

Chapter 1 PURPOSE AND NEED FOR ACTION

The Bureau of Reclamation (Reclamation) is proposing to renew the water service contracts held in Lucky Peak Reservoir or convert them to repayment contracts. Out of a total reservoir storage capacity of 293,100 acre-feet, approximately 71,000 acre-feet of water is allocated to 18 irrigation and water organizations in the Boise Valley (hereinafter referred to as contractors) under 19 water service contracts. The original contracts were executed between 1965 and 1968 and each remains in effect for a period of 40 years.

The purpose of the proposed action is to continue to provide current Lucky Peak contractors with a supplemental irrigation water supply for beneficial use from storage, consistent with applicable law, up to the percentage of active capacity in the reservoir allocated to each contractor under their original contract. Renewal or conversion is needed because the 40-year contract periods for the 19 contracts will expire between 2005 and 2008, and the contractors have a continuing need for irrigation water.

1.1 Background

1.1.1 Location and General Description of Affected Area

Lucky Peak Dam and Reservoir are located on the Boise River approximately 10 miles southeast of Boise, Idaho (*Frontispiece*). The reservoir, when full (elevation 2955 feet), is 12 miles long. It has 45 miles of shoreline and 3,019 acres of surface area. The lake provides a total storage capacity of approximately 293,000 acre-feet at elevation 2955 feet.

The contractors that hold the water service contracts deliver water to meet the irrigation needs of approximately 90,000 acres of urban, suburban, and rural lands located in Ada and Canyon Counties in the Boise Valley. These lands are used for agricultural, residential, and commercial purposes.

1.1.2 Reclamation's Legal Authorities and Constraints

The Flood Control Act of 1946 (Public Law 79-526) authorized the U.S. Army Corps of Engineers (USACE) to construct Lucky Peak Dam and Reservoir "substantially in compliance with the recommendation of the Chief of Engineers in his report dated May 13, 1946." The May 13, 1946, report established flood control, irrigation, and power development as the authorized purposes of the Lucky Peak Project, with

1.1 Background

recreational use of the reservoir as a recognized project benefit. Construction of Lucky Peak Dam was completed in 1955 at a cost in excess of \$19 million.

For dam and reservoir projects constructed by the Secretary of the Army such as Lucky Peak, the Secretary of the Interior is authorized under the Flood Control Act of 1944 (43 U.S.C. Sec. 390) to “operate and maintain, under the provisions of the Federal Reclamation laws ..., such additional irrigation works in connection therewith as he may deem necessary for irrigation purposes.” Through a 1953 Memorandum of Agreement and 1985 Memorandum of Understanding, Reclamation and USACE established a joint operating plan for Lucky Peak, Anderson Ranch, and Arrowrock Reservoirs. Lucky Peak is operated primarily for irrigation and flood control by USACE, although flood control operations are coordinated with Reclamation. The Boise River watermaster is responsible for ordering releases for irrigation and water accounting.

Reclamation holds a water right license from Idaho Department of Water Resources (IDWR) for the storage of 293,050 acre-feet per year in Lucky Peak Reservoir. The purpose and place of use for 111,950 acre-feet of the water right is irrigation of lands within the Boise Federal Reclamation Project. The license also authorizes 152,300 acre-feet of storage for streamflow maintenance and 28,800 acre-feet of storage for recreation purposes.

Between 1965 and 1968, pursuant to the authority of 43 U.S.C. Sec. 390 and the Federal Reclamation laws, Reclamation entered into water service contracts with 20 irrigation entities. Section 9(e) of the Reclamation Project Act of 1939 governs water service contracts (43 U.S.C. Sec. 485h(e)). Under the water service contracts, Reclamation agreed to make available water stored in Lucky Peak Reservoir for irrigation purposes for a period of 40 years in exchange for a fee.

The original water service contracts include the following renewal or conversion clause:

This contract shall remain in effect for a period of forty (40) years from the date of its execution; Provided, That under the terms and conditions mutually agreeable to the parties hereto, renewals may be made for successive periods not to exceed forty (40) years each. The terms and conditions of each renewal shall be agreed upon not later than one (1) year prior to the expiration of the then existing contract; Provided further, That upon written request by the Contractor of the Secretary made not later than one (1) year prior to the expiration of this contract, whenever, account being taken of the amount then credited to the costs of construction of water supply works, the remaining amount of construction costs of water supply works which is properly assignable for ultimate return by the Contractor as established by the Secretary of the Interior pursuant to (3) of Section 1 of Public Law 643 (70 Stat. 483), probably can be repaid to the United States within the term of a contract under subsection (d), Section

9 of the 1939 Reclamation Project Act (53 Stat. 1187), this contract may be converted to a contract under said subsection (d) upon terms and conditions mutually agreeable to the United States and the Contractor. Notwithstanding any provisions of this contract, the Contractor reserves and shall have all rights and benefits under Public Law 643.

This contractual right to renew or convert is required by a 1956 statute. The 1956 Act requires that all water service contracts include a provision, if requested by the contractor, for renewal “under stated terms and conditions mutually agreeable to the parties” (43 U.S.C. Sec. 485h-1(1)). The 1956 Act also requires inclusion of a provision for conversion to a repayment contract “under stated terms and conditions mutually agreeable to the parties,” subject to certain limitations related to the financial capacities of the contractor (43 U.S.C. Sec. 485h-1(2)).

Finally, the 1956 Act provides that each contractor with a water service or repayment contract “shall, during the term of the contract and of any renewal thereof . . . , have a first right . . . to a stated share or quantity of the project’s available water supply for beneficial use” (43 U.S.C. Sec. 485h-1(4)). This provision reflects a fundamental tenet of Reclamation law. Under section 8 of the Reclamation Act of 1902, “beneficial use [is] the basis, the measure, and the limit” of “the right to the use of water” acquired under Reclamation law (43 U.S.C. Sec. 372). Therefore, all use of Reclamation project water is limited to that which can be put to beneficial use.

Recognized beneficial uses of water under Idaho law include but are not limited to, domestic, municipal, irrigation, hydropower generation, industrial, commercial, wildlife, recreation, stockwatering, and fish propagation uses for which permits to appropriate water can be issued as well as other uses which provide benefits to the user of the water as determined by the Director. Industrial use includes, but is not limited to, manufacturing, mining, and processing uses of water. See IDAPA 37.03.08(06).

Under these contractual and statutory provisions, Reclamation has only limited authority with respect to the Lucky Peak water service contracts. Reclamation has no authority to deny requests for the renewal or conversion of the Lucky Peak water contracts. Further, Reclamation may change the amount of water supplied under these contracts only to the extent the originally contracted amount of water cannot be beneficially used. See *Renewal of Friant Unit Contracts*, M-36961, 96 I.D. 289, 301 (Nov. 10, 1988) (Tarr Opinion); 1956 Act, Sec. 1(4). Although “[t]he Secretary has considerable discretion . . . to change other terms of the contracts” upon renewal or conversion, these changes must be “mutually agreeable to the parties” (1956 Act, Sec. 1(1), (2); 96 I.D. at 301).

1.1 Background

1.1.3 Form of Contract

Water service contracts are executed pursuant to section 9(e) of the 1939 Reclamation Project Act (43 U.S.C.A. Sec. 485h(e)). These contracts are effective for a term of years, and typically provide that each contractor's payment to Reclamation is based on the amount of water the contractor uses. The rate of payment per acre-foot is calculated to cover costs attributable to constructing, operating, and maintaining the portion of the project that is dedicated to irrigation purposes. If the contractor uses more than the anticipated amount, it submits an additional payment after the irrigation season. If the contractor uses less, the excess payment is applied against amounts due for water requested in future years.

Repayment contracts are authorized by section 9(d) of the 1939 Reclamation Project Act (43 U.S.C. Sec. 485h(d)). A repayment contract is not limited to a term of years and requires the contractor to make annual payments for the total amount of the contractor's storage space, regardless of the quantity of storage the contractor actually uses. Although the contract is perpetual, there is a defined term for the repayment of construction costs.

1.1.4 Contractors' Use of Lucky Peak Storage for Supplemental Irrigation

The purpose of repayment and water service contracts is for Reclamation to operate and maintain the reservoir to store and deliver water to the contractors as a supplemental water supply to their natural flow water rights. The Lucky Peak contractors use their storage as a safety net to supplement natural flow water rights as water supplies decline and deliveries of natural flow water rights are curtailed. Use of this storage is relatively low in normal to good water years and unused storage is carried over into the next year. Several of the Lucky Peak contractors, hold repayment contracts for storage in Anderson Ranch and Arrowrock Reservoirs as well.

In dry years, storage use is relatively high as natural flows decline earlier in the year. If there are successive low water years, often, the storage accounts do not fill since Lucky Peak has the most junior storage rights in the Boise River reservoir system. In these instances, contractors have to balance a reduced supply with the need for carryover insurance the following year and for these reasons may use substantially less than their contracted storage space.

Chapter 3 contains a more detailed explanation of how Lucky Peak storage is used.

1.2 Scoping

Scoping under the National Environmental Policy Act (NEPA) is a process that solicits input from interested publics to help identify pertinent issues and alternatives related to the proposed action. Scoping for this project was initiated by Reclamation issuing a scoping letter to federal, state, and local agencies, interest groups, and interested individuals on July 10, 2002, announcing the intent to prepare a draft Environmental Assessment (EA) under NEPA. Reclamation also announced initiation of the Draft EA in the public news media. Reclamation received written scoping comments from the following agencies and organizations:

- Idaho Department of Fish and Game
- Idaho Department of Parks and Recreation (letter later withdrawn)
- Ada County Parks and Recreation
- Community Planning Association of Ada County
- City of Boise
- Trout Unlimited
- Moore Smith Buxton & Turke (on behalf of the city of Eagle)
- Boise Valley Fly Fishermen
- Idaho Rivers United
- Wilderness Ranch Owners Association
- Idaho Conservation League
- United Water Idaho

The major issues identified through public scoping were:

1. Development in Treasure Valley has and will continue to reduce irrigation demand. Excess Lucky Peak storage should be allocated to other uses.
2. A needs assessment and/or beneficial use of storage should be used to determine current and future irrigation storage requirements.
3. Permanent repayment contracts would not accommodate changing water needs such as changes in conservation and farming practices.
4. The range of alternatives presented in the scoping document is inadequate.

1.2 Scoping

5. Ensure water conservation measures and compliance with Reclamation Reform Act (RRA) are included in alternatives and evaluated.
6. Effects to hydropower generation should be analyzed.
7. An Environmental Impact Statement (EIS) is required.
8. Evaluate flood control effects and river channelization/floodplain encroachment resulting from operating upstream projects.
9. Must take a hard look at effects to Boise River.
10. Cumulative effects should be analyzed.
11. Mitigation should be included.
12. Mitigation for Diversion Dam Power Plant rehabilitation should be included.
13. Contracting with Reclamation is preferable to uncertainties of the rental pool.
14. Must meet provisions of Endangered Species Act (ESA) and Clean Water Act (CWA).
15. Evaluate pricing differences such as municipal and industrial vs lawn irrigation.
16. Evaluate effects due to speculation in the water market.

The above issues and concerns can be categorized into two general types.

- Those that pertain to alternatives to be analyzed. These are addressed in Chapter 2.
- Those that pertain to environmental impacts that should be addressed. These are addressed in Chapter 3.

Several scoping issues were received that were outside the scope of the Draft EA or that would not be affected by any of the alternatives, and these were not addressed. Below is a summary of these issues and explanations of why they were not addressed in this Final EA:

Mitigation for Diversion Dam Powerplant rehabilitation should be included.—A final EA and Finding of No Significant Impact (FONSI) for the Diversion Dam Powerplant rehabilitation were issued in March 2002. No mitigation was proposed because environmental impacts were determined to be very minor. The decision regarding contract renewal or conversion at Lucky Peak Reservoir is not related to rehabilitation of Diversion Dam Powerplant.

Salmon flow augmentation releases are in the summer when fish requirements are being met.—The timing of flow augmentation is determined by National Oceanic & Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries). The action evaluated in this Final EA has no bearing on that timing required for flow augmentation although the effects of the action on Reclamation’s ability to meet flow augmentation goals are analyzed.

Effects to hydropower generation.—Operational differences are so minor among the alternatives that effects to hydropower generation would not be measurable and are, therefore, not discussed.

Evaluate pricing differences such as municipal and industrial vs lawn irrigation.—The state of Idaho recognizes the use of water for irrigation of lawns, gardens, parks, and landscaping as irrigation. Under Reclamation policy, irrigation for agriculture, and noncommercial irrigation (lawns, gardens, parks, etc.) are all under the same pricing scheme. In addition, Reclamation has no authority to issue or convert contracts for Lucky Peak storage for municipal and industrial purposes from Lucky Peak Reservoir. Therefore, there is no analysis of pricing differences for these uses in this Final EA.

1.3 Related Actions and Activities

1.3.1 Assignment of Lucky Peak Contract Entitlements to Wilderness Ranch and Osprey Subdivisions and United Water Idaho, Inc.

Reclamation is currently evaluating proposed assignments of a portion of New Union Ditch Company’s Lucky Peak contract entitlement to Wilderness Ranch Owners Association (200 acre-feet) and Osprey Property Owners Association (300 acre-feet), two subdivisions located between Boise and Idaho City and from Boise City Canal Company to United Water Idaho, Inc. (300 acre-feet). A separate environmental assessment is being prepared for these actions in compliance with NEPA. If these assignments are effective prior to renewal or conversion of the existing contracts, the new assignees will assume the role of the contractors.

1.3.2 Assignment of Contract Entitlement to Provide 800 Acre-Feet of Storage in Lucky Peak Reservoir to United Water Idaho, Inc.

In December 2001, Reclamation issued a FONSI for assigning contract entitlements formerly held by South Boise Mutual Irrigation Company (SBMIC) and Capitol View Irrigation District (CVID) for use of storage water from Lucky Peak Reservoir to United Water Idaho, Inc. All of SBMIC's and CVID's rights under their Lucky Peak water service contracts were assigned in 2003 to United Water for the balance of the contract terms. The CVID contract is for use of up to 300 acre-feet and expires in 2008. SBMIC's contract is for use of up to 500 acre-feet and expires in 2006. United Water Idaho, Inc. actually has two contracts with Reclamation, which is the reason currently 18 contractors hold 19 contracts.

1.3.3 Simplot/Micron Municipal and Industrial (M&I) Contract

In 1997, Reclamation issued a FONSI for a 25-year contract to the JR Simplot Company and Micron Technology to provide 3,000 acre-feet of storage in Anderson Ranch Reservoir. This storage was previously used for salmon flow augmentation. To replace this storage in Anderson Ranch Reservoir, Reclamation acquired 3,554 acre-feet of Lucky Peak storage from Simplot/Micron free of charge. As part of this transaction, Reclamation also purchased an additional 2,378 acre-feet of Lucky Peak storage from Simplot/Micron for salmon flow augmentation.

1.3.4 Purchase of Lucky Peak Reservoir Water Service Contract Entitlement from Nampa and Meridian Irrigation District

In July 1996, Reclamation issued a FONSI for purchasing Nampa and Meridian Irrigation District's (NMID) remaining water service contract entitlement to delivery of 35,000 acre-feet of storage in Lucky Peak Reservoir held under a water service contract. Since the rescission of the NMID water service contract, this storage is used for salmon flow augmentation. This action reduced the original number of contracts and contractors from 20 to 19.