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FACSIMILE COVER SHEET

DATE: August 24, 1995 Recipient's Fax: 327-7866
 RE: Stipulation / USBA Applications
 TO: Karl Dreher
 FROM: John Rosholt

NUMBER OF PAGES INCLUDING THIS COVER: 6

ADDITIONAL MESSAGE:

Memo, Stipulation and Consent to
Stipulation to be sent by mail.

- Original will not be sent.
- Original will be sent by first class mail.
- Original will be sent by Federal Express.

IF YOU EXPERIENCE DIFFICULTIES RECEIVING THIS FAX, PLEASE CALL (208) 336-0700.

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MEMORANDUM

TO: Petitioners and Intervenors
FROM: John A. Rosholt *JAA*
DATE: August 23, 1995
SUBJECT: USBA Applications for Transfer

We met at the Simplot Auditorium this afternoon to discuss the enclosed Stipulation. Essentially, all questions were answered and approximately 15 Petitioners who were in attendance signed the original of the enclosed Consent to Stipulation.

It was the consensus of those in attendance that the Stipulation was the best vehicle to avoid an expedited hearing process on such an important issue without giving away any legal positions.

This memo is being sent to all Petitioners and Intervenors. If you have not signed and would elect to do so, please sign the Stipulation by Monday the 28th and return the page you have signed to the Idaho Water Users Association office, located at 410 S. Orchard, Boise, Idaho, 83705. The Stipulation and Consent will be presented to the Director of the Department at the August 30th session. I presume that if all or nearly all have executed the Stipulation, that the Director will order its implementation.

Please advise Sherl Chapman of your wishes no later than Monday, August 28th. If you do not have time to mail and wish to execute, you may fax to the Idaho Water Users Association at 344-2744.

\82395.mem

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Applications for)
 Transfer Nos. 4616, 4617, 4618,)
 4623, 4624, 4625, 4626, 4627,)
 4628, 4629, 4630, 4631, 4632,)
 4633, and 4636, and for the)
 Amendment of Water Right)
 Permit Nos. 25-07004 and)
 63-3618 In the Name of the U.S.)
 Bureau of Reclamation)
 _____)

STIPULATION

COME NOW, the undersigned protestants [Protestants] and Intervenors [Intervenors] in the above matter and the United States Bureau of Reclamation [Bureau] (collectively the "Parties") and hereby stipulate and agree as follows:

(1) That the above referenced-applications for transfer and applications to amend permits ("Applications") and all motions be held in abeyance by the Department of Water Resources until April 1, 1996;

(2) The Protestants and Intervenors will not oppose the Bureau's release of up to 427,000 acre feet of Idaho water during the calendar year 1996, pursuant to the conditions set forth herein;

(3) That prior to February 1, 1996, the Parties hereto will engage in good faith negotiations to develop alternative proposals, including, but not limited to, legislation that addresses the Protestants' and Intervenors' concerns with the Applications, pursuant to terms and conditions agreed to by the Parties. Joint status reports on the negotiations will be submitted by the Parties to the Director on October 15, 1995, December 1, 1995, and January 15, 1996. This stipulation in no way binds the Parties regarding the terms and conditions of such negotiations or the content of such legislative proposal;

(4) That a hearing on the Bureau's Applications will be held no sooner than October 1, 1996. By agreeing to the scheduling of such possible hearing, Protestants do not waive any right to challenge the date or necessity of such hearing based on due process or other grounds;

(5) The Parties agree that the Bureau will rent storage water through the water bank operated by the Idaho Water Resource Board pursuant to section 42-1761 through 42-1764, Idaho Code, and its water bank rules or through local rental pools created pursuant to section 42-1765, Idaho Code, and local rental pool rules, to augment flows for salmon migration, provided said flows also are used for power production purposes within the State of Idaho;

(6) Parties agree that for the limited purposes of this stipulation, the conditions of section 42-1763, Idaho Code, have been met with the regard to the release of up to 427,000 acre feet of water in calendar year 1996;

(7) That any water made available for the purposes of this stipulation shall be obtained only from willing lessors. Any stored water released as salmon augmentation flows from reservoirs located within a basin having a local rental pool committee established pursuant to section 42-1765, Idaho Code, shall be rented only through, and pursuant to the rules of, the local rental pool committee. The Parties agree not to assert that the agricultural preference or lessee priority provisions of local rental pool rules shall apply to any uncontracted or reallocated space. Last to fill priorities of local rental pool rules are unaffected by the provisions of this stipulation;

(8) That water available from the water bank or through the local rental pool committees for the purposes of this stipulation must be used in accordance with an annual water flow augmentation plan prepared by those entities proposing the rental of water and

approved by the Director. The Director's review and approval of such plan shall be based upon, among other things, a determination that the water rented pursuant to this stipulation will be used as part of a regional coordinated effort to enhance salmon migration and that other parties are making a proportional contribution to solving the salmon migration problem;

(9) Any party may seek a determination from the Director that any provision of this stipulation has been violated. If the Director determines that a provision has in fact been violated, the moving (non-offending) party may elect to withdraw from this stipulation. In addition, in the event the Bureau's obligation to provide the 427 kaf flow augmentation for 1996 is reduced to an amount less than 427 kaf, this stipulation will be deemed modified to provide for use of the lower augmentation amount during 1996 under the terms herein. In the event the Bureau's obligation to provide 427 kaf flow augmentation for 1996 is increased to an amount greater than 427 kaf, nothing in this stipulation shall be construed as providing any authorization by the Parties or as providing any mechanism under Idaho law to facilitate the provision of any water in excess of 427 kaf. Finally, this stipulation shall be superseded on the effective date of any legislative solution acceptable to the Bureau and the Protestants enacted during the 1996 session of the State Legislature, or on December 31, 1996, whichever occurs first.

(10) That the Bureau will honor its longstanding commitment to maintain a minimum pool in Cascade Reservoir of 300,000 acre-feet during the period this stipulation is effective.

(11) This stipulation shall not constitute, or be interpreted, construed or used as evidence of any admission of liability or any admission of law or fact, either by the Parties as among themselves or by any other person not a party. It is for settlement purposes only,

and the Parties intend to preserve all of their rights and privileges under state and federal law in regard to the settlement.

(12) Nothing herein is intended to or shall affect the statutory authority of IDWR.

DATED this ____ day of _____, 1995.

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