

III 5/7/91



PC-ID-002-006

*Goes out of effect
when new facility
operating*

LARRY ECHOHAWK
Attorney General
State of Idaho
Statehouse Rm. 210
Boise, Idaho 83720
Telephone (208) 334-2400

ROBERT R. GATES
TIMOTHY R. McNEESE
TIMOTHY D. WILSON
Deputy Attorneys General
Corrections Section
Statehouse Mail
Boise, Idaho 83720
Telephone (208) 334-2318

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

LOIS WITKE, et al.,)	
)	Civil No. 82-3078
Plaintiffs,)	
)	
v.)	INTERIM AGREEMENT
)	
RICHARD VERNON, et.al.,)	
)	
Defendants.)	
)	

INTERIM AGREEMENT

I. PRELIMINARY STATEMENT

Plaintiffs' complaint in this class action case was filed in September 1982. A Stipulated Agreement resolving the issues in the case was approved by the Court in January, 1985, and a Supplemental Stipulated Agreement was approved by the Court in May, 1988.

Plaintiffs filed their Motion for an Order to Show

Cause Why Defendants Should Not be Held in Civil Contempt, alleging non-compliance with both previous agreements, on July 13, 1989. That motion is currently pending.

The parties now submit this Agreement (hereinafter, "this agreement") for approval by the Court. The purpose of this agreement is to enforce compliance with the purpose of the terms of the Stipulated Agreement and Supplemental Stipulated Agreement, and to obviate the need for current court intervention.

The parties are presently in dispute as to whether full compliance has been reached with the previous agreements. However, defendants have agreed subject to funding by the Idaho legislature to construct a new institution for women prisoners in Idaho. It is anticipated that the new facility will be ready for occupancy in approximately two years. This Interim Agreement is intended to supplement and not to replace the Stipulated Settlement Agreement and Supplemental Stipulated Agreement. It applies to all state institutions where women are housed, unless otherwise specified. It will remain in full force and effect until the plaintiffs are transferred into the new facility. At that time, this Interim Agreement will expire. Notwithstanding any provision of this Interim Agreement, the Stipulated Settlement Agreement approved by the Court in January, 1985, and the Supplemental Stipulation Agreement approved by the Court in May, 1988, will remain in full force and effect at all times.

II. GENERAL AGREEMENTS

1. Plaintiffs agree to withdraw their pending Motion

for an Order to Show Cause Why Defendants Should Not be Held in Civil Contempt when compliance with this agreement is reached.

Plaintiffs reserve the right to seek court intervention during the pendency of this agreement in any area of non-compliance which poses a significant threat to the health and safety of the plaintiff class. If such a threat to health and safety should arise, plaintiffs will notify defendants, in writing, and will attempt to resolve the matter with the defendants before requesting relief from the Court.

2. Plaintiffs' counsel will monitor compliance with this agreement. Plaintiffs' counsel, upon providing reasonable advance notice, will have access to all institutions where women are housed and will be allowed to confer with members of the plaintiff class, when doing so would not disrupt the orderly operation of the facility. Defendants agree to provide to plaintiffs' counsel any items of discovery allowable under the Federal Rules of Civil Procedure. Once a year, one medical and one sanitation expert of plaintiffs will tour any Department of Correction facility where women are housed and prepare a written report of their findings and send a copy addressed to both the plaintiffs and defendants. If significant noncompliance is identified during their annual visits, plaintiffs may conduct one additional follow-up tour with their experts during the year. The cost of the tours by the medical and sanitation experts will be borne by the defendants, as part of the costs of the litigation, but will not exceed \$10,000 in total, per year, unless it is necessary for the experts to make a return visit, in which case

the total will be limited to costs not anticipated to exceed \$20,000. When it appears that fees and costs incurred by plaintiffs' experts have exceeded or will exceed this amount, plaintiffs will seek and receive leave of the court prior to expenditure of such costs.

3. Plaintiffs and defendants agree to act in utmost good faith during the pendency of this agreement, and to assist and encourage the efforts of all concerned to meet the ultimate goal of this action, that being full compliance with the terms of the Stipulated Agreement of January 22, 1985 and Supplemental Stipulated Agreement of May 1988.

4. This agreement addresses all the outstanding issues of this case, except that of attorneys' fees and costs. The matter of attorneys' fees and costs will be addressed separately by the parties subsequent to the acceptance of this agreement by the court. The matter of attorneys' fees and costs will in no way affect the validity of this agreement. Plaintiffs will submit detailed schedules of all costs and fees at a time to be agreed upon by the parties.

5. During the planning phase preceding the construction of the new institution, defendants will provide to the plaintiffs reasonable opportunity to review and comment upon all proposals which deal with prisoner programming, staffing patterns, site selection and building plans. The defendants agree to provide this information to the plaintiffs prior to or simultaneous with the submission to the governor, legislature, other state agencies, architects and contractors. The defendants

further agree to provide reasonable notice of actions taken by other branches of government over which it has no control, but which may impact upon the purpose of this agreement.

6. Defendants agree to retain the services of an independent expert or agency selected by defendants to prepare a study of the classification of women prisoners in Idaho to determine the number of beds for all levels of security necessary to meet the needs of public safety and of the inmate population.

The expert or agency will also prepare a new classification instrument designed specifically for women. Defendants will provide at least two weeks' advance notice of this study and proposed classification instrument to the plaintiffs and provide the plaintiffs with 30 days to comment on the study before any decisions are made.

7. Defendants agree to comply with all applicable state and federal laws and rules of the Idaho Personnel Commission in recruiting, interviewing and hiring a qualified applicant for the position of warden of the new institution. Defendants will vigorously pursue their affirmative action plan to find a pool of qualified applicants and assert their strongest commitment to the hiring of a qualified person for this position. Upon hiring, this person will be fully involved in whatever pre-operational planning of the construction and programming of the new institution remaining to be accomplished. Prior to the selection of the warden, the superintendent of the Community Work Center-Boise and the women's program coordinator will be involved in all discussions, planning, and committees for the construction and

programming of the new institution.

8. Defendants agree that the new institution will be in a centrally located metropolitan area of a population of at least 50,000 and which has a college, university, junior college or technical/vocational college and major medical facilities. This proposed site will be located near excellent transportation, and major highways, air and bus terminals. Upon opening, it will offer job and programming opportunities, including on-site correctional industries and off-site employment for eligible prisoners, and be independent of facilities and programming of any other prison. Close custody inmates will be afforded opportunities to participate in correctional industries.

III. SPECIFIC AGREEMENTS

Medical and Mental Health - Orofino

9. Defendants will maintain a regularly scheduled obstetric and gynecological clinic. The clinic will be operated by a qualified OB/GYN nurse practitioner. It is open for gynecologic care at least twice monthly. Non-routine gynecologic medical care will be provided by a licensed and board-certified OB/GYN physician who will also provide emergency care whenever possible. Defendants will continue to search for a licensed and board-certified OB/GYN physician to run the clinic. Pregnant women will receive care from a licensed and board-certified OB-GYN physician throughout their pregnancy, delivery, and recovery.

10. Defendants will maintain a regularly scheduled orthopedic clinic at least twice a month with additional emergency

care available as needed, provided by a licensed and board-certified orthopedic physician.

11. The physician providing general medical care for inmates will be available at the facility at least two full days a week. Security concerns, such as transportation logistical problems, shall not be asserted as a basis for denying medical care.

12. Defendants will increase the 16 hour per day nursing coverage to 24 hour per day coverage.

13. Psychiatric coverage will assure that there is appropriate monitoring of psychotropic medications for efficacy and side effects. This monitoring consists of daily monitoring for the first two weeks, monthly for the next three months, and quarterly examinations, once the patient is stabilized. This procedure will be used unless the psychiatrist determines that another plan is appropriate. The plan will be written into the patient's medical record. There will be 4 hours of weekly psychiatric coverage. Defendants will employ a full-time master level psychologist or master level social worker to provide 15 hours of individual and group therapeutic services for the women per week.

14. Within 30 days of signing of this agreement, the defendants will take the following steps pursuant to applicable standards to improve access for physically disabled women: install bars in the shower room and in at least one toilet stall; repair all broken showers; lower the shower controls so that they can be reached from a sitting position; and provide wheelchairs and

elevator access for physically disabled women when necessary. The plaintiffs' experts will develop a list of improvements for disabled inmates to be forwarded to defendants, who will undertake the necessary repairs and improvements subject to the covenants and conditions set forth in paragraph 38.

15. Oral surgery, other than that which is characteristic of routine dental care, will be performed only by a qualified, licensed oral surgeon. Defendants will make dental care a part of their quality assurance plan. This plan is set forth in paragraph 16. All dental care shall be provided at State expense.

16. Within 60 days of the signing of this agreement, defendants will develop, implement, and comply with a written plan for a quality assurance program addressing all aspects of medical, dental and mental health care. This will be an ongoing program of objective evaluation and corrective action based upon such evaluation. The program for quality assurance shall include both independent as well as internal audits. Plaintiffs will review and approve the plan prior to implementation.

17. If any necessary medical, mental health or dental services cannot be provided to the women while they are at Orofino due to a lack of specialists in the area or any other reason, the defendants will send the women to the Boise or Lewiston area for appropriate treatment.

Environmental and Life Safety - Orofino

18. The defendants will develop, implement, and comply

with a written comprehensive preventive maintenance program to address the environmental and life safety provisions in the previous two agreements within 60 days of signing this agreement. This program will cover both major equipment and systems such as heating and cooling, fire safety equipment, plumbing, ventilation, lighting and electricity; and building-related problems, such as the kitchen, bathrooms, recreation, living and work areas. The preventive maintenance plan will include a preventive maintenance manual, a list of all equipment and systems, a preventive maintenance schedule, staff assignments, a checklist for what has to be done, an inventory of replacement parts and a log to reflect the date that the item has passed inspection and/or has been repaired. The defendants will also maintain a written record of the date of all maintenance requests and the date the repair was made. Physical facilities will meet the standards agreed to in all previous stipulated agreements. Plaintiffs will review and approve the plan prior to implementation.

19. The facility will comply with the current Idaho Uniform Electrical Code. All electrical hazards including exposed wires will be repaired by a properly licensed electrician in accord with paragraph 38. Missing switch plates will be replaced, and the use of extension cords will be monitored to assure that a risk to safety is avoided. The defendants will request that the Idaho Department of Labor and Industrial Services conduct an annual inspection of the facility. The defendants will ask for the first such inspection to be conducted within 30 days of this agreement.

20. Within 30 days of the signing of this agreement, the appropriate state authority will conduct a fire safety inspection and defendants will have remedied inadequacies in the fire safety system. All staff will be trained in the use of the smoke detection and fire alarm system. A staff person will be responsible for testing, monitoring and inspecting the fire alarm and smoke detection system on a monthly basis to make sure it is working and for documenting the result. Heat and smoke detectors will be tested by a licensed and certified inspector at least every six months. Missing and misplaced smoke detectors will be replaced and installed in proper locations by skilled workers. A damper will be properly designed and installed so the ventilation system functions according to the applicable fire code when the fire alarm is activated. All fire fighting equipment, air tanks, and extinguishers will be inspected monthly by a trained staff person and documented. All fire escape doors along exit routes will swing in the direction of exit travel. Fire exit drills will be conducted at least 4 times a year at unannounced times and under varying conditions to practice safe exit from the building in the event of a fire. All officers are required to practice with air breathing apparatuses at least 4 times a year until the sprinkler system is installed, and then every six months thereafter. Fire exit and air breathing apparatus drills will be documented in writing to reflect dates and participants. Within 30 days of signing this agreement, a written evacuation plan for each living, working and indoor recreation area, including maps showing at least two alternative fire escape routes, will be

developed and posted in the areas covered. All exit signs will be lighted. The work will proceed in accord with the provisions of paragraph 38.

21. Within three months of signing of this agreement, defendants will either (a) provide sufficient emergency power to ensure heat and lighting for the women's facility and adequate supplies for feeding the entire population during an extended outage or (b) extend their emergency power to cover the women's unit and kitchen.

22. In addition to Health District inspections, the defendants will conduct quarterly unannounced food service inspections. These inspections will be conducted by a qualified staff member with knowledge of food sanitation practices. Reports of visit will be in writing and provided to both parties as well as to the Health District within thirty days of the completion of each visit. Defendants will comply with applicable sections of Title 2, Chapter 19, Idaho Code, Rules Governing Food Sanitation Standards for Eating and Drinking Establishments.

23. Food will be kept at proper temperatures -- 45 degrees or less for cold food and 145 degrees or more for hot food. Temperatures will be taken inside the refrigerator twice daily, when the refrigerator is first opened each day and near the end of the day. This information will be made available to the District Health Department during its periodic inspections of the kitchen and made available to plaintiffs upon written request. The refrigerator system will be included in the preventive maintenance program. Food will be kept at proper temperatures

from the time of preparation until served. Temperatures will be taken and recorded of the food at the time food is served.

24. Within 30 days of the signing of this agreement, the defendants will establish a fumigation program to eliminate insect and rodent infestations in the kitchen; remedy improper dishwashing and drying; train kitchen workers in personal hygiene; and stop the flow of unclean air from the restroom into the kitchen where food is prepared.

25. Ventilation will be part of the preventive maintenance program.

26. Within 60 days of the signing of this agreement, adequate lighting will be provided in the showers and restroom. Prisoners will be provided with light in their rooms sufficient to provide at least 20 footcandles of light so that they have enough light to read and clean by.

27. Within 60 days of the signing of this agreement, the flow of excessively hot water in the showers and sinks will be controlled and adequate water provided to the segregation cells.

28. The population at the women's facility at Orofino will not exceed 56. The defendants will provide plaintiffs with weekly population reports of all state facilities housing women.

Reception and Diagnostic Unit

29. Following ACA standards and state law, defendants will develop a plan to bring food service sanitation up to acceptable levels, including cleaning the kitchen, establishing a regular fumigation program to eliminate vermin infestations, following sanitation practices, and fitting the water supply hose

with a vacuum breaker. This plan will be provided to plaintiffs for approval prior to entering this agreement.

30. No women will be double-bunked for more than 21 days as allowed in Balla v. Board of Corrections, 656 F. Supp. 1108 (D. Idaho 1987).

31. All mattresses will be made of fire retardant material. Soiled and torn mattresses will be cleaned and repaired or replaced.

32. Women will be allowed to have outdoor recreation in areas consistent with their security classification and will not be required to recreate in cages unless their classification is maximum security. They will be allowed at least one hour of outdoor recreation per day, at least five days per week, weather permitting. Appropriate outdoor recreation equipment and extra clothing during winter months will be provided.

33. Paint and combustible materials will not be stored in the hallway outside the unit.

34. While at the RDU, women will not be required to participate in the men's program solely because the men are required to do so. Programs for women at the RDU will be consistent with programming that will be provided them in Orofino or as part of the rider program.

35. No woman will spend more than 3 weeks at the RDU, unless for a medical or other legitimate reason. If housed in excess of three weeks due to a legitimate, non-medical reason, such period shall not exceed one additional week.

Programs

36. While in Orofino, close custody women will not be separated from medium custody women except for punishment as determined by the disciplinary system.

37. Prior to entering into this agreement, a women's program coordinator will be hired whose responsibility will be to develop programs for women consistent with the Stipulated Settlement Agreement in this case, and to review and process women's grievances. This person will not be responsible for monitoring this agreement.

38. The defendants will develop a specific program for women riders that is comparable to the program provided to male riders. Women riders will be housed in quarters which are consistent with the requirements of the rider program. If necessary, trailers may be used at the CWC site. These shall be used only as temporary measures until the new prison is built, and shall meet appropriate State and American Correctional Association fire safety standards. No riders will be held at Orofino unless necessitated by a re-classification.

39. The parties acknowledge that in paragraphs 13, 18 and 19 of this agreement, defendants have agreed to undertake the repair, renovation or construction of certain improvements to the institution. That parties further acknowledge that the repair, renovation and construction of the improvements set forth in paragraphs 13, 18 and 19 may be subject to the approval and management of the Idaho Department of Public Works ("Public

Works"). Defendants' obligation with respect to such improvements shall be subject to the following covenants and conditions:

a. Covenants.

(1) Defendants will exhaust all current funds legally available in the Department of Correction's budget for the repair, renovation or construction of the improvements. The women's prison will be given first priority for these funds.

(2) To the extent funds are not available in the defendants' current budget, defendants will request emergency funding for such improvements by making a request to Public Works under IC Section 67-5711B within 30 days of signing the agreement. Copies of any such requests will be provided to plaintiffs.

(3) If the request for emergency funds is denied, defendants will within 10 days request sufficient funds to provide for the improvements and will diligently pursue all reasonable efforts to obtain such funds from the governing bodies that control the appropriation of such funds. Copies of any such requests will be provided to plaintiffs.

(4) Defendants will request in writing that the Division of Public Works delegate control over the repair, renovation or construction, and improvement of the facilities at ICI-0, where provided and allowed by law. Otherwise, the defendants will diligently pursue all reasonable efforts to assure that Public Works effectuates the repair, renovation or construction of the improvements without delay.

b. Conditions.

(1) Defendants shall not be obligated to effectuate repair, renovation or construction of improvements for which no funds are legally available or have been appropriated. This agreement shall in no way or manner be construed so as to obligate the State of Idaho beyond the appropriation of any particular funds by the Legislature of the State of Idaho as may from time to time exist.

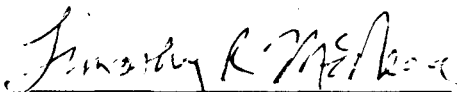
(2) If the cost of any repairs, renovation or construction exceeds the amount established by Idaho Code, Section 67-5711, such repair, renovation or construction shall be made after plans and specifications have been approved by Public Works and a contract is awarded after bidding in accordance with the state's statutory bidding procedures.


(3) If the cost of any repairs, renovation or construction is less than the amount established by Idaho Code, Section 67-5711, the repair, renovation or construction shall proceed within 30 days of the signing of this agreement.

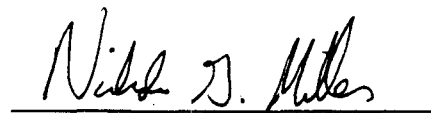
DATED This 7th day of May, 1991.

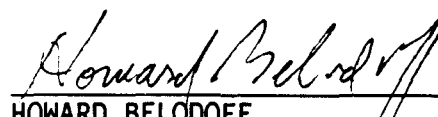
By Defendants:

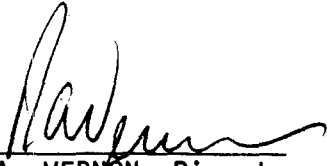
By Plaintiffs:


TIMOTHY R. McNEESE
Deputy Attorney General


ALEXA FREEMAN
American Civil Liberties
Union


NICK MILLER, Chairman
Idaho Board of Correction


HOWARD BELODOFF
Idaho Legal Aid, Inc.



RICHARD A. VERNON, Director
Idaho Department of Correction