UNITED STATES COURTS
DISTRICT OF IDAHO

OCT 17 1995

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SETTLEMENT AGREEMENT

The State of Idaho, through the Attorney General and Governor Philip E. Batt in his official capacity; the Department of Energy, through the General Counsel and Assistant Secretary for Environmental Management; and the Department of the Navy, through the General Counsel and Director, Naval Nuclear Propulsion Program, hereby agree on this 16th day of October, 1995, to the following terms and conditions to fully resolve all issues in the actions Public Service Co. of Colorado v. Batt, No. CV 91-0035-S-EJL (D. Id.) and United States v. Batt, No. CV-91-0054-S-EJL (D. Id.):

## A. DEFINITIONS

For purposes of this Agreement, the following definitions shall apply:

1. The "State" shall mean the State of Idaho and shall include the Governor of the State of Idaho and the Idaho State Attorney General.

2. The "federal parties" means U.S. Department of Energy (DOE) and the U.S. Department of the Navy (the Navy), including any successor agencies.

3. "Treat" shall be defined, as applied to a waste or spent fuel, as any method, technique, or process designed to change the physical or chemical character of the waste or fuel to render it less hazardous; safer to transport, store, dispose of; or reduce in volume.

4. "Transuranic waste" shall be defined as set forth in the EIS, Volume 2, Appendix E.

5. "One shipment of spent fuel" shall be defined as the transporting of a single shipping container of spent fuel.

6. "High-level waste" shall be defined as set forth in the EIS, Volume 2, Appendix E.

7. "DOE spent fuel" shall be defined as any spent fuel which DOE has the responsibility for managing with the exception of naval spent fuel and commercial spent fuel which DOE has accepted or will take title to pursuant to the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10101 et seq. or comparable statute.

8. "Naval spent fuel" shall be defined as any spent fuel

removed from naval reactors as a result of refueling overhauls (refueling) or defueling inactivations (defueling).

9. "Metric ton of spent fuel" shall be defined as a metric ton of heavy metal of spent fuel.

10. "Naval reactors" shall be defined as nuclear reactors used aboard naval warships (submarines, aircraft carriers, or cruisers), naval research or training vessels, or at land-based naval prototype facilities operated by the Naval Nuclear Propulsion Program for the purposes of research, development, or training.

11. "Calendar year" shall be defined as the year beginning on January 1, and ending on December 31.

12. "Mixed Waste" shall be defined as set forth in the EIS, Volume 2, Appendix E.

13. "EIS" shall be defined as the Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Program Final Environmental Impact Statement issued April, 1995.

14. "ROD" shall be defined as the Record of Decision issued by DOE on June 1, 1995, concerning the EIS.

15. "INEL" shall be defined as the Idaho National Engineering Laboratory.

16. "Running Average" shall mean the total number of shipments of naval spent fuel to INEL, or transuranic waste from INEL, over any period of three years, divided by three.

17. The "Court" shall mean the United States District Court for the District of Idaho before which is pending Public Service Company of Colorado v. Batt, No. CV 91-0035-S-EJL and United States v. Batt, No. CV 91-0054-S-EJL, and any appellate court to which an appeal may be taken, or with which an application for a writ of certiorari may be filed, under applicable law.

**B. TRANSURANIC WASTE SHIPMENTS LEAVING IDAHO**

1. DOE shall ship all transuranic waste now located at INEL, currently estimated at 65,000 cubic meters in volume, to the Waste Isolation Pilot Plant (WIPP) or other such facility designated by DOE, by a target date of December 31, 2015, and in no event later than December 31, 2018. DOE shall meet the following interim deadlines:

a. The first shipments of transuranic waste from INEL to WIPP or other such facility designated by DOE shall begin by April 30, 1999.

b. By December 31, 2002, no fewer than 3,100 cubic meters (15,000 drum-equivalents) of transuranic waste shall have been shipped out of the State of Idaho.

c. After January 1, 2003, a running average of no fewer than 2,000 cubic meters per year shall be shipped out of the State of Idaho.

2. The sole remedy for failure by DOE to meet any of these deadlines or requirements shall be the suspension of DOE spent fuel shipments to INEL as set forth in Section K.1.

## C. SPENT FUEL & HIGH-LEVEL WASTE SHIPMENTS LEAVING IDAHO

1. DOE shall remove all spent fuel, including naval spent fuel and Three Mile Island spent fuel from Idaho by January 1, 2035. Spent fuel being maintained for purposes of testing shall be excepted from removal, subject to the limitations of Section F.1 of this Agreement.

2. Until all of the aluminum-clad spent fuel then stored at INEL has been shipped to the Savannah River Site, the cumulative number of shipments of spent fuel from the Savannah River Site to INEL under Section D as of the end of any calendar year shall not exceed the cumulative number of shipments of aluminum-clad spent fuel from INEL to the Savannah River Site for the same period.

3. DOE shall treat all high-level waste currently at INEL so that it is ready to be moved out of Idaho for disposal by a target date of 2035.

## D. SHIPMENTS OF SPENT FUEL TO INEL

The federal parties may transport shipments of spent fuel to INEL only in accordance with the following terms and conditions.

1. Shipments of naval spent fuel to INEL shall take place as follows:

a. The Navy may make only those shipments of naval spent fuel to INEL that are necessary to meet national security requirements to defuel or refuel nuclear powered submarines, surface warships, or naval prototype or training reactors, or to ensure examination of naval spent fuel from these sources. The

Secretary of Defense, upon notice to the Governor of the State of Idaho, shall certify the total number of such shipments of naval spent fuel required to be made through the year 2035.

b. The Navy shall not ship more than twenty four (24) shipments to INEL from the date of this Agreement through the end of 1995, no more than thirty six (36) shipments in 1996, and no more than twenty (20) shipments per year in calendar years 1997 through 2000. From calendar year 2001 through 2035, the Navy may ship a running average of no more than twenty (20) shipments per year to INEL. The total number of shipments of naval spent fuel to INEL through 2035 shall not exceed 575. Shipments of naval spent fuel to INEL through 2035 shall not exceed 55 metric tons of spent fuel.

c. Prior to January 1 of each calendar year through the year 2035, the Navy shall provide to Idaho an estimate of the number of shipments and the number of metric tons of naval spent fuel to be shipped during the following calendar year.

d. By January 31 of each calendar year, the Navy shall provide to Idaho the actual number of shipments and actual number of metric tons of naval spent fuel shipped during the preceding calendar year.

e. The naval spent fuel stored at INEL on the date of the opening of a permanent repository or interim storage facility shall be among the early shipments of spent fuel to the first permanent repository or interim storage facility.

f. The sole remedy for the Navy's failure to meet any of the deadlines or requirements set forth in this section shall be suspension of naval spent fuel shipments to INEL as set forth in Section K.1.

2. Shipments of DOE spent fuel to INEL shall take place as follows:

a. If DOE and the U.S. Department of State adopt a policy to accept spent fuel from foreign research reactors into the United States, DOE may send to INEL a maximum of 61 shipments of spent fuel from foreign research reactors during the period beginning on the date such a policy is adopted and ending on December 31, 2000. The Secretary of Energy, upon notice to the Governor of the State of Idaho, must certify that these shipments are necessary to meet national security and nonproliferation requirements. Upon such certification, DOE may ship not more than 10 such shipments from the date such policy is adopted through December 31, 1996, not more than 20 such shipments from the date the policy is adopted through December 31, 1997, and not more than 40 such shipments from the date the policy is adopted

through December 31, 1998.

b. Until such time as a permanent repository or interim storage facility for storage or disposal of spent fuel, located outside of Idaho, is operating and accepting shipments of spent fuel from INEL, DOE shall be limited to shipments of spent fuel to INEL as set forth in Sections D.2.a., c., d., e., and f. After a permanent repository or interim storage facility is operating and accepting shipments of spent fuel from INEL, the State of Idaho and DOE may negotiate and reach agreement concerning the timing and number of shipments of DOE spent fuel that may be sent to INEL, in addition to those otherwise permitted under this Section D.2., for preparation for storage or disposal outside the State of Idaho.

c. After December 31, 2000, DOE may transport shipments of spent fuel to INEL constituting a total of no more than 55 metric tons of DOE spent fuel (equivalent to approximately 497 truck shipments) and subject to the limitations set forth in Sections D.2.e., f., g., and h. below, except that the limitations of Section D.2.a. above will not apply.

d. No shipments of spent fuel shall be made to INEL from Fort St. Vrain, unless a permanent repository or interim storage facility for spent fuel located outside of Idaho has opened and is accepting spent fuel from INEL, in which case such shipments may be made for the purpose of treating spent fuel to make it suitable for disposal or storage in such a repository or facility. Shipments of spent fuel from Fort St. Vrain shall remain at INEL only for a period of time sufficient to allow treatment for disposal or storage in such a repository or facility. The total number of Fort St. Vrain shipments shall not exceed 244, constituting no more than sixteen (16) metric tons of spent fuel, and shall be in addition to those allowed under Section D.2.c. above.

e. Except as set forth in Section D.2.d. above, DOE will make no shipments of spent fuel from commercial nuclear power plants to INEL.

f. After December 31, 2000, and until an interim storage facility or permanent repository is opened and accepting spent fuel from INEL, DOE shall not ship to INEL more than 20 truck shipments of spent fuel in any calendar year, except that:

(i) In one calendar year only, DOE may make not more than 83 truck shipments of spent fuel to INEL from the West Valley Demonstration Project;

(ii) DOE may not make more than 13 truck shipments in any of the nine calendar years succeeding the

shipment of the West Valley Demonstration Project spent fuel to INEL; and

(iii) Shipments DOE is entitled to make to INEL in any calendar year, but has not made, may be shipped in any subsequent calendar year, notwithstanding the limitations in this Section D.2.f. on the number of shipments per year.

For purposes of this section and Section D.2.c., in determining the number of truck shipments, one rail shipment shall be deemed equivalent to 10 truck shipments, except that in the case of shipments from West Valley Demonstration Project, seven rail shipments shall be deemed to be equal to 83 truck shipments. DOE may elect to make rail shipments in lieu of truck shipments, in accordance with this conversion formula and subject to other limitations of this section.

g. Prior to January 1 of each calendar year through the year 2035, DOE shall provide to Idaho an estimate of the number of shipments and the number of metric tons of DOE spent fuel to be shipped during the following calendar year.

h. No later than January 31st of each calendar year, DOE shall provide to Idaho the actual number of shipments and actual number of metric tons of DOE spent fuel shipped during the preceding year.

i. The sole remedy for DOE's failure to meet any of the deadlines or requirements set forth in this section shall be the suspension of DOE spent fuel shipments to INEL as set forth in Section K.1.

## E. TREATMENT & TRANSFER OF EXISTING WASTES AT INEL

1. **Treatment Commitment.** DOE agrees to treat spent fuel, high-level waste, and transuranic wastes in Idaho requiring treatment so as to permit ultimate disposal outside the State of Idaho.

2. **Mixed Waste Treatment Facility.** DOE shall, as soon as practicable, commence the procurement of a treatment facility ("Facility") at INEL for the treatment of mixed waste, transuranic waste and alpha-emitting mixed low-level waste ("Treatable Waste"). DOE shall execute a procurement contract for the Facility by June 1, 1997, complete construction of the Facility by December 31, 2002, and commence operation of the Facility by March 31, 2003. Commencement of construction is contingent upon Idaho approving necessary permits.

a. **Treatment of Non-INEL Wastes.** Any and all Treatable Waste shipped into the State of Idaho for treatment at the Facility shall be treated within six months of receipt at the Facility, with the exception of two cubic meters of low-level mixed waste from the Mare Island Naval Shipyard which will complete base closure for nuclear work in 1996. DOE may request an exception to the six month time period on a case-by-case basis, considering factors at the shipping site such as health and safety concerns, insufficient permitted storage capacity, and base or site closures. Any transuranic waste received from another site for treatment at the INEL shall be shipped outside of Idaho for storage or disposal within six months following treatment. DOE shall continue to use the Federal Facility Compliance Act process, as facilitated by the National Governors' Association, to determine what locations are suitable for mixed low-level waste treatment and storage.

3. **Operation of High-Level Waste Evaporator.** DOE shall commence operation of the high-level waste evaporator by October 31, 1996, and operate the evaporator in such a manner as to reduce the tank farm liquid waste volume by no fewer than 330,000 gallons by December 31, 1997. Efforts will continue to reduce the remaining volume of the tank farm liquid waste by operation of the high-level waste evaporator.

4. **Calcination of Remaining Non-Sodium Bearing Liquid Wastes.** DOE shall complete the process of calcining all remaining non-sodium bearing liquid high-level wastes currently located at INEL by June 30, 1998.

5. **Calcination of Sodium-Bearing Wastes.** DOE shall commence calcination of sodium-bearing liquid high-level wastes by June 1, 2001. DOE shall complete calcination of sodium-bearing liquid high-level wastes by December 31, 2012.

6. **Treatment of Calcined Wastes.** DOE shall accelerate efforts to evaluate alternatives for the treatment of calcined waste so as to put it into a form suitable for transport to a permanent repository or interim storage facility outside Idaho. To support this effort, DOE shall solicit proposals for feasibility studies by July 1, 1997. By December 31, 1999, DOE shall commence negotiating a plan and schedule with the State of Idaho for calcined waste treatment. The plan and schedule shall provide for completion of the treatment of all calcined waste located at INEL by a date established by the Record of Decision for the Environmental Impact Statement that analyzes the alternatives for treatment of such waste. Such Record of Decision shall be issued not later than December 31, 2009. It is presently contemplated by DOE that the plan and schedule shall provide for the completion of the treatment of all calcined waste located at INEL by a target date of December 31, 2035. The State

expressly reserves its right to seek appropriate relief from the Court in the event that the date established in the Record of Decision for the Environmental Impact Statement that analyzes the alternatives for treatment of such waste is significantly later than DOE's target date. In support of the effort to treat such waste, DOE shall submit to the State of Idaho its application for a RCRA (or statutory equivalent) Part B permit by December 1, 2012.

7. **Transfer of Three Mile Island Fuel.** DOE shall complete construction of the Three Mile Island dry storage facility by December 31, 1998. DOE shall commence moving fuel into the facility by March 31, 1999, and shall complete moving fuel into the facility by June 1, 2001.

8. **Transfer out of Wet Storage.** By December 31, 1999, DOE shall commence negotiating a schedule with the State of Idaho for the transfer of all spent fuel at INEL out of wet storage facilities. DOE shall complete the transfer of all spent fuel from wet storage facilities at INEL by December 31, 2023. If DOE determines that transfer to dry storage of any portion of such spent fuel is technically infeasible, or that transfer to such dry storage presents significantly greater safety or environmental risks than keeping the fuel in wet storage, DOE shall inform the State and propose a later date or alternative action. If the State does not agree to such later date or alternative action, DOE may apply to the Court for appropriate relief. DOE shall, after consultation with the State of Idaho, determine the location of the dry storage facilities within INEL, which shall, to the extent technically feasible, be at a point removed from above the Snake River Plain Aquifer ("Aquifer").

9. The sole remedy for DOE's failure to meet any of the deadlines or requirements set forth in this section shall be the suspension of DOE spent fuel shipment to INEL as set forth in Section K.1.

## F. SPENT FUEL PROGRAM

1. **Establishment of INEL as DOE Spent Fuel Lead Laboratory.** DOE shall, within thirty days of entry of this Agreement as a court order, designate INEL as the Department's lead laboratory for spent fuel. DOE shall direct the research, development and testing of treatment, shipment and disposal technologies for all DOE spent fuel, and all such DOE activities shall be coordinated and integrated under the direction of the Manager, DOE-Idaho Operations Office. Such designation shall not permit the shipment to INEL of any spent fuel beyond that permitted by this Agreement with the exception that quantities of spent fuel brought to INEL for testing in excess of those

permitted by this Agreement shall leave the State of Idaho within five years of the date of receipt at INEL.

2. **Construction of Dry Storage.** DOE shall include in its appropriation request for federal fiscal year 1998 to the Executive Office of the President funds necessary for DOE to initiate the procurement of dry storage at INEL to replace wet, below ground facilities. Spent fuel loading into dry storage shall commence by July 1, 2003.

3. **Funding for Dry Cell Expansion Project.** The Naval Nuclear Propulsion Program shall include in its appropriation request to the Executive Office of the President for federal fiscal year 1997 funds necessary for the Dry Cell Expansion Project ("Project") at the Expended Core Facility at the Naval Reactors Facility to accommodate removal of excess material and examination of naval spent fuel in a dry condition. The Project shall commence as soon as Idaho issues the required permit under the Clean Air Act and funding is appropriated. Completion of this project shall result in the expenditure of approximately $26 million dollars over the next five years.

4. **Multi-Purpose Canisters.** DOE and the Navy shall employ Multi-Purpose Canisters ("MPCs") or comparable systems to prepare spent fuel located at INEL for shipment and ultimate disposal of such fuel outside Idaho. Procurement shall be performed in accordance with the Federal Acquisition Regulation which ensures that companies in Idaho will have opportunity to bid on and obtain any competitive contracts for such work. The Record of Decision on the NEPA analysis shall be completed by April 30, 1999.

5. **ECF Hot Cell Facility Upgrade.** The Naval Nuclear Propulsion Program shall include in its appropriation request for federal fiscal year 1997 to the Executive Office of the President funds necessary to proceed with upgrades which shall require approximately $12 million of expenditures during the next three years.

6. **ECF Dry Storage Container Loading Station.** The Naval Nuclear Propulsion Program shall include in its appropriation request for federal fiscal year 1997 to the Executive Office of the President funds necessary to proceed with design and construction of a dry storage container loading station at ECF. This project shall require no less than $20 million of expenditures during the next five years.

7. **Funding for Discretionary Environmental Remediation Work at the Naval Reactors Facility.** The Naval Nuclear Propulsion Program shall undertake environmental remediation efforts at the Naval Reactors Facility totaling approximately $45

million over the next five years.

8. **Water Pool Reracking.** DOE may proceed with installing new racks into the water pool in the building at the Idaho Chemical Processing Plant Facility currently holding naval spent fuel to provide enhanced capability for spent fuel storage in the existing water pool space until dry storage can be made available. Installation of the new racks may commence as soon as Idaho issues the necessary permit under the Clean Air Act. Idaho shall issue said permit within 180 days after DOE re-submits its application to Idaho.

## G. INEL ENVIRONMENTAL RESTORATION PROGRAM

1. **INEL Environmental Restoration Program to Continue.** DOE shall continue to implement the INEL environmental restoration program in coordination with Idaho and EPA. Such implementation shall be consistent with the schedules contained in the Federal Facilities Agreement and Consent Order (FFA/CO) entered into with the State of Idaho, EPA and DOE, and it shall include schedule requirements developed pursuant to the completed and future Records of Decision under the FFA/CO. The sole remedies for failure to implement the environmental restoration activities specified in the FFA/CO shall be those specified in the FFA/CO.

## H. OBTAINING TIMELY FEDERAL FUNDING FOR COMPLIANCE WITH THIS ORDER

1. **Compliance Funding.** DOE and the Naval Nuclear Propulsion Program shall share budget information concerning INEL with Idaho prior to submitting the budget request to the Executive Office of the President. Consultations with the State of Idaho shall continue throughout the budget process. The current DOE estimate for the costs of the activities and projects described in Sections A through G over the next five years is approximately $200 million above established budget targets.

## I. FEDERAL FUNDS FOR THIS SETTLEMENT AGREEMENT

1. DOE shall provide to the State of Idaho beginning in federal fiscal year 1996 and continuing through 1997-2000, a total amount of $30 million for community transition purposes and any other purposes that are mutually acceptable to the parties, such as the non-Federal development of Boron Neutron Capture Therapy and Radiological Toxicology technology in Idaho.

2. **Acoustic Research Funding.** The Navy shall include in its appropriation request to the Executive Office of the President for federal fiscal year 1997 no less than $7 million for the Navy to construct a Ships Model Engineering and Support Facility at the Naval Surface Warfare Center, Carderock Division, Acoustic Research Detachment at Bayview, Idaho.

## J. GOOD FAITH COMPLIANCE & AFFIRMATIVE SUPPORT

1. The federal parties and Idaho agree that the activities to be performed under this Agreement and the subsequent Consent Order are in the public interest. The federal parties and Idaho acknowledge the complexity of this Agreement and have agreed to act in good faith to effectuate its fulfillment. The federal parties and Idaho shall affirmatively support this Agreement and its terms, conditions, rights and obligations in any administrative or judicial proceeding. The federal parties and Idaho intend to seek a sense of the Congress resolution expressing support for the terms, conditions, rights and obligations contained in this Agreement and the subsequent Consent Order and recommending to future Congresses that funds requested by the President to carry out this Agreement be appropriated. In any administrative or judicial proceeding, Idaho shall support the adequacy of the EIS and ROD against any challenges by third parties. Idaho shall have the ability, in its sole discretion, to waive performance by the federal parties of any terms, conditions and obligations contained in this Agreement.

2. Idaho shall promptly issue, upon submission of legally sufficient applications, all permits, licenses or other approvals needed by the DOE, the Navy or the Naval Nuclear Propulsion Program for the performance of any of their respective obligations set forth in this Agreement.

3. No provision of this Agreement shall compel any party to act without due legal authority. Performance by every party under this Agreement shall be subject to and comply with all applicable federal statutes, regulations and orders, including the Anti-Deficiency Act. The inability of any party to comply with the provisions of this Agreement, or a delay in such compliance, as a result of any applicable federal statute, regulation or order shall not subject that party to judicial enforcement under Section K.2.a, but shall not preclude the application of Sections K.1.a. or K.1.b.

4. In the event any required NEPA analysis results in the selection after October 16, 1995, of an action which conflicts with any action identified in this Agreement, DOE or the Navy may request a modification of this Agreement to conform the action in

the Agreement to that selected action. Approval of such modification shall not be unreasonably withheld. If the State refuses to accept the requested modification, DOE or the Navy may seek relief from the Court. On motion of any party, the Court may extend the time for DOE or the Navy to perform until the Court has decided whether to grant relief. If the Court determines that the State has unreasonably withheld approval, the Agreement shall be conformed to the selected action. If the Court determines that the State has reasonably withheld approval, the time for DOE or the Navy to perform the action at issue shall be as set forth in this Agreement and subject to enforcement as set forth section in Section K.1.

5. **Effect of Certain Court Orders.**

a. **Navy.** In the event that a court order is entered in the case of Snake River Alliance Education Fund v. United States Department of Energy, No. CV-95-0331-S-EJL (D. Idaho), or in any other judicial proceeding, that prohibits in whole or in part any shipment of spent fuel to INEL by the Navy under section D, then all obligations, requirements and deadlines of the federal parties under this Agreement shall be suspended during the period of applicability of the order. Upon the vacating, dissolving or reversing of any such order, the obligations, deadlines and requirements provided for in this Agreement shall be extended by a period that corresponds to their period of suspension.

b. **DOE.** In the event that a court order is entered in the case of Snake River Alliance Education Fund v. United States Department of Energy, No. CV-95-0331-S-EJL (D. Idaho), or in any other judicial proceeding, that prohibits in whole or in part any shipment of spent fuel to INEL by DOE under section D, then the DOE has the option to suspend all DOE shipments to INEL and suspend all of DOE's obligations, requirements and deadlines under this Agreement during the period of applicability of the order. If DOE exercises this option, then upon the vacating, dissolving, or reversing of any such order, DOE's obligations, deadlines and requirements provided for in this Agreement shall be extended by a period that corresponds to their period of suspension.

## K. ENFORCEMENT

1. **Suspension of Shipments.**

a. **DOE.** If DOE fails to satisfy the substantive obligations or requirements it has agreed to in this Agreement or fails to meet deadlines for satisfying such substantive obligations or requirements, shipments of DOE spent fuel to INEL

shall be suspended unless and until the parties agree or the Court determines that such substantive obligations or requirements have been satisfied.

b. **Navy.** If the Navy or the Naval Nuclear Propulsion Program fails to satisfy the substantive obligations or requirements it has agreed to in this Agreement or fails to meet deadlines for satisfying such substantive obligations or requirements, shipments of Navy spent fuel to INEL shall be suspended unless and until the parties agree or the Court determines that such substantive obligations or requirements have been satisfied.

2. **Other Enforcement**

a. **Judicial Enforcement.** The Court may enforce the rights, obligations and requirements assigned by this Agreement, other than those exclusively enforceable under Section K.1., pursuant to all legal and equitable remedies available to the courts of the United States, including, but not limited to, use of the Court's contempt powers.

b. **RCRA Enforcement.** Nothing in this Agreement shall prohibit the State of Idaho from requiring necessary remedial actions as set forth in the Resource Conservation and Recovery Act, 42 U.S.C. section 6929 ("RCRA") (or statutory equivalent), including penalty and fine procedures, the sums of which shall be payable to the State of Idaho.

c. **Payment Obligation.** In the event that the federal parties do not carry out the requirement that all spent fuel located at INEL be removed from Idaho by January 1, 2035, then subject to the availability of the appropriations provided in advance for this purpose, the federal parties shall pay to the State of Idaho $60,000 for each day such requirement has not been met.

3. **Prior Orders, Agreements and Decisions.** The terms of this Agreement shall supersede all rights, duties and obligations set forth in any prior orders, agreements or decisions entered in this litigation, captioned Public Service Company of Colorado v. Batt, and United States of America v. Batt, Nos. CV 91-0035-S-EJL and CV 91-0054-S-EJL, except for the provisions of paragraph 4 of the December 22, 1993 Court Order.

4. **Dispute Resolution.** In the event that any party to this Agreement contends that any other party has violated any terms of the Agreement, the parties shall seek to resolve their differences informally before asking for resolution by the Court.

L. CONSENT ORDER

1. The parties agree they shall jointly present this Agreement to the U.S. District Court with a proposed Consent Order which will provide for the incorporation of this Agreement, continuing jurisdiction of the Court and the administrative termination of this action without prejudice to the right of the parties to reopen the proceedings for good cause shown. This Agreement and Consent Order shall not preclude any party from applying to the Court under Rule 60, of the Federal Rules of Civil Procedure, or the Court from granting relief thereunder.

2. If the Consent Order is not entered by the Court, in accordance with Section L.1 above, within 45 days of lodging with the Court, then either party to this Agreement may elect to terminate this Agreement, in which case this Agreement becomes null and void, and of no force or effect.

For the Federal Parties:

Robert R. Nordhaus
General Counsel
Department of Energy

Thomas P. Grumbly
Assistant Secretary
for Environmental Management
Department of Energy

Steven S. Honigman
General Counsel
Department of the Navy

Admiral Bruce DeMars
Director, Naval Nuclear
Propulsion Program

For the State of Idaho:

Philip E. Batt
Governor, State
State of Idaho

Alan G. Lance
Attorney General,
State of Idaho