroughly under the control of Reclamation in its releases for irrigation and other purposes of the Minidoka Project that the Applicant would have no opportunity to operate the project in a manner to conflict with future depletion or diversion of the water of the Snake River. The use of the resource is a non-depleting one and under the

Act of December 28, 1973, and related contracts, the operation of the hydroelectric facility shall not impair the efficiency of the Replacement Dam Program to serve the other purposes of the Minidoka Project.

The Federal Power Commission went on extensively in their remarks and concluded that the action that they took on March 31 would best serve the public interest. We would agree with that conclusion.

We urge this committee and the Congress to clarify the relationship of the act of December 28, 1973 with the provisions of 26 U.S.C. 103(c)(4), and we encourage the committee to favorably consider S. 1152.

In the final analysis, in my opinion, this program would permit the replacement of the deteriorated dam, would return it to the United States essentially with no cost to them.

The new dam has the benefits of public safety, flood control, public recreation, fish and wildlife enhancement, essentially at no Government cost except as specified in the act in some minor regards.

The State obtains recreational areas, new highway crossing, and the water users, most importantly, would attain the dependable water supply that is needed to protect them and permit them to control their own fate in averting future economic disasters.

As I indicated, there are attached to my statement both the technical synopsis of the tax question, and there is—are four separate statements, one of Mr. John Barker, the president of the American Falls Reservoir District; Mr. Cecil Hobdey, counsel for American Falls Reservoir District No. 2; Mr. C. J. Marshall, the chairman of the American Falls Spaceholders Executive Committee; and Mr. Ted Diehl, who is president of the Idaho Water Users Association and also the American Falls Spaceholders organization. Those letters are attached, and I would ask that they be included as a part of the written remarks.

Thank you, very much.

Senator McCLURE [presiding]. I might state to the witness, unless he has to get away, the bells have rung, which indicate that I have to vote.

If the witness does not have to catch an airplane or something, we will recess long enough for me to go and vote and return.

Mr. ROSHOLT. Eleven-thirty tomorrow.

Senator McCLURE. It won't take me that long.

The committee will stand in recess.

[A brief recess was taken.]

Senator McCLURE. The meeting will come to order.

One of the concerns that is expressed by IRS has been whether or not the passage of this legislation, or the granting of a tax-exempt status for these bonds, would create a precedent which would be troublesome in regard to other types of water projects similar to this one.

Would you care to comment on that fear on their part?

Mr. ROSHOLT. Senator, in our opinion, the issue of whether this project should be constructed by the Federal Government or with private funding by the spaceholders was discussed thoroughly and considered as a part of the record in the legislation that resulted in the bill signed on December 28, 1973.

In our opinion, at least, the amendment that is proposed today. Senate 1152 that is under consideration, sets no kind of a precedent, administrative or otherwise, for any other project. It merely deals with the problem of the American Falls reconstruction.

Senator McCLURE. It would be my opinion that the likelihood of finding another situation the same as this one anywhere in the United States is very, very remote, for the Federal Government built a dam several years ago, where because of chemical changes within the dam, it has now become unsafe for the spaceholders, in concurrence with other entities, are in a position to offer to reconstruct the dam for the Federal Government without cost to the Federal Government.

All the various elements that go together to make this a feasible project are not apt to be duplicated anywhere else in the exact way that this one was put together.

It would seem to me that the effort we are making here not to amend the tax statute to broaden the definition of the tax exemption, but to remove ambiguity by simple legislative declaration that this falls within the purview of that statute does not broaden that statute at all and would remove any possibility that a bad precedent was being established rather than enhancing that likelihood.

Mr. ROSHOLT. Senator McClure, you stated that very well. I think if a precedent was established, it was established at the time of the act of December 28, 1973, was passed.

Senator McCLURE. Thank you, very much.

I have no further questions. Thank you, very much, for your testimony.

Mr. ROSHOLT. Thank you.

[The prepared statement of Mr. Rosholt follows:]

PARRY, ROBERTSON, DALY & LARSON

LAWYERS

R. P. PARRY
T. M. ROBERTSON
JOHN H. DALY (1913-1968)
BERT LARSON
C. G. MCINTYRE
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BEFORE THE SUBCOMMITTEE ON ENERGY RESEARCH AND WATER RESOURCES
INTERIOR AND INSULAR AFFAIRS COMMITTEE
UNITED STATES SENATE
HEARING-S.1152
April 24, 1975

STATEMENT OF JOHN A. ROSHOLT
REPRESENTING AMERICAN FALLS RESERVOIR DISTRICT

Mr. Chairman, Members of the Subcommittee, Ladies and Gentlemen:

My name is John A. Rosholt. I am a practicing attorney in Twin Falls, Idaho, with the firm of Parry, Robertson, Daly & Larson. Our firm has represented the American Falls Reservoir District for about 25 years. I have with me today, Mr. Phillip H. Holm of the law firm of Chapman and Cutler, of Chicago, Illinois, the Bond Counsel for the American Falls Reservoir District.

I would first request that a copy of my written statement be included as a part of the official record of this hearing. I will attempt to summarize that statement orally. Following the summary, both Mr. Holm and myself are available to attempt to answer any questions that the Chairman or members of the Subcommittee may have.

The original American Falls dam was constructed in 1927 by the Bureau of Reclamation in part with \$2.6 million in bond proceeds advanced by the American Falls Reservoir District. The dam lasted 45 years and was restricted to two-thirds of its 1.7 million acre foot capacity in 1972 by the Bureau of Reclamation for safety reasons because of excessive pressures on the dam which were caused by an alkali-aggregate reaction and deterioration in the concrete. Following consultation with the Idaho Congressional Delegation, the 36 different wateruser entities owning varying amounts of irrigation water space in the American Falls Reservoir supported and obtained Congressional authorization to replace the American Falls Dam with private financing pursuant to the Act of December 28, 1973, (P.L. 93-206, 87 Stat. 904).

In summary, the Act provided for the financing and construction of the dam and related facilities and authorized the American Falls Reservoir District as the "constructing agency", and to contract with the Secretary of Interior to undertake the reconstruction and also provided that the Secretary must approve any contract with a non-federal entity for the use of the falling water, and further required that the Secretary be a party to each spaceholder repayment contract. The Act further limited the initiation of construction until the plans, designs, and specifications had been approved by the Secretary. In addition to specifically requiring that the Spaceholders undertake the prevention of erosion control, the Act also provided that the District would cooperate in the completion of a four-lane highway crossing of the river at American Falls.

Jack O. Horton, Assistant Secretary of the Interior, set forth a short description of the proposal in his letter of May 9, 1973, to the Honorable Henry M. Jackson, Chairman, Committee on Interior and Insular Affairs, United States Senate, in Report No. 93-223. Mr. Horton stated at page 11:

The spaceholders would obtain financing for the new dam by the sale of tax-exempt bonds and would assist Idaho Power Company in obtaining a Federal Power Commission license for construction of a powerplant at the dam. The Idaho Power Company would pay to the spaceholders an amount of money equal to the annual requirements for interest and amortization of the spaceholders bonds over a 40 year period, up to the actual cost of the dam but not more than \$19 million plus interest. The spaceholders would pay any additional cost over the \$19 million plus interest and the costs of replacing the existing highway river crossing and facilities for recreation, fish and wildlife and public health and safety.

Since December 28th of 1973, the District has negotiated a draft of a contract with the Secretary as provided in Section 1 of the Act. A draft contract has been negotiated by the District and the Secretary's representative with the Idaho Power Company, for the approval of the Secretary pursuant to Section 4 of the Act. Drafts of repayment contracts between the Secretary, District, and each spaceholder entity, pursuant to Section 3 of the Act have been prepared. The District has contracted with the State of Idaho for the completion of a four-lane highway project, two lanes on a bridge presently under construction by the State and two

lanes on top of the replacement dam. The District has further contracted with the Idaho Department of Fish and Game for the payment of certain monies in mitigation of environmental and fish and wildlife ramifications of the project. The District has spent an excess of \$1 million obtaining final plans, designs, and specifications for the completion of the replacement dam and related facilities, all of which plans have presently been approved by the Secretary through the Bureau of Reclamation, except for the construction schedules which are tentative pending the selection of a starting date. Included in those plans are facilities to provide for oxygen injection to meet an amended State Water Quality Standard so as to alleviate an environmental consequence which had not been contemplated at the time the legislation was under consideration. A final Environmental Impact Statement prepared by the Bureau of Reclamation covering the replacement of the dam and the construction by the Idaho Power Company of a new 100 mW power plant downstream from the replacement dam was filed with the Council on Environmental Quality on November 13, 1974. The District and the spaceholders together with the Governor of the State, the Idaho Public Utilities Commission, and others intervened in support of the Power Company's application for a Federal Power Commission License, which was issued March 31, 1975. Provisions have been made for the construction of a Bureau warehouse and operational facility at American Falls. Coordination has been obtained with state and local agencies to enhance the recreational opportunities created by the reconstruction of the project. In addition to the accomplishments above enumerated, under both Federal and State law, elections must be held by the spaceholder entities to approve the contracts and court confirmation proceedings must be completed before the bonds can be marketed.

A request for a ruling from the Internal Revenue Service that interest on its bonds would be exempt from Federal income taxes was filed on behalf of the District in June of 1974. Despite three conferences and the submission of additional data, considerable delays have been encountered in the receipt of a ruling. We believe that Congressional action is needed to clarify the relationship between the Act of December 28, 1973, and the provisions of 25 U.S.C. Section 103(c)(4). With passage of the bill the water users would be able to complete the financing and construction of the replacement dam.

Review and approval of the drafts of the contracts by the Secretary has been deferred pending resolution of the tax question. Increased project costs because of inflation

are to be expected, adding to the expense to the waterusers of the cost of financing the construction of the replacement dam. If construction can start in the late fall of 1975, the total project cost might go over \$40,000,00.

Although the Spaceholders are now willing to complete the contract negotiations and expend additional capital to attempt to alleviate further delays, the failure of S.1152 could spell the demise of the project. The spaceholders and the Congress originally contemplated tax-exempt interest in financing this project and if the same is not now available, under the Idaho Power Company proposal, the full burden of the cost differential arising from taxable interest falls on the spaceholders. It is doubtful that the spaceholders would be willing to proceed under those circumstances. Therefore, it now appears that the success of the project, as contemplated in the Act of December 28, 1973, is dependent upon the language of S.1152. After all the work and money that has been expended, this project should not go down the drain. The clarifying language of the amendment of S.1152, designating the dam and related facilities to be financed and constructed by the American Falls Reservoir District as provided in the Act, shall for all purposes of 26 U.S.C. Section 103(c)(4) constitute "facilities solely for the furnishing of water, available on reasonable demand to members of the general public." The dam and related facilities would thus qualify as an exempt water activity under 26 U.S.C. Section 103(c)(4)(G), which in fact they are.

We believe that it was not intended that the contract by the American Falls Reservoir District with the Idaho Power Company would cause the replacement dam facilities to be considered as other than a water or irrigation project. The replacement dam will continue to be operated and maintained by the Bureau of Reclamation as part of the Minidoka Project. The Act provides that the falling water contract must not impair the efficiency of the Minidoka Project. The following language appears in the draft contract between the Secretary and the American Falls Reservoir District:

Operating Criteria

16. The Replacement Dam will be operated by the United States in a manner so that (1) the storage rights of the Spaceholders shall not be altered or changed, (2) the water surface elevation of the Replacement Dam shall not exceed a maximum of 4354.5 feet above mean sea level U.S.C. & G.S. datum, and (3) the primary irrigation purpose and the incidental purposes (recreation, fish and

wildlife, and flood control) of the Minidoka Project shall not be impaired by the utilization for power generation of the water leaving the Replacement Dam. The United States is not obligated to operate the Replacement Dam in a manner to have water in the Replacement Dam at elevations for power generation or to operate to increase the head in the Replacement Dam for power generation.

The Idaho Power Company has consented to the application of the above criteria to the operation of the replacement dam.

Hydroelectric generation as authorized in the Act is subordinate to irrigation. A non-consumptive use of water does not destroy the purpose of the project. This is recognized in the language of the Federal Power Commission License at pages 11 and 12:

"The use of falling water releases for power generation is so thoroughly under the control of Reclamation in its releases for irrigation and other purposes of the Minidoka Project that the Applicant would have no opportunity to operate the project in a manner to conflict with future depletion or diversion of the water of the Snake River. The use of the resource is a non-depleting one and under the Act of December 28, 1973, and related contracts, the operation of the hydroelectric facility shall not impair the efficiency of the Replacement Dam Program to serve the other purposes of the Minidoka Project."

The Federal government should permit the American Falls Reservoir District to utilize the falling water in a manner which will reduce the cost of the replacement dam. The Federal Power Commission also recognized this relationship at page 16 of the License:

"We believe that the licensing of American Falls Project No. 2736 best meets the standard of §10(a) of the Act, 16 U.S.C. §803(a). That section requires that a project approved shall 'be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes. . . .'

Utilization of added head from the Replacement Dam through additional units will increase power capacity of the existing site from 27.5 mW to 92.4mW. This increase reflects a fuller development of the waterpower potential of the project than previously attained. Releases from storage for irrigation purposes will also occur at times of Applicant's greatest need to serve the area's electric loads, principal of which are pumping loads of irrigators. Better use will be made of recreational attributes of the area. Adequate mitigation measures have been provided for any adverse effects of the overall project, particularly in terms of the loss of the forebay fishery, potential turbine fish mortality, and water quality concerns.

The value of increased generation and its contribution to system reliability is great. Applicant is a member of the Western Systems Coordinating Council (WSCC), in addition to having its own interconnected system. In these times of increasing need for reliable power, the addition of this potential is necessary. Of course, the energy source is of a nondepleting nature, which contributes to its efficacy in terms of conservation of natural resources.

Further, we have evaluated the cost and benefits of this project in comparison with those of alternative thermal generating sources, which would require the utilization of supplies from diminishing sources of fossil fuels. We are persuaded, as indicated previously, that no better alternative exists to the licensing of this project, and that the action we take today best serves the public interest."

In addition to their payments for falling water, the Idaho Power Company will spend \$39-\$41 million in the construction of their power plant.

We urge Congress to clarify the relationship between the Act of December 28, 1973, and the provisions of 26 U.S.C. 103(c)(4) by establishing that for all purposes of that section the dam and related facilities to be financed by the American Falls Reservoir District pursuant to the Act of December 28, 1973, constitute solely facilities for the furnishing of water which is available on reasonable demand

to the members of the general public, and therefore qualify solely as exempt facilities pursuant to 26 U.S.C. 103(c) (4)(G).

The present replacement program pursuant to the Act of December 28, 1973, would return to the United States, a new facility with essentially no cost to the Government. The new dam will have the benefits of public safety, flood control, public recreation, and fish and wildlife enhancement at no cost to the Federal Government, except as specified in the Act of December 28, 1973. The State obtains new recreational sites as well as a four-lane highway crossing that will meet modern day safety standards. The waterusers would obtain a firm supply of water to protect themselves from an agricultural economic disaster.

Attached to my statement are endorsements of S.1152 by Mr. John M. Barker, President of the American Falls Reservoir District Board of Directors, Mr. Cecil Hobdey, Counsel for American Falls Reservoir District No. 2, Mr. C. J. Marshall, Chairman of the American Falls Spaceholders Executive Committee and the North Side Canal Company, and Mr. Ted Diehl, President of the Idaho Water Users Association and the American Falls Spaceholders organization. I would ask that these statements be also included as a part of the record.

I thank the Subcommittee for your kind attention and courtesy, and for the opportunity of allowing me to appear today.

Respectfully submitted,

JOHN A. ROSHOLT

The request for ruling from the Internal Revenue Service was sought primarily under the theory that interest on the bonds proposed to be issued by the District in order to finance the reconstruction authorized by Congress in the Act would qualify for Federal income tax exemption under Section 103(c)(4)(G) of the Internal Revenue Code. This section provides that interest on bonds of a state or local governmental unit is tax exempt if substantially all of the bond proceeds are used to provide facilities for the furnishing of water, if available on reasonable demand, to members of the general public. The regulations which have been issued by the Treasury under Section 103(c)(4)(G) read in pertinent part as follows:

Reg. §1.103-8(h) Water facilities--(1) General rule. Section 103(c)(4)(G) provides that section 103(c)(1) shall not apply to obligations issued by a State or local governmental unit which are part of an issue substantially all of the proceeds of which are to be used to provide facilities for the furnishing of water which are available, on reasonable demand, to members of the general public. A water facility will satisfy the public use test of paragraph (a)(2) of this section if it will provide water, on reasonable demand, to any member of the general public within the service area of the water system of which such facility is a part.

(2) Definition. For purposes of section 103(c)(4)(G) and this paragraph, the "water facilities" include artesian wells, reservoirs, dams, related equipment and pipelines, and other facilities used to furnish water for domestic, industrial, irrigation, or other purposes.

It is submitted that the reconstruction authorized by Congress under the Act meets the requirements of the regulation in that: (a) it will constitute a reservoir, dam and related equipment and other facilities used to furnish water for domestic, industrial, irrigation and other purposes, and (b) it will in fact provide water, on reasonable demand, to members of the general public within the applicable service area. While there are thirty-five "Spaceholders" which are entitled to varying percentages of the total active storage capacity of the American Falls Reservoir,

each of the Spaceholders is entitled to such storage space capacity in trust for numerous water users who reside within twelve Idaho Counties. There are approximately 175,000 individual users of water resulting from the active 1,700,000 acre-feet of storage capacity in the American Falls Reservoir. While water made available from storage capacity may not be purchased in exactly the same manner one would subscribe for the delivery of water from a municipal culinary water system, nevertheless, any person of the general public residing in the area served by a Spaceholder may purchase, at the going price, the right to the storage of water if such storage rights are offered for sale and may thereby acquire the right to the distribution of water from the American Falls Reservoir or may, by purchasing land to which such water rights are appurtenant, acquire the right to use such water. This is the traditional way in which irrigation water is made available to adjacent landowners who have need for the use of irrigation waters on their lands. The regulation clearly provides that the exemption extends to water furnished for irrigation purposes from reservoirs, and it is submitted that the requirement of purchasing water storage rights before being served with water from the reservoir is well within the requirement that the water be supplied on "reasonable demand" to any member of the general public.

The requested ruling has not been received from the Internal Revenue Service although the matter has been under advisement for some months and much supplementary material has been submitted. As well as we can determine the position of the Service apparently is that because the Company will be obligated under the Falling Water Contract to make payments which in part secure the bonds, in return for which the Company will obtain the use of the falling water on a non-consumptive basis, an "interrelationship" will be created between the water aspects of the reconstruction and the power purposes arising from the use to which the Company will put the falling water. This appears to be the case irrespective of the fact that the Company will finance the powerplant itself which in reality constitutes the power aspect of the reconstruction project authorized by Congress in the Act. Despite the fact that the regulation above quoted contemplates the use of water for industrial and other purposes (presumably including generation of electricity), the Service has so far declined to rule that substantially all of the bond proceeds are to be used for a water project in view of the interrelationship between water and power which it has found to be present. Inasmuch as the reconstruction would not qualify under

the local furnishing of electricity exemption provided in Section 103(c)(4)(E), the District has no recourse to alternative provisions of the Internal Revenue Code under which interest on its bonds could be treated as tax exempt if Section 103(c)(4)(G) does not apply.

Section 103(c) was enacted in 1968. Section 103(c), (1) and (2) read as follows:

(c) Industrial Development Bonds.--

(1) Subsection (a)(1) Not to Apply.--Except as otherwise provided in this subsection, any industrial development bond shall be treated as an obligation not described in subsection (a)(1).

(2) Industrial Development Bond.--For purposes of this subsection, the term "industrial development bond" means any obligation--

(A) which is issued as part of an issue all or a major portion of the proceeds of which are to be used directly or indirectly in any trade or business carried on by any person who is not an exempt person (within the meaning of paragraph (3)), and

(B) the payment of the principal or interest on which (under the terms of such obligation or any underlying arrangement) is, in whole or in major part--

(i) secured by any interest in property used or to be used in a trade or business or in payments in respect of such property, or

(ii) to be derived from payments in respect of property, or borrowed money, used or to be used in a trade or business.

This provision was designed to limit the tax exemption of interest on so-called "industrial development bonds". These are bonds usually issued by a governmental unit to provide facilities for use in a private trade or business under circumstances

where the ownership of the facility would technically remain with the issuer but the facility would be leased or sold to the private trade or business, and upon retirement of the bonds, the facility would become the property of the private trade or business.

While it is apparent that the arrangement for the use of the falling water by the Company under the Falling Water Contract authorized in the Act does not fit into the traditional industrial development bond pattern because the reconstruction being financed with the bond proceeds would never be owned or leased to the Company, and constitutes a type of facility normally considered to be a public project, nevertheless, under Reg. §1.103-7(b)(5), if a non-exempt person such as the Company agrees pursuant to a contract to take, or to take or pay for, a major portion (more than 25%) of the output of electric or water facilities constructed, reconstructed or acquired by a state or local governmental unit with the proceeds of an issue of bonds, such contract will constitute an indirect use by the non-exempt person of a major portion of the proceeds and, hence, the bonds are treated as industrial development bonds under Section 103(c).

However, Section 103(c)(4) establishes certain categories of obligations which, while meeting the above-described tests as an industrial development bond, are, nevertheless, to be considered to be issued for an activity which is treated as exempt and interest on the bonds to finance such activity is tax exempt if substantially all of the proceeds are used to provide such exempt activities. As enacted in 1968 exempt activity (E) read as follows:

Sewage or solid waste disposal facilities or facilities for the local furnishing of electric energy, gas or water.

Reg. §1.103-8(f)(2)(iii) provides that the facilities for "local furnishing" means property which is part of a system providing service to the general populace of one or more communities or municipalities, but in no event more than two contiguous counties (or a political equivalent) whether or not such counties are located in one state.

In 1971, Section 103(c)(4) was significantly amended. This amendment, apparently enacted because of the restrictive

nature of the local furnishing provision as applied to public water projects such as the reconstruction authorized by the Act, removed "water" from exempt activity (E) and added a new exempt activity (G), reading as follows:

Facilities for the furnishing of water, if available on reasonable demand to members of the general public.

At the time of the considerations of the Act in 1973 it was felt that the provisions of Section 103(c)(4)(G) would apply to the bonds of the District to be issued to finance the reconstruction authorized by Congress. However for purposes of marketing the bond issue a specific Internal Revenue Service ruling on the point was required.

Inasmuch as the Company will be entitled under the Falling Water Contract to utilize an amount of the falling water which will satisfy the 25% rule of the regulation above cited the proposed bonds presumably constitute industrial development bonds even though the Company will not lease or otherwise control the replacement dam as noted by the Federal Power Commission. However, the purpose of Section 103(c)(4) is to provide exemptions even where industrial development bonds are present and it seems illogical to deny the exemption for precisely the reason which gave rise to resort to the exemption in the first place, i.e., the obligation of the Company in part securing the bonds. The character of the reconstruction authorized by Congress as a water project should not be destroyed by the non-consumptive use of the falling water by the Company. So long as the project satisfies the tests of the regulation under Section 103(c)(4)(G), it is submitted that it is irrelevant that the water is used to produce electric energy. The proposed contracts, as well as recognized by the Federal Power Commission at page 11 of its March 31, 1975, order, ensure that the use of the falling water will not adversely affect the operation of the replacement dam as part of a federal irrigation and reclamation project.

Because the Company will utilize the falling water in the production of electric energy, the Service has been unwilling to conclude that the issuance of bonds for the reconstruction authorized by Congress fits within the exemption for the furnishing of water. It appears that this administrative result was not intended by Congress at the time of the enactment of the Act in permitting the reconstruction to be financed in part pursuant to the Falling Water Contract. In view of the fact that the Service is apparently reluctant to rule that the exemption provided in

Section 103(c)(4) is applicable to the District's bonds, if the reconstruction is to be consummated as intended by Congress in the Act, it is desirable that Congress take immediate steps to amend the Act to clarify the relationship between the provisions of the Act which permit the execution of the Falling Water Contract and the exemption provided for water facilities under Section 103(c)(4). The proposed bill will accomplish this without being precedent setting as far as the general application of the exempt activity is concerned and will permit the marketing of the bonds.

OFFICERS:
 JOHN M. BARKER
 PRESIDENT
 MERL E. LEONARD
 VICE PRESIDENT
 TOM OLMSTEAD
 TREASURER
 DIANNE BRIDGEMAN
 SECRETARY

AMERICAN FALLS RESERVOIR DISTRICT

1132 LOCUST STREET — TWIN FALLS, IDAHO 83301
 OFFICE OF THE SECRETARY
 TELEPHONE: (208) 733-3560

April 24, 1975

IRS: 82-6001 361
 DIRECTORS:

JOHN M. BARKER
 G. DALE DEPEW
 FRANK W. GRAVES
 MERL E. LEONARD
 TOM OLMSTEAD
 ARMIN H. SCHROEDER
 L. RUSSELL WOOLLEY

Senator Frank Church
 Chairman
 Subcommittee on Energy Research
 and Water Resources
 Interior Committee
 United States Senate
 Washington, D. C. 20510

Re: S. 1152

Dear Senator Church:

As President of the American Falls Reservoir District, the designated "constructing agency" in the Act of December 28, 1973, (P.L. 93-206, 87 Stat. 904), I ask that this letter be included as a part of the record of the public hearing scheduled on S. 1152 for April 24, 1975.

The American Falls Spaceholders had hoped by this time that construction of the replacement of the deteriorating American Falls Dam would be well underway. But even though our progress has not been as swift as we had hoped, much has been accomplished toward an early construction start.

To date, the American Falls Spaceholders have expended an excess of \$1 million, and have secured the Bureau of Reclamation's approval of their engineering plans, specifications, and designs. Details have been worked out to complete the four-lane highway bridge crossing as contemplated in the Act, and the State is well along in their construction of two of the four lanes below the existing dam. Agreements have been negotiated settling matters of environmental concern. Precautions have been taken in the plans to insure that the water quality will meet the amended State Standards. Preparations are now underway for the completion of final contract drafts and their submission to the Secretary of Interior for final approval in hopes that all wateruser entities will hold successful elections in the early summer of 1974, thus making possible the awarding of equipment bids in the early fall of 1975 and the initiation of construction in 1976.

At the time of the Act of December 28, 1973, the problem which S. 1152 addresses was not contemplated. However, the passage of S. 1152 now appears as the last remaining

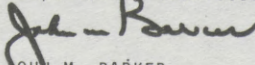
Senator Frank Church
Page 2
April 24, 1975

obstacle prior to the adoption of election resolutions and a vote on this project by the waterusers.

We encourage your favorable recommendation for S. 1152 and the support of your subcommittee in obtaining the early passage of the act by the Congress of the United States.

Thank you for your continuing efforts on behalf of the American Falls waterusers.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "John M. Barker". The signature is stylized, with the first name "John" written in a cursive script and the last name "Barker" in a more formal, slightly cursive style.

JOHN M. BARKER
President

LAW OFFICES

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April 15, 1975

The Honorable Frank Church
 Chairman, Subcommittee on
 Energy Research and Water Resources
 Senate Building
 Washington, D.C.

Re: S1152

Dear Senator Church:

I represent the American Falls Reservoir District #2 which is a contract space holder of approximately 25% of the space of American Falls Reservoir. Many of the lands in American Falls Reservoir District #2 are wholly dependant upon this storage water, having no other natural flow or storage rights appurtenant to these lands.

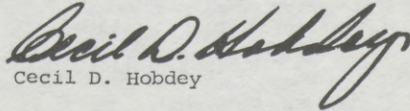
The District has, at this time, levied, collected and expended in excess of a quarter of a million dollars, in the effort to replace the Dam. These levies have been in addition to the existing construction charges, and the ever increasing M and O charges of the Bureau of Reclamation and of the District itself.

Please be assured the presentation of our position by this letter, rather than by personal appearance before your Honorable Committee, should not be considered by the Committee as any lack of interest or urgency on the part of the Directors of the District. It is strictly and solely because the District has expended so many dollars in combating bureaucratic windmills and other apparent road-blocks which have developed in the project that they feel they must economize when and where possible.

The Honorable Frank Church
Re: S1152
April 15, 1975
Page 2

We urgently request that favorable consideration be given the subject amendment and that Public Law 93-206 be amended to provide that the bonds issued by the constructing agency shall be tax exempt bonds and that this be accomplished at the earliest possible date.

Respectfully yours,


Cecil D. Hobdey

CDH/cab

TED DIEHL, GENERAL MANAGER

BERNICE JOHNSON, SEC.Y.TREAS

NORTH SIDE CANAL COMPANY

921 NORTH LINCOLN AVENUE

PHONE 324-2319 — 324-2310

JEROME, IDAHO 83338

April 24, 1975

Senator Frank Church, Chairman
Subcommittee on Energy
Research and Water Resources
Interior Committee
Washington, D. C. 20510

Subject: S.1152

Dear Mr. Chairman:

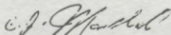
My name is C. J. Marshall. I am President of the North Side Canal Company in Jerome, Idaho, and I serve as President of the Executive Committee of the American Falls Spaceholders.

Our Committee is working and pulling their oar in the same direction toward finalizing the loose ends on the American Falls Dam Replacement project so that contracts can be voted on and construction initiated at the earliest possible time. The American Falls dam is a vital link to the irrigation water supplies for 900,000 plus acres and the economy of south-central Idaho. The Executive Committee continues to support early replacement of the dam pursuant to the provisions of Public Law 93-206 which the Congress favorably considered in 1973.

The Spaceholders have been willing to advance large amounts of money to expedite the initiation of construction and now find that the amendment which S.1152 addresses must be favorably considered by the Congress. S.1152 will eliminate the last remaining major obstacle.

We encourage your early consideration of S.1152 and solicit your support in obtaining its favorable consideration in the U.S. Senate. We are indebted to you for your continuing help in this effort. Please include this letter in the record of the hearing of April 24th on S.1152.

Respectfully,



C. J. MARSHALL

Chairman

American Falls Spaceholders

Executive Committee

April 24, 1975

Honorable Frank Church, Chairman
Subcommittee on Energy Research
and Water Resources
Interior Committee
U. S. Senate
Room 3302
Dirkson Senate Office Building
Washington, D. C. 20515

Re: S.1152

Dear Senator Church:

This letter is sent in support of S.1152, which I am advised is the subject of a hearing scheduled for April 24, 1975, by your subcommittee.

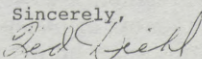
As Chairman of the group comprised of the 36 American Falls Spaceholder entities, and as the current President of the Idaho Water Users Association, let me again emphasize the criticality of the earliest possible replacement of perhaps the most vital irrigation water storage project in Idaho. Water from the American Falls Reservoir assures an adequate supply for approximately 900,000 acres of prime agricultural land.

We continue to receive unqualified support in our efforts from the Governor and the Legislature of the State of Idaho as well as the many wateruser organizations. Efforts are being made to finalize contract drafts for approval by the Interior Department so that a vote can be held as soon as S.1152 has been passed by the Congress.

The waterusers continue to obligate themselves for large amounts of advance monies in the hope of being able to finally resolve all complications so as to get on with the actual construction work. I encourage your subcommittee to favorably consider S.1152. Please include this letter as a part of the hearing record.

Thanks for your support of our efforts.

Sincerely,



TED DIEHL

Senator McCLURE. I will call Mr. Sullivan, the Assistant Commissioner of the Bureau of Reclamation, Department of the Interior.

Thank you, very much, for your patience in dealing with us as we try to expedite this hearing and accommodate Senator Church in his desire to ask questions of Mr. Rosholt as well as my necessity for getting over to the floor and answering roll call.

Thank you, very much, for being here.

State your name, please, and then proceed.

Mr. SULLIVAN. For the record, I am Edwin F. Sullivan, Assistant Commissioner, Bureau of Reclamation. I am representing the Department of the Interior in this statement.

I have with me here Mr. Vernon Cooper, who is on our staff and has assisted in preparing this material.

**STATEMENT OF EDWIN F. SULLIVAN, ASSISTANT COMMISSIONER,
RESOURCE MANAGEMENT, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY VERNON COOPER**

Mr. SULLIVAN. Mr. Chairman and members of the committee, we welcome the opportunity to appear before this committee to present the views of the Department of the Interior on S. 1152, which would amend the act of December 28, 1973, Public Law 93-206, relating to the replacement of the American Falls Dam, Minidoka project, Idaho. The amendment would clarify the relationship of the provisions of that act to the provisions of the Internal Revenue Code in section 103 of title 26, United States Code.

The purpose of the bill is to assure tax-exempt status for bonds that may be issued by a non-Federal public agency to provide for the replacement of the American Falls Dam, thereby overcoming uncertainties that have arisen in the proposed implementation of Public Law 93-206.

Public Law 93-206 forms the basic legal framework for the replacement of the American Falls Dam. It authorizes the Secretary of the Interior to enter into agreements with the American Falls Reservoir District, a non-Federal agency, or other appropriate agency, representing the present reservoir spaceholders, to finance and construct a replacement dam and related facilities.

The American Falls Dam, located in the Upper Snake River Basin in Idaho, is a major feature of the Minidoka project. Its reservoir is the largest storage reservoir in the Upper Snake River Basin and provides an irrigation water supply for about 900,000 acres of land and serves other important purposes. The reservoir has a storage capacity of 1,700,000 acre-feet; however, because of deterioration of the dam, it is not safe to use the full capacity. The use at present has been reduced by one-third to 1,125,000 acre-feet. The regional economy is dependent to a significant degree on the restoration of the dam and reservoir to its full capacity.

The Bureau of Reclamation constructed the American Falls Dam in 1927. Because of deterioration of the dam, the Bureau was authorized in 1966 to conduct a feasibility investigation of the replacement dam. In 1972, the Bureau issued its report documenting the need for and feasibility of a proposed replacement dam.

Subsequent to the Bureau's report, the reservoir spaceholders and the Idaho Power Co. proposed a plan to replace the structure through non-Federal financing. This plan was advanced to expedite the replacement of the dam. This proposal was endorsed by the Department of the Interior and approved by the Congress with the enactment of the Act of December 28, 1973, Public Law 93-206.

The plan upon which the act was based provided for the sale of tax-exempt bonds by the reservoir spaceholders to obtain financing for construction of the replacement dam. The plan also called for payment of a specified amount to the spaceholders by the Idaho Power Co. The spaceholders and the Federal Government were to pay certain additional costs associated with recreation and fish and wildlife enhancement and the spaceholders were to help the Idaho Power Co. obtain a Federal Power Commission license for construction of a power plant at the dam,

When Public Law 93-206 was being considered, the concept of non-Federal financing proposed was predicated on the issuance of tax-exempt bonds which would result in a more favorable interest rate on the bonds. This concept was acknowledged in the report submitted by the Department of the Interior to the Congress on the proposed legislation under consideration.

A question has since risen whether bonds issued by the spaceholders would qualify for tax-exempt status. S. 1152 is designed to resolve this question in the spaceholders' favor, in that it is specifically directed to take advantage of a provision of the Internal Revenue Code that gives tax-exempt status to bonds issued as part of an issue substantially all of the proceeds of which are used to provide facilities for the furnishing of water, if available on a reasonable demand, to members of the public.

The Department has consistently supported the replacement of the American Falls Dam to assure the full operation of the reservoir. The approval of the plan advanced by the spaceholders and adopted with the enactment of Public Law 93-206 represented a deliberate choice over the alternative plan that had been proposed, which would have placed the full responsibility for the replacement of the dam on the Federal Government. The spaceholders' plan was favored because it avoided total Federal involvement by utilizing resources that would be provided by private enterprise and non-Federal governmental agencies. It also appeared to provide the advantage of more rapid implementation.

The benefits of the reservoir and of the new dam are numerous. The principal use of the water is for irrigation. The water from the reservoir is vital to the agriculture of the region. The dam will also contribute to flood control, fish and wildlife enhancement, and to recreation for the general public. The utilization of the falling water from the dam to generate electricity will also be of considerable benefit to the area.

The Department of the Interior supports the purpose of Public Law 93-206 and has consistently supported it as indicated in prior legislative reports. However, S. 1152 concerns a tax issue with which the Treasury Department has primary expertise and authority; consequently, we must defer to the Treasury Department in their views on this bill.

Senator McCCLURE. Thank you, very much, Mr. Sullivan, for your tatement.

I might just note that the views of Treasury were requested on March 19, 1975, and have not been received at the date of this hearing.

Mr. Sullivan, as you know, two bills were introduced during the 93d Congress: S. 1528 authorized the Secretary of the Interior directly to construct a replacement dam; S. 1529 authorized the Secretary of the Interior to enter into a contract with a non-Federal entity to construct a new dam. A definite choice was offered. S. 1529 was supported by the administration because it called for a minimal Federal involvement, maximum use of private enterprise, and the most rapid implementation of a replacement program.

Am I correct that the administration still favors the use of a non-Federal approach?

Mr. SULLIVAN. Yes, that is correct, Senator.

Senator McCCLURE. With private financing, isn't it also true that the benefits to the United States and the taxpayer would be considerable because the burden of financing the reconstruction project would not be placed on the Federal Government and the taxpayer?

Mr. SULLIVAN. Yes, that is correct. The Federal investment would be minimized by that approach. That was one of the reasons that it was supported.

Senator McCCLURE. The dam needs to be replaced as has been pointed out in numerous words of testimony, both in this hearing and in the hearing on the prior legislation.

I think some general reference should be made here for further implementation and amplification of the arguments for this legislation to the previous hearing record on the bill, that has been referred to.

The present limitation of the dam to two-thirds of the reservoir capacity is a threat to the entire economy of southern Idaho. Literally, 900,000 acres of land receive irrigation water from the reservoir.

In your experience, what would you judge to be the time frame involved for replacing the dam if Congress were to authorize replacement through the Bureau of Reclamation, directly?

Mr. SULLIVAN. It is very difficult to give a definitive estimate of the time frame, but it undoubtedly would take several years to be accomplished. The legislation would have to be enacted, and there would have to be detailed plans developed and funding. Based on our experience in other projects, I think that it could hardly be done in less than 2 or 3 years and maybe longer.

Senator McCCLURE. Two to three would be pretty optimum.

Mr. SULLIVAN. To get started, I mean.

Senator McCCLURE. Isn't it also correct that if we were to experience a series of short-water years, 2 or 3 short-water years in succession before the dam is replaced, and at the present holding level that is mandated because of safety, that there would be a severe water shortage in the area served by the reservoir capacity of this reservoir?

Mr. SULLIVAN. Yes, there would be. The area relies to a very great extent on the use of storage. I think there probably would be some serious crop losses if some dry years should occur.

Senator McCCLURE. They could probably survive one dry year. If there were a second dry year, we would probably feel the pinch severely, and if there were a third, it would be a disaster.

Mr. SULLIVAN. Yes, I think that is right.

Senator McCLURE. Has the administration computed the cost or savings to the taxpayer if the dam is replaced by Federal funding? How much would it cost if the Government were to build this as compared to the present plan?

Mr. SULLIVAN. I don't have exact computations on that. I think it would be fair to assume that the actual construction cost would be approximately the same for Federal construction, but, of course, all the money would have to be advanced by the Federal Government. Then, under the normal procedures of Federal construction of these projects the repayment would be made without the payment of any interest. The Government would have advanced the money, and it would get full repayment, but it would be on an interest free basis. The cost to the taxpayer in that sense would be considerably higher than under the plan that is being advanced for non-Federal moneys.

Senator McCLURE. I could not help but smile a moment ago when you said maybe we could get it built in 2 or 3 years if the Federal Government were to do it because my own estimate would be we will be lucky if we had all the money put together and authorized by the Congress and get it all done in 8 to 10 years.

Mr. SULLIVAN. I guess I was thinking in terms of our capability to construct. It certainly would depend on appropriations to build it, and you, Senator, can say better on that than I can.

Senator McCLURE. It would probably be unfair of me to ask you what the Congress might do in terms of funding, because I think it is unlikely that we will be able to get the money on these current tight budget times very promptly. Certainly we would attempt it, but I think the likelihood of some substantial delay is greater. What has been our experience in the escalating costs of construction in recent years of this type of construction? How much has it been going up each year?

Mr. SULLIVAN. I don't recall any specific numbers, but I was talking to some of our people recently on construction in general.

As I recall, in 1 year, the costs have escalated about 15 or 20 percent just from inflation alone. If you project that to several years in the future it becomes very significant.

Senator McCLURE. I did a little calculation. The staff has done a little calculation in regard to what might happen to construction costs if it took us 8 or 10 years to reach completion through Federal authorization and appropriation processes that would indicate a cost of approximately \$35 to \$40 million at a 10 percent annual inflation, approximately \$92 million by the time the Federal Government might get around to completing the project. Those were costs which the taxpayers would have to bear.

Mr. SULLIVAN. I think that is right. I think we can all hope that we won't have inflation continuing at that rate, but we don't have any assurance.

Senator McCLURE. Mr. Sullivan, I thank you very much for your testimony. I think all of us who have been working on this appreciate the manner in which the Bureau of Reclamation has cooperated with presenting some very difficult decisions and has cooperated in testimony before this committee, both on the present bill and on the earlier bill authorizing the replacement of this dam. The testimony

has been helpful, and I, for one, and I know Senator Church, for another, appreciate the assistance and the testimony.

Are there any other witnesses who would like to be heard?

If not, the meeting will adjourn.

[Whereupon, at 3:45 the committee was adjourned.]

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