AGREEMENT SUMMARY

May 2004

Background of the Agreement

The Snake River Basin Adjudication (SRBA) is a water rights adjudication of the Snake River within the State of Idaho. As a part of that adjudication, the Nez Perce Tribe and the United States, as trustee for the Tribe, filed a variety of claims to water rights, based on treaties entered into between the United States and the Nez Perce Tribe. Among these, water rights were claimed for instream flows to protect the Tribe's treaty-reserved fisheries. Those claims were contested by the State of Idaho and certain Idaho water users because they could have affected the rights of Idaho water users to continue to divert water. By order of the SRBA Court in 1998, the parties have been attempting to resolve the issues. Negotiations to resolve the instream flow water right claims have focused on finding ways to protect fish habitat, including both flow and non-flow related issues, while preserving existing water uses.

The claims for the Tribe include not only the instream flow water right claims, but also claims to support the Tribe's consumptive water needs and claims to springs in the area ceded by the Tribe in 1863. The proposed settlement includes provisions resolving all of the issues relating to the Tribe's water right claims.

The parties to the mediation included the United States and the Tribe as claimants, as well as parties to the SRBA who filed legal objections to the Tribal claims. These objectors include the State of Idaho, Idaho Power Company, and water users throughout the Snake River basin within Idaho. After several years of negotiations, the parties have developed a framework for a proposed settlement agreement (although not a party to the settlement, Idaho Power participated in the mediation and is expected to continue working with others on issues associated with the Hells Canyon Complex).

Specifically, the framework, or "term sheet," is divided into three separate components: (1) the Nez Perce Tribal component to resolve issues on and near lands ceded by the Tribe in the 1863 Treaty, (2) the Salmon/Clearwater component to protect flows and habitat within the Salmon and Clearwater River basins, and (3) the Snake River flow component to resolve issues involving the use of the Snake River above the Hells Canyon Complex.

The proposed settlement agreement would (1) finally and fully determine the Tribal claims to water rights, (2) set out the understandings and criteria necessary to provide long-term ESA compliance for water use in the Snake River basin in Idaho and for timber land management activities on state and private lands, and (3) protect existing water uses.

Nez Perce Tribal Component

The Tribal component resolves water and other natural resource concerns raised by the Tribe in the SRBA. These resource concerns include water rights, development of water resources, hatchery management, certain BLM lands, and fisheries habitat. In exchange for the Tribe's agreement to resolve their water right claims, as well as to resolve any other Tribal water-based claims, the United States will provide financial compensation to the Tribe. The specific provisions of this component include:

- The Tribe's multiple-use water rights will be decreed in the amount of 50,000 acre-feet per year, primarily from Clearwater River sources. Water from other sources will be decreed only to the extent water is unappropriated and existing water rights are not injured.
- The Tribe's "springs or fountains" water rights claims on federal lands within the 1863 Nez Perce Treaty ceded area will be decreed, while similar rights claimed on nonfederal lands will be waived.
- BLM lands valued at $7 million will be transferred to the Tribe. BLM's recreational lands along the Clearwater River corridor will be excluded from this transfer.
- The United States and the Tribe will enter into agreements providing for tribal management of the Kooskia National Fish Hatchery and tribal co-management of the Dworshak National Fish Hatchery.
- The United States, the Tribe, and the State of Idaho will enter into an agreement regarding use of 200,000 acre-feet of water in Dworshak Reservoir as part of a flow augmentation plan for fish.
- The United States will establish a $50 million water and fisheries trust fund for use by the Tribe in acquiring lands and water rights, restoring and improving fish habitat, fish production, agricultural development, cultural preservation, and water resource development.
- The United States will provide $23 million for design and construction of sewer and water system projects for local Nez Perce tribal communities.
- In lieu of contracting 45,000 acre-feet of Payette River storage space for a 30-year rental term, the United States will pay to the Tribe the $10.1 million rental value of that storage space.
- The agreement does not resolve, but looks to separate discussions for a potential resolution of issues relating to the Bureau of Reclamation=s Lewiston Orchards Irrigation District water diversion system.

Salmon/Clearwater Component

Many of the parties believe the Salmon/Clearwater component of the agreement will provide benefits for ESA listed species in several ways: improved instream flows, habitat, and passage.

- Instream flows will be established and held by the Idaho Water Resources Board for selected streams of importance to the Nez Perce Tribe. These flows will provide for future domestic, commercial, municipal, and industrial uses and will allow for a certain level of future development of other water uses. The State will administer a cooperative agreement(s) under the Endangered Species Act to enhance riparian habitat and protect existing and future State-permitted uses.

- Under the Forestry Component of the agreement, riparian/streambank protection measures will improve habitat for aquatic species on enrolled lands. This voluntary program supplements existing Idaho Forest Practice Rules and all State and private landowners in the Salmon/Clearwater River basins will be encouraged to participate.

- A Habitat Trust Fund will be established to provide funding for habitat improvement projects under both the flow and forestry programs described above.

Snake River Flow Component

The Snake River flow component anticipates 30-year Biological Opinions (BO) from NOAA Fisheries and USFWS under the Endangered Species Act on continued operation of the Bureau of Reclamation's projects in the upper Snake River basin. These BOs would address issues relating to flows from the Snake River above Brownlee Reservoir and the use of water for flow augmentation. The significant provisions of this component include the following:

- Minimum flows defined by the Swan Falls Agreement will be decreed by the SRBA Court to the Idaho Water Resources Board.

- The State of Idaho will extend the provisions of State water law *(Idaho Code 42-1763B)* for the term of the agreement to allow Reclamation to lease up to 427,000 acre-feet of water from Idaho water banks for flow augmentation.

- Reclamation will be allowed to rent or acquire up to 60,000 acre-feet of consumptive natural flow water rights from the Snake River between Milner and Swan Falls for flow augmentation purposes. When added to the other rentals, this water may increase the total water available for flow augmentation to 487,000 acre-feet. The United States will compensate local governments for impacts caused by Reclamation's acquisition of this additional 60,000 acre-feet.