



United States Department of the Interior

BUREAU OF RECLAMATION
Pacific Northwest Region
1150 North Curtis Road, Suite 100
Boise, Idaho 83706-1234

IN REPLY
REFER TO:

PN-3100

ADM-13.00

JUN 20 2001

Mr. Karl Dreher
Director
Idaho Department of Water Resources
1301 North Orchard Street
Boise ID 83706

Subject: Memorandum of Agreement - Lemhi Water Bank Lease

Dear Mr. Dreher:

Enclosed three signed copies of the subject Memorandum of Agreement.

Payment will be authorized upon our receipt of two originals of each of the three above documents, each with your signature. Please return the documents to the above address, Attention: E. Gail McGarry, PN-3100.

Sincerely,

Kenneth R. Pedde
Acting Regional Director

Enclosures

MEMORANDUM OF AGREEMENT
No. 1425-01 MA 103250
Between the United States Bureau of Reclamation
and the Idaho Department of Water Resources
Regarding
WATER RENTAL FOR 2001 SEASON FOR INSTREAM
FLOW PURPOSES BELOW DIVERSION L6 OF THE LEMHI RIVER

This Memorandum of Agreement (Agreement) is entered into by and between the United States Bureau of Reclamation (Reclamation) and the Idaho Department of Water Resources (IDWR), and shall be effective as of the date of execution and shall remain in force until December 1, 2001.

I. Background

The State of Idaho and Reclamation share an interest in maintaining an instream flow for the benefit of fish in the Lemhi River from the L6 Diversion to the confluence of the Salmon River. The Idaho Legislature enacted House Bill 358 into law this year, which established the Lemhi River Basin Local Rental Committee (Committee) to operate Idaho's water bank for natural flow in the Lemhi Basin. Reclamation is planning to rent water from the Committee for instream flow purposes to keep water in a critical stretch of the river. IDWR can demonstrate that the water rented will reach Lower Granite Dam; therefore, Reclamation will count some or all of this water towards the 427,000 acre-feet that Reclamation is authorized to make available at Lower Granite Dam. Additionally, the Lemhi River Basin is identified as a priority subbasin for habitat improvement in the Federal Caucus' Final Basinwide Salmon Recovery Strategy. Authority for Reclamation to enter into this Agreement for the rental of water is the Endangered Species Act and the Act of June 17, 1902, and acts amendatory or supplementary thereto, especially section 14 of the Reclamation Project Act of 1939, ch. 418 (43 U.S.C. § 389).

II. Purpose and Objectives

The purpose of this Agreement is for Reclamation to obtain the assistance of IDWR in renting water through the water bank to provide a protected instream flow of up to 35 cfs below the L6 Diversion for the 2001 season. IDWR will prepare and submit rental applications on behalf of Reclamation to the Committee and will help to ensure that the actions taken by the Committee and the Watermaster of Water District 74 will result in the rented water being maintained for instream flow use downstream of the L6 Diversion. This will result in improved habitat for listed fish and will help Reclamation toward meeting its goal of making 427,000 acre-feet available at Lower Granite Dam.

III. Implementing Actions

a. Responsibilities of Reclamation

Reclamation will pay \$250,000 to IDWR for renting a minimum of 21.40 cfs for the 2001 season. This payment of \$250,000 includes any administrative costs payable to the Idaho Water Resource Board and the Committee.

b. Responsibilities of IDWR

Upon execution of this Agreement, IDWR will file on Reclamation's behalf an application to rent a minimum of 21.40 cfs of water from the Lemhi water bank for instream flow purposes below the L6 Diversion. The priority date of any water rights rented will be prior to 1900. IDWR will verify the ownership and priority dates of the water rights before arranging for the rental of the water rights from the Committee. IDWR will request that the Committee accept applications for a minimum of 21.40 cfs within 12 hours from the time the flow below L6 drops to less than 35 cfs or July 1, 2001, whichever is earlier. Once leases are accepted, use of the water right by the lessor will cease for the duration of the lease. Leases will extend through November 15, 2001. Before July 10, 2001, IDWR will submit a list of the water rights rented by Reclamation.

IDWR will make the payments to the Committee for the leases and will pay all administrative costs to the Idaho Water Resource Board and the Committee. IDWR will use the \$250,000 paid by Reclamation to pay the lessors the rental rate and to pay administrative costs to the Idaho Water Resource Board (a maximum of 10 percent of the rental rate) and the Committee (a maximum of 10 percent of the rental rate). Any part of the payment by Reclamation not used for these purposes will be reimbursed to Reclamation by August 1, 2001.

IDWR will use its best efforts to ensure that the Lemhi River is regulated so that the rented water rights provide instream flow below the L6 Diversion at all times through October 31, 2001. The parties recognize that some fluctuation in flows may occur due to changes in the natural conditions and daily management of the river. The parties also recognize that automation of the L6 gate is currently under investigation, which may reduce fluctuations. Fluctuations below 18 cfs downstream from the L6 Diversion are to be avoided. Daily averages at the L5 Gauge should be at least equal to the quantity of rented water rights that are in priority. Upon identification of any problem in delivering the rented water rights in accordance with the provisions of this Agreement, IDWR shall notify Reclamation and immediately meet with the Watermaster and/or the Committee to resolve the problem. IDWR will report the resolution of the problem to Reclamation. At the end of the season, IDWR will submit a record showing how the acquired water rights were delivered according to their priority.

IV. Payment

Upon execution of this Agreement, IDWR will submit to Reclamation a Request for Advance or Reimbursement (U.S. Standard Form 270) for \$250,000. Reclamation will promptly process the request.

V. Dispute Resolution

IDWR and Reclamation agree to engage in mediation in an effort to resolve issues raised as a result of alleged breach of this agreement. Each party will bear its own cost of the mediation process and share equally the cost of a mediator.

VI. Term of Agreement

This Agreement shall become effective on the date of the last signature hereto and will terminate on December 31, 2001.

GENERAL PROVISIONS

1. Officials Not To Benefit

No member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit that may arise out of it.

2. Covenant Against Contingent Fees

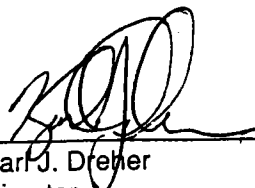
The recipient warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide offices established and maintained by the recipient for the purpose of securing agreements or business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement amount, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

3. Duplicate Original

This Agreement is executed in Duplicate. Each of the documents with an original signature of each party shall be an original.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date following their respective signatures.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES




Karl J. Deher
Director

June 20, 2001

Date

UNITED STATES
BUREAU OF RECLAMATION



Kenneth R. Pedde
Acting Regional Director

6/20/01

Date