

ATTACHMENT 1

Resource Agency Contacts

Organization	Authorized Representatives	Contact Information
BEAR (SODA, GRACE, & ONEIDA)		
U.S. Fish and Wildlife Service	Cary Myler, Partners for Fish and Wildlife Biologist	4425 Burley Drive, Suite A Chubbuck, ID 83202 Phone: 208-237-6975 Ext. 104 Email: cary_myler@fws.gov
U.S. Bureau of Land Management	Arn Berglund, Resource Coordinator / Fisheries Biologist	Idaho Falls District/Upper Snake Field Office 1405 Hollipark Drive Idaho Falls, ID 83401-2100 Phone: 208-524-7509 Email: aberglund@blm.gov
U.S. National Park Service	Susan Rosebrough, Planner	909 First Ave Seattle, WA 98104-1060 Phone: 206-220-4121 Email: susan_rosebrough@nps.gov
U.S. Forest Service	Lee Mabey, Acting Forest Fish Biologist	1405 Hollipark Drive Idaho Falls, ID 83401 Phone: 208-557-5784 Email: lmabey@fs.fed.us
Shoshone-Bannock Tribes	Hunter Osborne, Fisheries Biologist	29 Shoshone Drive P.O. Box 306 Fort Hall, ID 83203 Phone: 208-239-4564 Email: hosborne@sbtribes.com
Idaho Department of Environmental Quality	Lynn Van Every, Water Quality Regional Manager	444 Hospital Way #300 Pocatello, ID 83201 Phone: 208-236-6160 Email: Lynn.Vanevery@deq.idaho.gov
Idaho Department of Fish and Game	David Teuscher, Regional Fisheries Manager	1345 Barton Road Pocatello, ID 83204 Phone: 208-232-4703 Email: david.teuscher@idfg.idaho.gov
Idaho Department of Parks and Recreation	Kirk Rich, Park Manager	P.O. Box 252 Paris, ID 83261 Phone: 208-945-2565 Email: krich@idpr.idaho.gov

PacifiCorp Energy
 Bear River Hydroelectric Project (FERC No. P-20)

Organization	Authorized Representatives	Contact Information
BEAR (SODA, GRACE, & ONEIDA)		
Idaho Council of Trout Unlimited	Jim DeRito, Bear River Project Coordinator	25 N. Main St. Providence, UT 84332 Phone: 208-360-6165 Email: jderito@tu.org
Idaho Rivers United	Kevin Lewis, Conservation Director	P.O. Box 633 Boise, ID 83701 Phone: 208-343-7481 Email: kevin@idahorivers.org
American Whitewater	Charlie Vincent, Regional Coordinator	1800 E 3990 South Salt Lake City, UT 84124 Phone: 801-243-4892 Email: charliev@xmission.com
Greater Yellowstone Coalition	Kathy Rinaldi, Idaho Conservation Coordinator	60 E. Little Ave., Suite 201 P.O. Box 1072 Driggs, ID 83422 Phone: 208-354-1593 Email: krinaldi@greateryellowstone.org

ATTACHMENT 2

Overview of the Bear River Basin and Associated Facilities

TABLE OF CONTENTS

2.0 OVERVIEW OF THE BEAR RIVER BASIN.....3

2.1 Project Description3

 2.1.1 Soda development5

 2.1.2 Grace development.....5

 2.1.3 Oneida development.....5

2.2 Project Photographs6

2.3 Project Operations8

2.0 OVERVIEW OF THE BEAR RIVER BASIN

The Bear River Basin is located in northeastern Utah, southeastern Idaho, and southwestern Wyoming. It comprises approximately 7,500 square miles of mountain and valley lands (2,700 in Idaho, 3,300 in Utah, and 1,500 in Wyoming). The Bear River begins in the Uinta Mountains in Utah and extends 500 miles, crossing state boundaries five times before ending in the Great Salt Lake. It is the largest tributary to the Great Salt Lake and the largest stream in the western hemisphere that does not empty into the ocean. The Bear River ranges in elevation from over 13,000 to 4,211 feet and is unique in that it is entirely enclosed by mountains, thus forming a huge basin with no external drainage outlets.

Developed and undeveloped agricultural lands throughout the basin, as well as urban areas, are located in valleys along the main stem of the river and its tributaries. The Bear River watershed also includes vast amounts of federal (both Bureau of Land Management and Forest Service) and state lands that serve a range of natural and agricultural functions. The Bear River is a highly regulated system. The major headwater storage facility is Bear Lake, the discharges from which are primarily for irrigation and flood control.

2.1 PROJECT DESCRIPTION

PacifiCorp operates five hydroelectric developments in the Bear River Basin. Three of the developments—Soda, Grace, and Oneida—are operated under the Federal Energy Regulatory Commission (FERC) license for the Bear River Hydroelectric Project No. 20 and are the focus of this application. Two other projects operated by PacifiCorp include the Cutler and Last Chance hydroelectric projects. The Cutler hydroelectric project is operated under FERC license No. 2420. FERC granted the Last Chance development an exemption from licensing in 1981 due to the project's small size. A sixth facility on the Bear River, the Cove development, was decommissioned in 2006.

The Soda development is located the farthest upstream on the Bear River, five miles west of the city of Soda Springs in Caribou County, Idaho. The Last Chance development is located on the Last Chance Canal, a diversion from the Bear River that is located four miles downstream of the Soda powerhouse. The Grace development is the next facility downstream and it is also located in Caribou County, Idaho. The Oneida Project is located in Franklin County, Idaho, approximately 6 miles south of Cleveland, Idaho. The Cutler development is located 44 miles downstream of the Oneida project in Utah, near the confluence of several major tributaries. Figure 2.1-1 provides a map of the project locations and Table 2.1.-1 summarizes information about the facilities that are the subject of this application.

Table 2.1-1. Generation and reservoir information for the subject projects on the Bear River.

Development	Avg. Annual Generation 1994-2013 (Mwh)	Reservoir Total Storage (ac-ft)	Reservoir Active Storage (ac-ft)	Normal Full Pool Elv. (feet msl)	Generator Nameplate kW	Turbine
Soda	25,065	16,300	16,300	5,719	14,000	2- Vertical Francis
Grace	122,114	320	250	5,554	33,000	3- Vertical Francis
Oneida	52,658	11,500	10,880	4,882.4	30,000	3- Vertical Francis
Total	199,837	28,120	27,430			

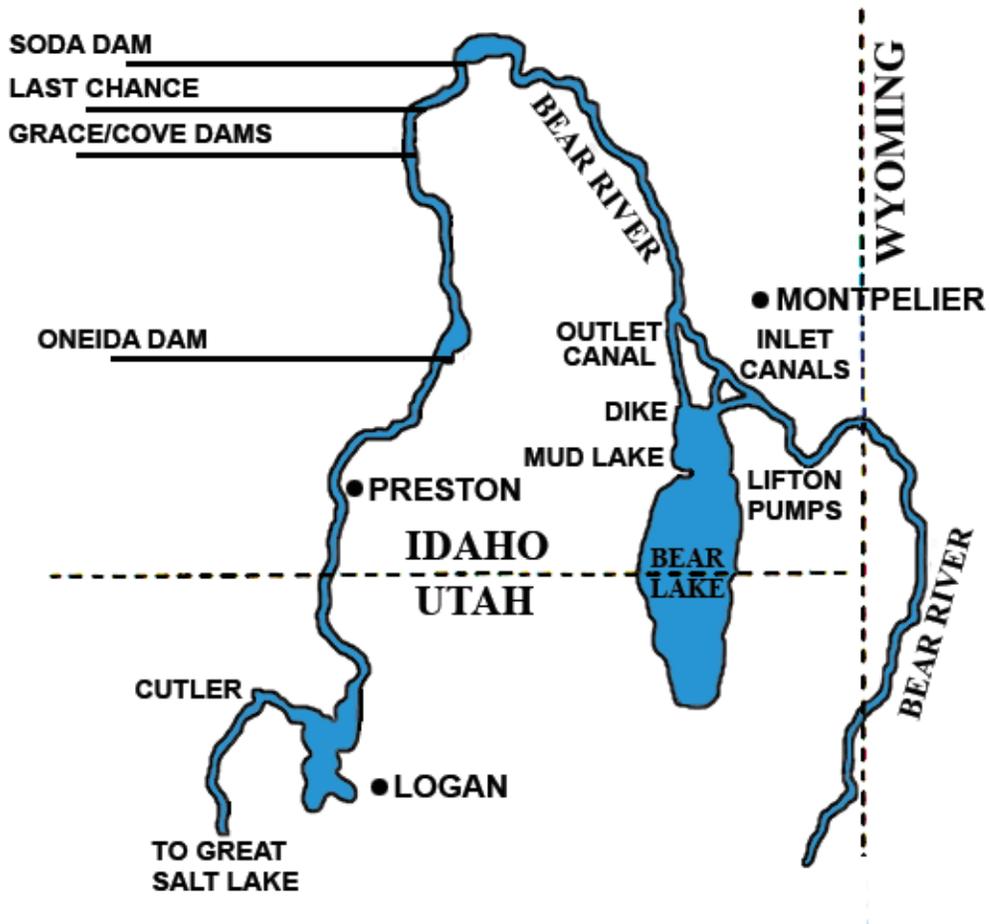


Figure 2.1-1. Map of PacifiCorp's Bear River hydroelectric projects

2.1.1 Soda development

The Soda development consists of a 103-foot-high by 433-foot-long concrete gravity dam with a 109-foot-long integral powerhouse section containing five headgates that supply water to the generating unit penstocks and to a 900-cubic feet per second (cfs)-capacity low-level discharge (Johnson valve). The concrete dam also has a 210-foot-long non-overflow gravity section and a 114-foot-long gated overflow spillway section containing three, 30-foot by 14-foot Taintor gates. A 55-foot-long by 19-foot-high earth fill dam also forms parts of the development. The Soda reservoir (commonly referred to as the Alexander reservoir) has a surface area of 1,100 acres, an active storage capacity of 16,300 acre-feet, and a maximum full pool elevation of 5,720 feet. It extends approximately 4.5 miles upstream to just below the Big Spring Creek confluence with the Bear River. The development's 41-foot by 109-foot powerhouse contains two vertical Francis units, each with an installed capacity of 7 MW and maximum hydraulic capacities of 1,287 and 1,337 cfs, respectively. The development includes a tailrace immediately downstream of the powerhouse with a normal tailwater elevation of 5,641 feet.

2.1.2 Grace development

The original Grace Dam and the existing power facilities and other appurtenant structures were constructed shortly after 1910. A new dam was constructed in 1951 and the original rock-filled, timber-crib dam is now submerged in the forebay just upstream of the 1951 dam. Grace Dam is a rock-filled, timber-crib structure with a concrete core at the base of the structure. The structure stands approximately 51 feet high including the flashboards. The crest length is 180 feet 5.5 inches. The dam creates a 320 acre-foot forebay with 250 acre-feet of usable storage. A 52-foot-wide intake structure containing eighteen 5-foot by 10-foot screen sections is housed within a concrete stucco building, adjacent to the earth embankment section of the dam. A 26,000-foot-long 11-foot-diameter flowline consisting of 15,000 feet of steel and 11,000 feet of wood stave pipeline conveys water from the intake structure to the surge tanks. There are two surge tanks, one 10 feet in diameter and 38 feet high, located approximately 2.6 miles downstream of the diversion, and the other 30 feet in diameter and 132 feet high, located directly above the powerhouse. Three 90-inch-diameter steel penstocks, equipped with two butterfly valves carry water from the surge tanks to the powerhouse. The powerhouse has three turbine generators rated at 11 MW each for a total plant capacity of 33 MW. Their total hydraulic capacity is 960 cfs. The Grace tailrace includes a short concrete-lined section that transitions to an unlined open channel section approximately 350 feet from its confluence with the Bear River.

2.1.3 2.1.3 Oneida development

The Oneida development includes a 111-foot-high by 381-foot-long concrete gravity dam that includes a 118-foot-long uncontrolled auxiliary spillway, a 66-foot-long non-overflow gravity section, a 99-foot-long gated spillway containing five Taintor gates, and an 86-foot-long gravity section with ice sluices. There is also a 40-foot-high, 1,100-foot-long embankment dam. The Oneida reservoir has an active storage capacity of 10,880 acre-feet and a surface area of 480 acres at an elevation of 4,882.40 feet. A 50-foot-wide by 50-foot-high intake structure, containing six openings fitted with trashracks, transitions to two, 16-foot-diameter circular

outlets. A 16-foot-diameter, 2,240-foot-long steel flowline conveys water from the intake structure to a 40-foot-diameter, 142-foot-high surge tank. Three 12-foot-diameter, 120-foot-long steel penstocks extend from the surge tank to the powerhouse. The Grace powerhouse is 52-feet by 162-feet and contains three vertical Francis units, each with an installed capacity of 10 MW and hydraulic capacities of 1,161, 1,161, and 968 cfs, respectively. The development has a 64-foot-wide by 118-foot-long rectangular channel tailrace.

2.2 PROJECT PHOTOGRAPHS



Figure 2.1-1 Soda Dam



Figure 2.2.-2 Grace Dam



Figure 2.2-3 Oneida Dam

2.3 PROJECT OPERATIONS

PacifiCorp operates the hydroelectric developments on the Bear River in a coordinated manner to meet irrigation demands and generate power. River flows are generally higher than the natural conditions during the irrigation season (April through October) due to irrigation releases from Bear Lake. The Soda, Grace, and Oneida developments are usually operated in a modified run-of-river mode during this season; water stored in Soda and Oneida reservoirs may be used to satisfy short-term irrigation demand or to maintain reservoir levels in Cutler reservoir. The Cutler reservoir level must be maintained for environmental protection purposes even when the Cutler facility normally ceases to generate power during the summer low-flow period. Substations containing step-up transformers and circuit breakers are located adjacent to the powerhouses at Soda, Oneida, and Grace. The substations serve as the point of interconnection to the transmission grid system.

ATTACHMENT 3

A.1 Flows

Yes. PacifiCorp's Bear River hydroelectric project is in compliance with resource agency recommendations issued after December 31, 1986 regarding flow conditions for fish and wildlife protection for all reaches. Resource agency recommendations regarding flow conditions are contained in Sections 3.2 and 3.3 of the Settlement Agreement adopted by the Federal Energy Regulatory Commission (FERC) in the new license issued December 22, 2003 and the Section 401 Water Quality Certification (WQC) issued by Idaho Department of Environmental Quality (IDEQ) on June 23, 2003. The Section 401 WQC is included as Attachment A to the project license.

The project license (with 401 WQC) and the Settlement Agreement are available on PacifiCorp's website (follow the Project License or Settlement Agreement links on the Bear River project homepage: <http://www.pacificorp.com/es/hydro/hl/br.html>). A summary of the requirements for flow conditions contained in these documents follows.

Flow releases:

Article 408 of the project license and the Section 401 WQC established minimum instream flows downstream of each development. These minimum flow requirements were revised May 23, 2006, when FERC issued its Cove Decommissioning Order amending Article 408. The minimum flows are:

- Downstream of Soda dam: year-round minimum flow of 150 cfs, or inflow into the Alexander reservoir, whichever is less;
- Grace bypass reach: year-round minimum bypass flow of 63 cfs or inflow, whichever is less, in addition to 2 cfs leakage below the Grace dam;
- Oneida reach downstream of the powerhouse: year-round minimum flow of 250 cfs or inflow, whichever is less, in addition to 1 cfs leakage downstream of Oneida dam.

Per Article 410 of the project license, PacifiCorp developed a plan to modify the flows from Kackley Spring to benefit the aquatic resources in the Bear River, based on the results of studies and monitoring outlined in the Settlement Agreement. The Kackley Springs Plan was approved by FERC Order dated March 22, 2005. Following the completion of the studies and monitoring, the ECC agreed in 2008 to discontinue diversion of the spring directly into the Bear River and send the water down a longer route that can potentially be used by native fish for spawning and rearing. PacifiCorp completed the work on the reroute in September, 2009.

In accordance with Article 420 of the project license, PacifiCorp developed an Operational Regime to minimize the frequency of river level fluctuations downstream of the Oneida powerhouse, thereby reducing bank erosion and turbidity in the river. The Operational Regime

was approved by FERC Order dated August 17, 2005. The record of attainment is provided in the annual Oneida Development Operations Report filed with the IDEQ.

In 2011, PacifiCorp installed a low level release valve at Grace Dam to improve the measurement and delivery of the required minimum instream flow in the Black Canyon downstream of Grace Dam.

Ramping rates:

Article 412 of the project license and the Section 401 WQC established maximum ramping rates downstream of the Soda and Oneida dams. A minor discrepancy between the project license and the Section 401 WQC was reconciled by FERC Order issued on July 7, 2004 that modified Article 412 (b). The maximum ramping rates are:

- 1.2 feet per hour in the Soda reach, ascending and descending, as measured at USGS Gage No. 10075000; and
- 3.0 inches every 15 minutes on the descending arm of the ramp in the Oneida reach measured at a designated site between river miles 26 and 30. This equates to two feet in 15 minutes at the USGS gage directly below the Oneida tailrace.

The project license and Section 401 WQC also permit PacifiCorp to increase flow ramping rates for emergencies, to comply with legal constraints associated with water rights, for emergency power needs, and to comply with requirements of the downstream Cutler Hydroelectric Project.

No major changes in conditions or notices of violations were received. Documentation of compliance with the minimum instream flows and ramping rate restrictions recommended by the resource agencies is provided in PacifiCorp's annual reports (follow the Annual Reports link on the Bear River project homepage: <http://www.pacificorp.com/es/hydro/hl/br.html>).

ATTACHMENT 4

B. Water Quality

B.1 a) Yes. The Bear River project is in compliance with the conditions in the Section 401 WQC issued by Idaho Department of Environmental Quality (IDEQ) on June 23, 2003. The Section 401 WQC is included as Attachment A to the project license which is available on PacifiCorp's website (follow the Project License link on the Bear River project homepage: <http://www.pacificorp.com/es/hydro/hl/br.html>).

In accordance with the 401 WQC and Article 413 of the project license, PacifiCorp prepared and implemented Water Quality Monitoring Plans (WQMPs) for the Grace bypass reach and the Bear River downstream of the Oneida powerhouse to monitor temperature, dissolved oxygen, nutrients, specific conductance, and turbidity. Monitoring in the Grace bypass reach serves as the basis for evaluating both the Grace development and the Soda development's effects on water quality. The WQMPs were completed on June 18, 2004 and approved by the Federal Energy Regulatory Commission (FERC) Order dated September 15, 2004.

The 401 WQC also requires PacifiCorp to provide IDEQ with an annual Oneida Development Operations Report. PacifiCorp has submitted this report to IDEQ every year since 2004.

B.2 Yes. Total Maximum Daily Loads (TMDL) have been established pursuant to Section 303(d) of the Clean Water Act for phosphorous and total suspended solids in the Alexander reservoir, the Oneida Narrows reservoir, and the Bear River from the Alexander reservoir to the Idaho border. The Bear River is still listed for temperature, as a TMDL has not yet been established.

B.3 Yes. PacifiCorp has conducted extensive water quality monitoring in the Grace bypass and downstream of the Oneida powerhouse beginning in May 2004.

PacifiCorp submitted the 2007 Water Quality Monitoring Report for the Grace-Cove Development to IDEQ in January 2008. Based on the results of the water quality monitoring in the Grace bypass, IDEQ informed PacifiCorp in a letter dated January 20, 2009 that "PacifiCorp's operation has not contributed to violations of State of Idaho water quality standards," and that water quality monitoring at Grace can be discontinued (two years before scheduled, see Attachment 4a).

A final Oneida Water Quality Monitoring Report was submitted to the IDEQ on April 6, 2007. Supplemental reports and data were provided to IDEQ in February, 2009. This information documents the results of studies that PacifiCorp conducted to investigate potential connections between the facility and water quality criteria exceedances. Operational changes at Oneida to reduce potential contributions to exceedances include the elimination of peaking events and the establishment of a ramping rate based on bank stability. IDEQ has informed PacifiCorp in a

letter dated July 24, 2009 that the water quality monitoring downstream of the Oneida powerhouse demonstrates that the facility is not contributing to water quality standard exceedances (see Attachment 4b). There have been no substantial changes to operating conditions since then.

ATTACHMENT 4a



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

444 Hospital Way, #300 • Pocatello, Idaho 83201 • (208) 236-6160

C.L. "Butch" Otter, Governor
Toni Hardesty, Director

January 20, 2009

Mr. Mark Stenberg
PacifiCorp Energy
License Program Manager – Idaho
822 Grace Power Plant Road
Grace ID 83241

RE: Compliance with DEQ's 401 certification condition 1 (a. and b.), Grace/Cove water quality monitoring.

Dear Mr. Stenberg:

In compliance with DEQ's 401 certification for PacifiCorp's Bear River Hydroelectric Projects, PacifiCorp Energy has monitored water quality through Grace/Cove from 2004-2007. DEQ Pocatello Regional office staff have reviewed these data and concluded that PacifiCorp's operation has not contributed to violations of State of Idaho water quality standards. DEQ's 401 certification of June 2003 required PacifiCorps to implement water quality monitoring in this project reach for six (6) years.

Based on the four (4) years of data (2004-07) and our agreed upon need to reallocate those monitoring resources to documenting water quality associated with the whitewater boater flow program in 2008 (and following years) DEQ is relieving PacifiCorp of the last 2 years (2008-2009) of water quality monitoring as required under condition 1 (a. and b.) in the 401 certification.

Should new or additional information suggest that PacifiCorp's ongoing operation of the Grace Project is causing water quality violations, DEQ reserves the right, in consultation with PacifiCorp, to reopen the 401 certification.

Please call me at 236-6160 if you have questions or want to discuss.

Sincerely,

A handwritten signature in black ink that reads "Lynn Van Every".

Lynn Van Every
Regional Water Quality Manager

Cc: file



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

444 Hospital Way #300 • Pocatello, Idaho • 83201

24 July 2009

C.L. "Butch" Otter, Governor
Toni Hardesty, Director

Mark Stenberg
PacifiCorp Energy, Grace Hydro Plant
822 Grace Power Plant Road
Grace ID 83241

RE: Oneida Hydroelectric Project, FERC No. P-20, Clean Water Act Section 401 Certification.

Dear Mr. Stenberg:

The Idaho Department of Environmental Quality (DEQ) has reviewed "Water Quality Summary 2004-2005 for the Oneida Hydroelectric Project," 31 May 2006, and "Supplemental Report to the May 2006 Water Quality Summary 2004-2005," 26 February, 2009, (hereafter "Reports") submitted on behalf of PacifiCorp by Ecosystems Research Institute of Logan, Utah. The reports are intended to fulfill Section 5 and 6 requirements of the 401 water quality certification issued by DEQ on 23 June 2003. The reports describe the relationship among flow changes and turbidity, and other water quality parameters in Bear River downstream of the Oneida Hydroelectric Project (project). Additionally, at DEQ's request, PacifiCorp provided raw data and filtered data used to compile the reports. DEQ conducted an internal analysis of this data set which included turbidity, flow, stage, and precipitation records from 2004-2005. Finally, you, Conley Baldwin and the consultant team have taken time to meet with Greg Mladenka and me on numerous occasions to discuss operational considerations and license constraints at the project, possible additional data analysis and the reports' conclusions, with a goal of understanding and evaluating the project's contributions to exceedances of State of Idaho Water Quality Standards.

After extensive evaluation of the reports, the 2004-05 data, and much discussion, internally and with PacifiCorp, it is DEQ's opinion that project operations that occurred in compliance with FERC license conditions (Articles 408, 412 and 420) during the study period of 2004-05, the Oneida Hydroelectric Project did not contribute to violations of State of Idaho Water Quality Standards.

In the event that PacifiCorp anticipates operating the project in a manner substantially different than during the 2004-2005 study period PacifiCorp shall consult with IDEQ in advance. Examples of such changes include significant changes to the frequency or magnitude of daily stage changes than those presented in the reports (2004-2005 data). If significant operational changes are planned or occur, DEQ may require further study of water quality effects to determine if operations are causing exceedances of Water Quality Standards.

Section 4 of the 401 water quality certification requires reporting of the preceding water year on an annual basis to DEQ. In addition to the items list in Section 4, the annual report shall include summary statistics for the frequency and magnitude of daily stage changes and downramp.

We appreciate your cooperation in complying with conditions in the Water Quality Certification. If you have any questions or need clarification, please contact me at 208-236-6160.

Sincerely,

Lynn Van Every
Regional Water Quality Manager

Cc: Bruce Olenick, DEQ Regional Administrator

ATTACHMENT 5

C. Fish Passage and Protection

C.6 Yes. The Bear River project is in compliance with mandatory Fish Passage Prescriptions and resource agency recommendations regarding riverine fish. The majority of the measures focus on restoration of Bonneville cutthroat trout. The Bonneville cutthroat trout is native to the Bear River basin and a species of special concern to the State of Idaho.

Per Article 403 of the Federal Energy Regulatory Commission (FERC) project license, PacifiCorp completed a Bonneville cutthroat trout Restoration Study Plan in July 2004; the Plan was approved by FERC Order dated December 2, 2004. The results of the studies undertaken in support of restoration are provided in PacifiCorp's annual reports.

The U.S. Fish and Wildlife Service (USFWS) did not prescribe any fishways for the Bear River Project. However, by letter dated April 15, 2002, the USFWS requested reservation of authority to prescribe the construction, operation, and maintenance of fishways at the Bear River project. Article 414 of the project license reserves the Commission's authority to prescribe fishways in the future.

C.7 N/A. Due to the limited numbers of native fish currently in the Bear River, fish entrainment has not been a significant issue for the project, and consequently, the resource agencies have not made fish entrainment protection recommendations. As reflected in the Settlement Agreement, the Bear River Environmental Coordination Committee (ECC) has focused on habitat restoration to increase native fish populations in the watershed.

Per Article 403 of the project license, PacifiCorp prepared a Bonneville cutthroat trout Restoration Study Plan. The Restoration Study Plan specifically included the goal of developing "baseline habitat conditions and fish passage obstruction and diversion information for the Bear River drainage in Idaho to aid in the management of Bonneville cutthroat trout." However, work on the irrigation diversion/barrier mapping was discontinued by the ECC in 2006 when it was learned that similar information was available from another source. In 2007 a more intensive irrigation diversion mapping study was proposed by the Idaho Department of Fish and Game (IDFG) and the ECC provided the necessary funding to implement it.

In accordance with Article 410 of the project license, a Fish Stranding Minimization Plan was completed as part of the Bear River Hydroelectric Project Implementation Plan filed with FERC May 28, 2004. An order modifying and approving the plan was issued by FERC on March 7, 2005. The plan describes measures and agency consultation to minimize potential fish stranding resulting from release of recreation flows from the Grace development.

ATTACHMENT 6

D. Watershed Protection

D.2 Yes. PacifiCorp has established funds to implement watershed protection and enhancement measures that were agreed to by the parties to the Settlement Agreement. Together, these funds and protection measures provide the ecological and recreational equivalent of land protection in D1 above. The funds include \$648,000 in one time contributions and up to \$567,000 annually, for the studies and implementation of the aquatic resources restoration measures outlined in Section 3.1 of the Settlement Agreement. These measures include:

- *Habitat Restoration Program* - PacifiCorp is contributing \$167,000 (in 2002 dollars escalated by GDPI to payment year funds) annually to implement a Habitat Restoration Plan approved by Federal Energy Regulatory Commission (FERC) Order dated March 22, 2005. The Restoration Plan was developed and the fund established per Article 405 of the project license (Section 3.1.4 of the Settlement Agreement). Habitat restoration and enhancement projects and related studies and monitoring are eligible for this funding if they are within the portion of the watershed that includes the Bear River and land drained by the Bear River and its tributaries below the point of confluence of the Bear Lake Outlet Canal with the mainstem Bear River and the Idaho-Utah border.

The Bear River Environmental Coordination Committee (ECC) selects and implements the activities that are implemented under the Habitat Restoration Program. Any remaining funds not expended in one year may be spent on land and water acquisition pursuant to Section 3.1.4 of the Settlement Agreement.

- *Land and Water Conservation Fund* - PacifiCorp is contributing \$300,000 (in 2002 dollars escalated to funding year dollars by GDPI) annually to implement a Land and Water Acquisition Plan approved by FERC Order dated March 22, 2005. The purpose of the Land and Water Conservation Fund is to take advantage of opportunities to purchase or lease and manage land and water rights and easements in accordance with Idaho water law and policy to benefit Bonneville cutthroat trout and other fish and wildlife resources. The following conservation land and easement purchases were entirely funded by the Bear River project Land and Water Conservation Fund and are held by Sagebrush Steppe Regional Land Trust (SSRLT):

Conservation Easements	Acreage	Watershed	Date
Harris Easement	116	Bear River	2009
Henderson Preserve	210	Bear River	2008
Cove Easement 1/Olsen	0.25	Bear River	2006
Cove Easement 2/Hansen	0.04	Bear River	2006
Cove Easement 3/McCurdy	0.68	Bear River	2006

Conservation Easements	Acreage	Watershed	Date
Cove Easement 4/Olsen	0.24	Bear River	2006
Cove Easement 5/Harris	1	Bear River	2006
Chistensen Mink Creek Easement	1033	Mink Creek	2012
Boyack Conservation Easement	200	Bear River	2014
Fee Title			
Kackley Preserve	157	Bear River	2006
Cove Preserve	2.3	Bear River	2006
Deep Creek Preserve	435	Bear River	2010

An additional 77.5 acres of conservation land purchases held by the IDFG were also partially funded through the Land and Water Conservation Fund.

Conservation Land Purchase	Acreage	Watershed	Date
McCammon Parcel	77.5	Bear River	2006

Total land protected through fee purchase and conservation easements as of October 2014, is 2,233 acres.

- *Broodstock and Conservation Hatchery Program* - PacifiCorp has completed the requirement for funding the implementation of a broodstock program for Bonneville cutthroat trout. Per Article 404 of the project license, PacifiCorp will contribute up to \$100,000 annually for three years for broodstock development (Section 3.1.2.5 of the Settlement Agreement). The Conservation Hatchery Program commenced on December 22, 2011. Beginning that year, per Section 3.1.3 of the Settlement Agreement, PacifiCorp will contribute up to \$100,000 annually for the conservation hatchery program for the remainder of the license term. Using the state’s Grace Fish Hatchery near Grace, Idaho, the program will focus on enhancing Bonneville cutthroat trout in the Thatcher Reach between the Grace Dam and Oneida Reservoir.
- *Creel and Macroinvertebrate Studies* - PacifiCorp contributed up to \$35,000 annually for seven years to conduct long term fish population, periphyton, pebble count and macroinvertebrate studies (Section 3.1.6 in the Settlement Agreement). The studies were used to assess the long term effects of experimental recreation flows released for boaters in the Grace bypass on river ecology. These studies will also inform future flow releases to benefit native biological communities.

In addition to the funding for the Creel and Macroinvertebrate Studies that was established through the Settlement Agreement, PacifiCorp contributed \$117,702 to collect water quality data and perform a fish stranding study in the Grace bypass from 2008-2010. The additional resources for these efforts will further inform decision making

regarding the boater flow releases, and are a prime example of PacifiCorp's commitment to meeting recreational and ecological goals in the watershed.

See also Attachment 6a for additional documentation of the equivalent land protection that is provided by the watershed enhancement funds and land management plans. This information was provided in 2010 in response to condition #2 of the LIHI certification. In that analysis, PacifiCorp noted that the amount of land that would be protected by a 200-ft buffer around the three reservoirs was approximately 717 acres and that the amount of land protected by the Land and Water Conservation Fund at that time was 1,000 acres (increased to 2,233 ac as of 2014). Together, with the acreage of land protected as conservation lands under PacifiCorp's LMP program (989 ac), the protected acreage greatly exceeded the watershed protection acreage that would be afforded by **D.1**.

D.3 Yes – answer not required (per response to D.2). However, it is notable that there is also an approved Land Management and Buffer Zone Plan for the project. The Land Management and Buffer Zone Plan was completed in January 2005 in accordance with Articles 424 and 425 of the project license and Section 3.6 of the Settlement Agreement and was updated in 2011. The Plan identifies areas that are designated for "Conservation," including shoreline buffer areas required by the project license. In consultation with the ECC, PacifiCorp is establishing the buffers, which are at least 100 ft wide in most places, around Bear River, springs, and the wetland and riparian habitats that adjoin the river, springs, and tributary streams. Project lands designated for conservation are managed to retain and preserve a character of undeveloped, natural, open space and to conserve and protect fish, wildlife, scenic, historic, archaeological, and cultural values.

In addition to the Soda, Grace, and Oneida developments, PacifiCorp has included lands in the adjacent Last Chance project and the decommissioned Cove development in land management and buffer zone planning. Collectively, approximately 1,637 acres are included in the Conservation land management classification. Buffer zone widths around protected areas vary depending on topography, land use, and other site-specific conditions. Individual site plans with refined buffer delineations are complete for the Grace/Cove, Oneida, Soda/Alexander, and Grace/Last Chance developments. The Bear River Land Management and Buffer Zone Plans and all of the associated site plans are available on PacifiCorp's website (<http://www.pacificorp.com/es/hydro/hl/br.html#>). Under Bear River, select the link to "Project Documents," then select the tab for "ECC Final Documents," and follow the links to Land Management and Site Plans.



825 NE Multnomah, Suite 1500
Portland, Oregon 97232

December 2, 2010

Certification Administrator
Low Impact Hydropower Institute
34 Providence Street
Portland, ME 04103

Re: Response to Certification Condition #2 for the Bear River Hydroelectric Project

On May 19, 2010, the Low Impact Hydropower Institute issued a letter of certification for the Bear River Hydroelectric Project that included two conditions for certification. The first condition requested the results from the Black Canyon monitoring study. That information was provided by PacifiCorp by email on August 11, 2010. In the transmittal letter, PacifiCorp noted that information in support of the second condition would be provided at a later time.

The second condition is the option to provide additional information on watershed protection to support qualification for 3 additional years of certification. The second condition states:

2. (Optional) In reviewing the watershed protection information the Application Reviewer recommended that the LIHI Board award the Bear River project an extra three years of certification because of the Applicant's watershed protection efforts. The Board discussed the recommendation but did not come to an agreement and asked whether the Applicant is interested in seeking the extra three years. If they are the Board asks PacifiCorp to supply supporting information. The supporting information should be (1) copy of entire settlement document, (2) Annual status of land protection measures, (3) contacts with whom LIHI can discuss the administration of this land protection (e.g., land trust given to, etc) to see how it is going, and; (4) any additional information that helps the Board answer "yes" to D.2 of the Watershed Protection criterion:

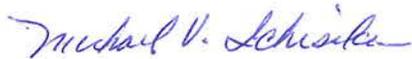
D.2 Has the facility owner established an approved watershed enhancement fund that: 1) could achieve within the project's watershed the ecological and recreational equivalent of land protection in D.1., and 2) has the agreement of appropriate stakeholders and state and federal resource agencies?

To meet this second condition, supplemental information is included in Attachment A. In addition, the Settlement Agreement will be emailed separately as a PDF Attachment. PacifiCorp believes that this supporting information will help to demonstrate that the Bear River Project meets Certification Condition #2. With this submittal, PacifiCorp respectfully requests consideration for the three (3) extra years of certification for the Bear River Project.

Certification Administrator
Low Impact Hydropower Institute
December 2, 2010
Page 2

Please contact me at (503) 813-6617 or mike.ichisaka@pacificorp.com if you have any questions regarding this supporting information.

Sincerely,



Michael V. Ichisaka
Hydro Resources Department,
PacifiCorp Energy

Enclosure: Attachment A (Supporting Information for Certification Condition #2
for the Bear River Hydroelectric Project)

Attachment A

Supporting Information for Certification Condition #2 for the Bear River Hydroelectric Project

The LIHI Board asks PacifiCorp to supply the following: (1) *copy of entire settlement document*, (2) *Annual status of land protection measures*, (3) *contacts with whom LIHI can discuss the administration of this land protection (e.g., land trust given to, etc) to see how it is going, and;* (4) *any additional information that helps the Board answer “yes” to D.2 of the Watershed Protection criterion:*

D.2 Has the facility owner established an approved watershed enhancement fund that: 1) could achieve within the project’s watershed the ecological and recreational equivalent of land protection in D.1., and 2) has the agreement of appropriate stakeholders and state and federal resource agencies?

The following information corresponds to the numbered items in the optional condition. An analysis demonstrating how the Bear River project provides equivalent land protection is provided in response to supporting information item #4.

(1) A copy of the Settlement Agreement:

The following documents are being transmitted by email (PDF attachments):

- Bear_River_Settlement_Agreement_Explanatory_Statement.pdf
- Bear_River_Final_Settlement_Agreement.pdf

(2) Annual status of land protection measures:

PacifiCorp has established several funds and plans that focus on achieving the “ecological and recreational equivalent of land protection in D.1.” The two main PacifiCorp funds and plans are the Land and Water Conservation Fund and the Land Management Plan. Both are required by the Settlement Agreement and therefore have the agreement of appropriate stakeholders and agencies. A description of these programs and their annual status follows.

Land and Water Conservation Fund

In accordance with License Article 406 and the Settlement Agreement (Section 3.1.5), PacifiCorp is committed to providing up to \$300,000 annually through the term of the license to purchase land or water rights to benefit Bonneville Cutthroat Trout and other fish and wildlife. Unused funds can be carried over to successive years. Annual funding began in December 2004, and as of August, 2010, a total of 1000 acres of conservation easements or fee title purchases have been acquired. This includes 923 acres acquired by the Sagebrush Steppe Regional Land Trust and an additional 78 acres of land purchased by Idaho Department of Fish and Game (IDFG land was 30% funded by PacifiCorp).

Acquisitions through the Land and Water Acquisition Plan and associated Land and Water Conservation Fund are prioritized by the Environmental Coordination Committee (ECC) which consists of representatives from the signing parties.

PacifiCorp’s annual reports summarize the status of program activities for the Land and Water Acquisition Plan and associated Land and Water Conservation Fund. The 2009 Annual Report is

posted on PacifiCorp’s website (follow the Annual Reports link on the Bear River project homepage). <http://www.pacificorp.com/es/hydro/hl/br.html>

Land and Water Acquisition Plan (Article 406)

The Land and Water Acquisition Plan was completed in 2004 as part of the Implementation Plan and an order approving the plan was issued by FERC on March 22, 2005. This plan describes the funding provided to acquire available land and water rights in the action area. Actions pursuant to the Land and Water Acquisition Program will be decided upon and prioritized by the ECC. Annual funding of \$300,000 (escalated annually) for this purpose began December 22, 2004 and will continue through the end of the license term.

In 2005, the ECC formed a subcommittee to develop proposal and application forms for individuals and organizations seeking funding from the ECC for land and water acquisition projects. The subcommittee also developed evaluation criteria for proposals. Due to the opportunistic nature of land and water acquisition fund projects, the ECC voted in 2007 to accept and evaluate such proposals year-round. They are approved by consensus agreement among ECC members at large. Prior to the 2009 review period, flyers were distributed to ECC members, local USDA-Natural Resource Conservation Service offices, and previous applicants to announce land and water acquisition funding availability and request proposals. Application materials were posted to PacifiCorp’s website.

Three land and water acquisition projects were approved by the ECC during 2009. See Section 4.0 [of the 2009 Annual Report] for funding activity in the Land and Water Conservation Fund in 2009.

Conservation easements or fee title purchases of land have been acquired mostly through the Sagebrush Steppe Regional Land Trust. Some land is also held by the Idaho Department of Fish and Game. A listing of conservation land and acquisition dates as of August 2010 is provided in Tables 1 & 2.

Table 1. Conservation Land and Easement purchases 100% funded by the Bear River Hydroelectric Project Land and Water Conservation Fund and held by Sagebrush Steppe Regional Land Trust

Conservation Easements	Acreage	Watershed	Date	LF Protection*	
				RB	LB
Cove Easement 1/Olsen	0.25	Bear River	2006	342	
Cove Easement 2/Hansen	0.04	Bear River	2006	29	
Cove Easement 3/McCurdy	0.68	Bear River	2006	758	
Cove Easement 4/Olsen	0.24	Bear River	2006	343	
Cove Easement 5/Harris NS	1.0	Bear River	2006	1,521	
Henderson Preserve	210.0	Bear River	2008	4,456	4,828
Harris Preserve	116.0	Bear River	2009	1,509	
Fee Title					
Kackley Preserve	157.0	Bear River	2006	1,964	3,402
Kackley Creek		Bear River	2006	2,661	2,790
Cove Preserve	2.3	Bear River	2006		772
Deep Creek Preserve	435.0	Bear River	2010	1,767	1,812

Table 2. Conservation Land purchase partial funded by the Bear River Hydroelectric Project Land and Water Conservation Fund and held by the Idaho Department of Fish and Game.

Fee Title	Acreage	Watershed	Date	LF Protection*	
				RB	LB
McCammon Parcel	77.5	Bear River	2006		4,696

* Linear feet of riparian protection provided. RB = right bank, LB = left bank looking downstream.

Total land protected through fee purchase and conservation easements as of August 2010, is 1000 acres. Total linear feet of riparian protection provided is 33,650 ft (6.4 miles).

Management of these lands varies with the parcel and by conservation entity. Overall, management of these lands is compatible with the watershed protection goals of the LIHI certification. Watershed protection measures are implemented and monitored. Public access is permitted on the large Kackley Preserve and adjoining PacifiCorp lands but is restricted on some of the privately held easements.

The Harris Conservation Easement area is an example of one of the larger areas protected through the Land and Water Conservation Fund that is managed by the Sagebrush Steppe Regional Land Trust for conservation purposes. The Harris Conservation Easement is located along the Bear River in Caribou County, Idaho. The 116 acre conservation easement is just across the river from the Land Trust’s Kackley Preserve. The conservation easement will permanently protect the property’s diverse open space values, including riparian areas along the Bear River, wetlands and springs, as well as prime agricultural and ranch land. The conservation easement allows the landowners to continue traditional farming and ranching, but forever prohibits development and harmful land uses and activities on the property. Goals are: to improve wetland function, riparian condition, water quality, and fish and wildlife habitat through habitat restoration, enhancement and management; to sustain priority natural resource features for the long-term through monitoring and adaptive management; and, to facilitate limited educational and recreational opportunities to improve knowledge and inspire stewardship of Bear River’s vulnerable natural areas, while prioritizing protection of wetlands, riparian areas, water quality, and fish and wildlife (http://www.sagebrushlandtrust.org/harris_conservation_easement.php).

This conservation easement protects low wetland and riparian areas along the Bear River. A spring water source is also included in the conservation area. This landowner had previously completed exclusion fencing along the Bear River and the spring complex. This project complements the PacifiCorp ownerships in the area.

Bear River Land Management Plan (LMP) Description

In addition to the lands purchased through ongoing the Land and Water Conservation Fund program described above, PacifiCorp manages a total of approximately 2,885 acres of land in the vicinity of the Soda, Grace, and Oneida hydroelectric facilities in accordance with the Bear River Land Management Plan (LMP) and associated Site Plans. Site plans provide management standards for each facility. Site plans assign land management classifications to various parcels, with each classification having slightly different management requirements. Land management classifications include Conservation Lands, Recreation, Potential Lease, and Operations. The

Conservation Lands category provides for riparian buffers, conservation practices and recreational use that is most relevant to the requirements of Certification Questionnaire requirement D.1. Although the other land management categories also provide watershed protection, for simplicity, the acreage of land in the Conservation Lands category will be used for further comparisons of equivalent land protection. Conservation Lands make up about 988 acres of the 2,885 total approximate acres managed under the LMP.

(This space left blank intentionally.)

The following LMP standards describe management of lands designated as Conservation Lands (Table 4.1-4 from LMP, page 62):

Table 4.1-4. Specific Land Use Standards for Lands in the Conservation Land Management Classification.

Issue	Land Use Standards
Public Access	<ul style="list-style-type: none"> • Motorized vehicle use is prohibited off existing roads. • Dispersed camping is prohibited. Any newly discovered campsites will be removed and appropriate measures taken to correct damage and prevent future use. • Pedestrian and equestrian trails are allowed and may be hardened if needed. • In areas where a Conservation land management classification occurs adjacent to developed or dispersed recreation areas, signage will be installed at the boundary prohibiting fire rings, vegetation removal, and site hardening within the Conservation land management classification.
Vegetation Management	<ul style="list-style-type: none"> • Vegetation management will be limited to restoration of damaged sites. • Restoration projects will utilize approved native or non-invasive non-native plant species. • Mechanical (hand pulling and use of heavy equipment), biological, and appropriate chemical methods will be emphasized for control of noxious weeds to minimize impacts to water quality. • Roads within or immediately adjacent to Conservation land management classifications will be maintained in a manner that is consistent with maintaining wetland and riparian vegetation.
Wetland and Riparian Habitat Management	<ul style="list-style-type: none"> • Springs and wetlands within the Conservation land management classifications that are currently used for agricultural purposes (through diversions and ditches) will continue to be utilized for irrigation, but will be managed to maintain or improve water quality. • PacifiCorp will monitor wetlands and riparian areas within Conservation land management classifications at least once every 5 years to determine if additional protection measures or vegetation management actions are necessary.
Agricultural Uses	<ul style="list-style-type: none"> • Grazing and farming are generally not permitted in Conservation land management classifications. The only exception is that controlled, short-term grazing may be considered as a management tool to achieve desired vegetation conditions. Grazing would only occur in Conservation land management classification within the FERC Project boundary after consultation with the ECC. Such grazing would adhere to standardized criteria (from the Natural Resources Conservation Service [NRCS] and other accepted sources) and monitoring. • Fencing will be maintained to exclude livestock where necessary. • Watering access points along the river may only be installed if off-river water sources (using existing irrigation diversions) cannot be used in adjacent lease areas. • Existing agricultural irrigation systems that emanate within or cross Conservation land management classifications can continue to function under existing water rights. Diversion of water will only be conducted during the growing season. Future easement requests will require Best Management Practices (BMPs) by irrigation system owners. • PacifiCorp will explore options for terminating water diversions that are no longer necessary for agricultural purposes. If terminated, water will be returned to the Bear River via natural drainageways (restored if necessary).

PacifiCorp's annual reports summarize the current status of implementation of land protection measures related to the Land Management Plan and associated site plans. The 2009 Annual Report is posted on PacifiCorp's website (follow the Annual Reports link on the Bear River project homepage). <http://www.pacificorp.com/es/hydro/hl/br.html>

Land Management Plan (Article 424), which includes Shoreline Buffer Zone Plan (Article 425), and Cove Bypass Reach Fencing Plan (Article 426)

The Land Management Plan (LMP) was filed with FERC January 31, 2005. Included in the LMP are the Shoreline Buffer Zone Plan and the Cove Fencing Plan. The LMP has specific detail regarding implementation of new land management procedures in five site plans. These site plans were completed (written) within 5 years after the LMP is approved, and are prioritized as follows: Grace-Cove, Oneida, Soda, Grace Dam, and Last Chance. During 2008, the ECC agreed to incorporate the Grace Dam and Last Chance site plans into one document, reducing the number of site plans to four. Implementation of the site plans must be completed by 10 years after the LMP is approved.

The first site plan, for the Grace-Cove area, was completed and reviewed by the ECC in 2005. Most of the implementation scheduled in the Grace-Cove Site Plan was completed in 2005 and 2006, the remainder was finished in 2007—including revised leases, final edits to monitoring forms, and revisions based on Cove decommissioning. The Oneida Site Plan was drafted and reviewed by the ECC in 2006. The plan was finalized in 2007, but revisions were made during 2008. Implementation actions for Oneida were completed in 2007 and 2008 including installation of cattle exclusion fencing and boundary markers along property lines not fenced. The Soda Site Plan was completed and reviewed by the ECC during 2008 and implementation actions were substantially completed during 2008, including installation of boundary markers and cattle exclusion fencing, marking of expanded reservoir buffer areas, and seeding of approximately 130 acres with native grass in new reservoir buffer areas. Agricultural leases were modified to prohibit grazing and to allow for the reduction in areas set aside for reservoir buffers. The Soda Site Plan was finalized in 2009 and is submitted to FERC with this annual report. The Grace Dam and Last Chance Site Plan was reviewed and approved by the ECC during 2009. Implementation of this final site plan began during 2009, including installation of property boundary markers and cattle exclusion fences where needed, marking of an expanded reservoir buffer area at the Grace forebay. Noxious weed control activities were performed in 2009 as required in the site plans. The Cove Buffer shoreline fence was monitored as required during 2009. Monitoring forms are included in Appendix D of this report. Maintenance needs were noted and will be completed during 2010. Monitoring reports for Grace-Cove, Oneida, and Soda site plans are included in Appendix C, E, and F of this report, respectively.

(3) Contacts with whom LIHI can discuss the administration of this land protection:

For information on the management of land and easements purchased by Land and Water Conservation Fund, contact the Sagebrush Steppe Regional Land Trust:

Joselin Matkins
Executive Director
Sagebrush Steppe Regional Land Trust
PO Box 1404
Pocatello, ID 83204
(208) 241- 4662
www.sagebrushlandtrust.org

Tom Lucia
President
Sagebrush Steppe Regional Land Trust
PO Box 1404
Pocatello, ID 83204
(208) 221-7100

Contacts for feedback on PacifiCorp's management of lands under the Bear River Land Management Plan would be the members of the Environmental Coordination Committee (ECC). Contact information for ECC members was provided in the contact list - Attachment 1 to the Bear River LIHI application questionnaire.

(4) Any additional information on the watershed enhancement fund that achieves the ecological and recreational equivalent of land protection in D.1 and has the agreement of appropriate stakeholders and state and federal resource agencies:

As discussed in section (2) above, the watershed enhancement fund (Land and Water Conservation Fund) was established in 2004. Since contributions will continue annually throughout the term of the license, the full benefits from this fund in terms of acres of land protection have yet to be realized. Even at this point in time, however, PacifiCorp believes that the combination of land acquired through the Land and Water Conservation Fund and the land currently managed as Conservation Lands under the Land Management Plan (LMP) provide substantial protection of land in the watershed which is equivalent to the protection afforded by D.1.

Analysis of equivalent land protection

To meet the requirements of Questionnaire section D.1., a 200-ft wide land protection buffer that extends around 50% of the project's reservoir and includes all undeveloped land would be needed.

There are a several ways to illustrate that the land protection afforded by the Bear River Project provides the equivalent to the land protection requirements of questionnaire section D.1. One way to evaluate this is to estimate the number of acres that would be protected within a 200-ft buffer of the project reservoirs as required in questionnaire D.1 and compare that to the acres of conservation lands acquired or managed by PacifiCorp within the watershed. A second way to evaluate equivalent land protection in the watershed would be to calculate the length of shoreline that occurs around the three project reservoirs that could be protected through requirements of questionnaire D.1 and compare that to the lengths of shoreline protected by PacifiCorp programs. The following analyses describe how the Bear River Project meets or exceeds these two metrics.

Comparison of acreage of watershed protection

There are approximately 717 acres of land that would be protected if there was a 200-ft buffer around the three reservoirs (Table 3).

Table 3. Acres within a 200-ft buffer

Acres	Reservoir
373	Alexander (Soda) Reservoir
79	Grace Reservoir
265	Oneida Reservoir
717	Total acres

The Land and Water Conservation Fund established by PacifiCorp through the Settlement Agreement has been used to purchase lands in the watershed and as of August 2010, approximately 1000 acres of conservation lands and easements have been acquired (see list of parcels and acreages in the answer to question #2 above). In comparison to the requirements of D.1, the 1000 acres protected by this PacifiCorp program exceed the 717 acres that would be protected with a 200-ft buffer around the reservoirs.

Additionally, PacifiCorp’s LMP program also provides equivalent land protection near the hydro facilities. Lands managed by the LMP site plans under the Conservation Lands category provide riparian buffers, conservation practices and recreational use. Approximately 989 acres of land in the LMP are managed as “Conservation Lands” and meet the intent of Questionnaire requirement D.1. The 989 acres protected by the LMP program exceed the 717 acres that would be protected in a 200-ft buffer around the reservoirs.

Together, the Land and Water Fund and the Conservation Lands in the LMP provide approximately 1,989 acres of watershed protection (Table 4) which greatly exceeds the 717 acres of land that would be protected by equivalent shoreline buffers as intended in questionnaire D.1.

Table 4. Conservation Lands in watershed

Acres	Reservoir shoreline classified as Conservation Lands in LMP
566	Alexander (Soda) vicinity
234.5	Grace vicinity
188	Oneida vicinity
	Land and Water Conservation Fund acquisitions
923	Easements and fee title purchased through Sagebrush Steppe Land Trust
78	IDFG land 30% funded by PC
1,989.5	Total acres

Comparison of length of shoreline protection

There is approximately 33 miles of total shoreline surrounding the three project reservoirs (Table 5). Only a portion of the shoreline (50% plus all undeveloped shoreline is less than the entire shoreline) would be required to be protected to meet D.1. Thus, the 33 miles of total shoreline would be the maximum length of shoreline that might be protected by a shoreline buffer that meets the requirements of questionnaire D.1.

Table 5. Reservoir area

Miles	Reservoir area
17.0	Alexander Reservoir (Soda facility) vicinity
5.1	Grace vicinity
10.6	Oneida vicinity
32.7	Total miles

In comparison, the Land and Water Conservation Fund and the LMP programs together, protect approximately 35 miles of shoreline in the Bear River watershed (Table 6). This includes 28.5 miles of shoreline protected by the LMP and associated site plans (conservation land management category) plus an additional 6.4 miles of shoreline protected by the easements and fee title acquisitions through the Land and Water Conservation Fund. About half of the protected shoreline has a shoreline buffer width that is greater than 200 feet.

Table 6. Shoreline length protected by LMP (conservation lands), land acquisition and easements

Miles	Reservoir shoreline classified as Conservation Lands in LMP
16.3	Alexander Reservoir (Soda facility) vicinity
4.9	Grace vicinity
7.3	Oneida vicinity
	Land and Water Conservation Fund acquisitions
5.5	Sagebrush Steppe Land Trust acquisitions and easements as of 7/2010.
0.9	IDFG parcel partially funded by PacifiCorp
34.9	Total miles

The 35-mile length of protected shoreline in the Bear River watershed is equivalent to the 33-mile length of shoreline that occurs around the three project reservoirs. Using length of shoreline protection within the watershed as the metric, the Bear River project’s conservation lands provide the equivalent or greater protection than the buffer requirement in questionnaire D.1.

In summary, there are several ways in which the established Land and Water Conservation Fund and LMP protection measures “achieve within the project’s watershed the ecological and recreational equivalent of land protection in D.1.” First, the acreage of conservation land provided by the Land and Water Conservation Fund and the LMP is currently much greater than the watershed protection acreage that would be provided through D.1. Second, the length of shoreline protected through Bear River Land and Water Conservation Fund and LMP measures is currently equivalent to the shoreline length that would be protected through D.1. The amount of land protected by these programs will continue to grow as PacifiCorp continues to provide annual funding to the Land and Water Conservation Fund throughout the term of the license.

PacifiCorp conservation funds and plans have the “agreement of appropriate stakeholders and state and federal resource agencies” as outlined by LIHI requirement D.2. These funds and plans are required by the Settlement Agreement which has been approved by the appropriate stakeholders and agencies. These stakeholders continue to approve land acquisition and land management site plans through their membership in the RCC.

PacifiCorp believes that the Bear River Project meets both requirements of D.2. Therefore, PacifiCorp would like to respectfully request consideration for an additional three (3) years of Low Impact Hydropower Certification for the Bear River facilities.

EXPLANATORY STATEMENT

FOR THE SETTLEMENT AGREEMENT
AMONG
PACIFICORP
UNITED STATES FISH AND WILDLIFE SERVICE
UNITED STATES BUREAU OF LAND MANAGEMENT
UNITED STATES NATIONAL PARK SERVICE
USDA FOREST SERVICE
SHOSHONE-BANNOCK TRIBES
IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY
IDAHO DEPARTMENT OF FISH AND GAME
IDAHO DEPARTMENT OF PARKS AND RECREATION
TROUT UNLIMITED
IDAHO RIVERS UNITED
GREATER YELLOWSTONE COALITION
AMERICAN WHITEWATER

DATED AUGUST 28, 2002

CONCERNING THE RELICENSING OF THE
BEAR RIVER HYDROELECTRIC PROJECTS
FERC PROJECT NOS. 20, 472, AND 2401
CARIBOU AND FRANKLIN COUNTIES
IDAHO

Explanatory Statement
for the Bear River Settlement Agreement

I. Introduction

In 1999, PacifiCorp filed with the Federal Energy Regulatory Commission (“FERC”) applications for New Licenses for the Bear River Hydroelectric Projects, the Soda (FERC No. 20), Grace/Cove (FERC No. 2401) and Oneida (FERC No. 472), (hereinafter collectively referred to as the “Bear River Project” or the “Project”).¹ Now, after lengthy discussions between PacifiCorp, state and federal agencies, tribes, and non-governmental organizations, PacifiCorp is submitting an Offer of Settlement describing the terms of the Settlement Agreement (“Agreement”) under which PacifiCorp and these entities will support FERC’s issuance of the New Licenses. Pursuant to FERC’s regulations at 18 C.F.R. § 385.602, PacifiCorp is submitting this separate Explanatory Statement (“Statement”) which provides the rationale behind the protection, mitigation and enhancement (“PM&E”) measures and decision-making provisions contained in the Agreement. Nothing in this Statement is intended to modify the terms of the Agreement. Any conflict between the language in the Agreement and this Statement should be resolved in favor of the Agreement. This Statement should not be used to interpret Agreement terms.

The Agreement was executed on August 28, 2002 (the “Effective Date”) among PacifiCorp, an Oregon corporation (“PacifiCorp” or “Licensee”), United States Fish and Wildlife Service (“USFWS”); United States Bureau of Land Management (“BLM”); United States National Park Service (“NPS”); USDA Forest Service (“USFS”); Shoshone-Bannock Tribes (“Tribes”); Idaho Department of Environmental Quality (“IDEQ”); Idaho Department of Fish and Game (“IDFG”); Idaho Department of Parks and Recreation (“IDPR”); ; Idaho Council of Trout Unlimited (“ITU”); Idaho Rivers United (“IRU”); Greater Yellowstone Coalition (“GYC”); American Whitewater (“AW”), and other intervenors to the FERC relicensing proceedings for the Bear River Project who have executed the Agreement, each referred to individually as a “Party” and collectively as the “Parties.” The Agreement resolves all issues regarding relicensing of the Projects for the purpose of obtaining a FERC order issuing to PacifiCorp a New License for the Project (“New License”).

The Parties submit that the Agreement is fair and reasonable and in the public interest within the meaning of Rule 602, 18 C.F.R. § 385.602(g)(3), for the reasons set forth in this Statement, including the following:

- (1) The Agreement contains specific measures that will substantially improve environmental conditions in the Bear River watershed near the Project;

¹ The license applications refer to the Soda, Grace/Cove and Oneida projects as separate projects for which the FERC would issue three separate new licenses. As stated in Section 6.11 of the Settlement Agreement, the Parties intend that PacifiCorp will request as part of its Offer of Settlement that the three facilities be consolidated under one New license. Therefore, this Statement refers to the three facilities as one Project under one New License.

Explanatory Statement
for the Bear River Settlement Agreement

- (2) The Agreement provides important resource protection and restoration measures that will benefit fish and wildlife habitat, consistent with regional restoration planning;
- (3) The Agreement provides for various interests and river uses, including irrigation, power production and natural resource values; and
- (4) The Agreement establishes a process for the Parties to collaborate to manage and enhance natural resources in the Bear River watershed throughout the terms of the New License.

The PM&E measures contained in the Agreement represent the Parties' preferred alternative to measures proposed in PacifiCorp's September 27, 1999 license applications. The Parties will file revised recommendations, terms, conditions, and prescriptions consistent with the Agreement, and intend that the Agreement and the revised terms, conditions, prescriptions, and recommendations supersede any inconsistent prior filings by the Parties in this proceeding.

II. Background

A. The Bear River Project

The Bear River Project is located on the Bear River in Caribou and Franklin Counties, Idaho, and is partially located on United States lands administered by BLM. The Project generates approximately 84.5 megawatts of electricity.

The Soda facilities consist of: (1) the 103-foot-high and 433-foot-long concrete gravity Soda dam with a 114-foot-long spillway section; (2) the Soda reservoir with a surface area of 1,100 acres, and active storage capacity of 16,300 acre-feet, and a maximum water surface elevation of 5,720 feet; (3) the Soda powerhouse containing two units with a total installed capacity of 14 megawatts; and (4) other appurtenances.

The Grace/Cove facilities consist of the Grace and Cove developments. The Grace development consists of: (1) a 51-foot-high and 180-foot-long rock filled timber crib dam that creates a 250-acre forebay; (2) a 26,000-foot-long flowline and surge tanks; and (3) a powerhouse with three units with a total installed capacity of 33 megawatts. The Cove development consists of: (1) a 26.5-foot-high and 141-foot-long concrete dam containing a 60-acre forebay; (2) a 6,125-foot-long concrete and wood flume; (3) a 500-foot-long steel penstock; and (4) a powerhouse with a 7.5-megawatt unit.

The Oneida facilities consist of: (1) the 111-foot-high and 456-foot-long concrete gravity Oneida dam; (2) the Oneida reservoir with an active storage of 10,880 acre-feet and a surface area of 480 acres; (3) a 16-foot-diameter, 2,240-foot-long flowline; (4) a surge tank; (5) three 12-foot-diameter, 120-foot-long steel penstocks; (6) the Oneida powerhouse with three units with a total installed capacity of 30 megawatts; and (7) other appurtenances.

Explanatory Statement
for the Bear River Settlement Agreement

The FERC licenses for these facilities expired on October 1, 2001. Since that time, the facilities have been operating on annual licenses. Since 1996, PacifiCorp has been in the process of seeking New Licenses for these facilities by undertaking studies, consulting with state, federal and tribal resource agencies, preparing license applications, and responding to Additional Information Requests from FERC. Final license applications for these facilities were filed with FERC on September 27, 1999.

B. History of Settlement Discussions

Comments received from public and agency participants on the draft license applications, distributed in November 1998, suggested that significant disagreements existed between PacifiCorp and the stakeholders. A draft offer of settlement was prepared and discussed with stakeholders in June 1999, but no consensus was reached. Based on comments received on the final license applications, and Additional Information Requests issued by the FERC, company representatives began informal communications during 2001 with agency stakeholders regarding issues and priorities in the Bear River basin related to the Project.

Agency stakeholders requested PacifiCorp's presence at a meeting on November 8, 2001, to discuss relicensing of the Bear River Project. Attendees at that meeting concluded that consensus among the parties on actions to resolve outstanding issues would be preferable to license conditions developed by the FERC with information provided in the license applications. The parties agreed to petition the FERC to delay the Ready for Environmental Analysis ("REA") notice to provide the necessary time to reach agreement. At a follow-up meeting on December 8, 2001, PacifiCorp and agency participants discussed potential components of an enhancement package targeted primarily toward restoration of Bonneville cutthroat trout ("BCT").

Subsequent meetings included agency and non-governmental stakeholders, referred to collectively as the Consensus Group. Nine Consensus Group meetings (including one teleconference call and two meetings that involved primarily legal representatives of the parties) were conducted between January 15 and May 23, 2002. An additional public meeting was conducted on February 5 to inform and encourage participation of the public. A final draft Agreement was distributed for a 30-day review to Consensus Group members and all intervenors to the Bear River licensing proceedings. Comments on the draft Agreement were discussed by interested parties during a conference call on July 29, 2002. The final Agreement was signed by the Parties in the State of Idaho Governor's office on August 28, 2002.

C. Mandates and Responsibilities of the Parties

Development of the PM&E measures and decision-making provisions of the Agreement was based on resource agency mandates and mutual agreement of the Parties to employ an ecosystem restoration approach to accomplish resource restoration and enhancement in conjunction with hydropower operations, recreation uses, and other beneficial uses of the Bear River. This section discusses the specific mandates and responsibilities of PacifiCorp; the USFWS, BLM, NPS, USFS, IDEQ, IDFG, IDPR and IDWR (the "Governmental Parties"), the Shoshone-Bannock Tribes (the "Tribes"); and ITU, IRU, GYC and AW (the "Non-governmental Parties" or "NGOs").

Explanatory Statement
for the Bear River Settlement Agreement

1. The Licensee

PacifiCorp is a public utility incorporated under the laws of Oregon. The immediate goal of PacifiCorp is to obtain a new FERC license for the existing Project at a reasonable transaction cost and with license conditions that will provide safe, economical and reliable electric generation in a responsible and environmentally sensitive manner over the term of the New License. The long-term goal of PacifiCorp is for the Project to continue to be a competitive source of least cost, reliable and flexible hydroelectric generation for meeting customer needs. PacifiCorp is obligated to shareholders and customers for service responsiveness, managed risk, and sound investment, given the ultimate need for the Public Utility Commission's ("PUC") prudence finding, which includes a public interest review. PacifiCorp has determined that the Agreement, if approved by FERC as drafted, will satisfy these goals and obligations.

2. The Governmental and Tribal Parties

a. United States Fish and Wildlife Service

USFWS, a bureau of the Department of the Interior, is the principal federal agency responsible for conserving, protecting, and enhancing fish, wildlife, plants, and their habitats. Pursuant to the Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-667(e), USFWS makes recommendations for the conservation of ecosystems upon which such species depend. USFWS also has responsibilities under the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531 *et seq.*, to help federal agencies ensure that their actions do not jeopardize the continued survival and recovery of threatened and endangered species. The only listed species potentially present in the area of the Project is the bald eagle, and the Project is not expected to adversely affect that species; however, BCT, which occurs below the Project, is not listed but is a species of special concern. Although the Agreement can not take the place of consultation under the ESA and therefore should not be considered determinative of USFWS' conclusions under that statute, USFWS believes after careful analysis that the Agreement, if approved unchanged by FERC, will satisfy the requirements of the ESA.

In addition to the above authorities, the Federal Power Act ("FPA"), 16 U.S.C. §§ 791(a) *et seq.*, delegates to the Secretary of the Interior the responsibility to prescribe fish passage requirements in hydroelectric licenses pursuant to Section 18, to provide recommended terms and conditions for the protection, mitigation and enhancement of fish and wildlife and related habitat pursuant to Section 10(j), and to submit recommendations for FERC's consideration pursuant to Section 10(a). Pursuant to these authorities, USFWS intends to submit revised recommendations, terms, conditions and prescriptions consistent with the Agreement.

b. Bureau of Land Management

BLM, a bureau of the Department of the Interior, administers public lands located primarily in 12 Western States for the use and enjoyment of present and future generations. The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) established the BLM as a multiple use agency and set forth the mandate for the land use planning process and the

Explanatory Statement
for the Bear River Settlement Agreement

development of Resource Management Plans. The Resource Management Plan directs the BLM in all natural resource management activities and establishes standards and guidelines for that management. The Project is partially located within BLM-administered lands. Section 4(e) of the FPA, 16 U.S.C. § 791(a)) allows BLM, as delegated by the Secretary of the Department of the Interior, to include in licenses for hydroelectric projects such conditions as it deems necessary for the adequate protection and utilization of BLM-administered lands upon which the Project is located. In addition, BLM may provide recommendations for license conditions pursuant to Section 10(a) of the FPA. Pursuant to these authorities, BLM intends to submit revised recommendations, terms and conditions consistent with the Agreement.

The National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*, sets forth federal agency decision making procedures which involve cooperation and communication with state and local governments, public and private organizations, and concerned members of the public. The measures included in the Agreement as well as the rationale provided herein will be used by BLM in completing any required NEPA analyses. The Parties have agreed to request that FERC include the Agreement in its NEPA documentation as the preferred alternative.

c. National Park Service

NPS, also a bureau of the Department of the Interior, preserves unimpaired the natural and cultural resources and values of the national park system for the enjoyment, education, and inspiration of this and future generations, and cooperates with partners to extend the benefits of natural and cultural resource conservation and outdoor recreation throughout this country and the world. Pursuant to Section 10(a) of the FPA, the NPS may submit recommendations for the New License for FERC’s consideration. NPS intends to submit revised Section 10(a) recommendations consistent with the Agreement.

d. USDA Forest Service

USFS is an agency of the Department of Agriculture and is responsible for managing public lands in national forests and grasslands. The USFS administers National Forest Lands located outside of the Project boundaries within the Bear River basin. Pursuant to Section 10(a) of the FPA, the USFS may submit recommendations for the New License for FERC’s consideration. USFS intends to submit revised Section 10(a) recommendations consistent with the Agreement.

e. Shoshone-Bannock Tribes

The measures contained in the Agreement are intended to fulfill the United States’ fiduciary duties towards the Tribes and any obligations that PacifiCorp may have in regards to operation of the Project over the term of the New License pursuant to the Fort Bridger Treaty of 1868 (15 Stat. 673) and other federal, state and tribal laws and regulations. The Project is not located within the Tribes’ reservation. The Parties have not determined in the Settlement Agreement whether any portion of the Project land includes unoccupied lands where Tribal hunting and fishing are reserved under Article 4 of the For Bridger Treaty of 1868.

Explanatory Statement
for the Bear River Settlement Agreement

f. Idaho Department of Environmental Quality

IDEQ is the state agency responsible for implementing environmental protection laws and programs for the state of Idaho. IDEQ manages a broad range of activities, including identification of problem areas; regulation of facilities that generate air, water, and hazardous waste pollution; air and water quality monitoring; cleanup of contaminated sites; and providing education and technical assistance to businesses, local and state government agencies, and interested Idaho citizens. Pursuant to Section 10(a) of the FPA, IDEQ may submit recommendations for the New License for FERC's consideration. IDEQ intends to submit revised Section 10(a) recommendations consistent with the Agreement.

In addition, pursuant to Section 401 of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251-1387, IDEQ is responsible for certifying that the Project, as operated under the New License, will meet water quality standards ("401 Certification"). As of the Effective Date of the Agreement, IDEQ had not yet issued its 401 Certification. The Agreement and its Appendices set forth a process to achieve 401 Certification and IDEQ's intended conditions for the 401 Certification.

g. Idaho Department of Fish And Game

Pursuant to Section 10(j) of the FPA, IDFG is responsible for providing recommended terms and conditions for the protection, mitigation and enhancement of fish and wildlife and related habitat. IDFG may also submit recommendations for the New License for FERC's consideration pursuant to FPA Section 10(a). IDFG intends to submit revised Sections 10(a) and 10(j) recommendations, terms and conditions consistent with the Agreement.

h. Idaho Department of Parks And Recreation

IDPR is the state agency charged with formulating and executing a long range, comprehensive plan and program for the acquisition, planning, protection, operation, maintenance, development and wise use of areas of scenic beauty, recreational utility, historic, archaeological or scientific interest, to the end that the health, happiness, recreational opportunities and wholesome enjoyment of the life of the people may be further encouraged. Pursuant to Section 10(a) of the FPA, IDPR may submit recommendations for the New License for FERC's consideration. IDPR intends to submit revised Section 10(a) recommendations consistent with the Agreement.

i. Idaho Department Of Water Resources

IDWR is the state agency charged with ensuring that water and energy are conserved and available for the sustainability of Idaho's economy, ecosystems, and resulting quality of life. IDWR achieves this mandate through controlled development, wise management, and protection of Idaho's surface and ground water resources, stream channels, and watersheds; and promotion of cost-effective energy conservation and use of renewable energy sources. Pursuant to Section 10(a) of the FPA, IDWR may submit recommendations for the New License for FERC's

Explanatory Statement
for the Bear River Settlement Agreement

consideration. IDWR intends to submit revised Section 10(a) recommendations consistent with the Agreement.

3. The Non-governmental Parties

a. Idaho Council Trout Unlimited

ITU's mission is to conserve, protect and enhance the watersheds and cold water fisheries of the state of Idaho. ITU intends to submit to FERC revised comments and recommendations for the New License consistent with the Agreement.

b. Idaho Rivers United

IRU's mission is to protect, restore and improve the rivers of Idaho and the communities that depend on them, focusing on issues such as establishment of instream flows, protection of wild rivers, keeping rivers clean and healthy, defending at-risk populations of fish, and minimizing the impacts of dams on Idaho's rivers. IRU intends to submit to FERC revised comments and recommendations for the New License consistent with the Agreement.

c. Greater Yellowstone Coalition

GYC's mission is to protect and conserve the Greater Yellowstone Ecosystem (GYE) and its full range of life, now and for future generations. GYC advocates ecosystem-level sustainability as a guide to the management of the region's public and private lands. GYC works to ensure that a thoughtful and holistic approach is taken to managing the natural resources of the GYE. GYC works to shape a future where wildlife populations maintain their full diversity and vitality, where ecological processes function on public lands with minimal intervention, where exceptional recreational opportunities abound for visitors and residents alike, and where communities can enjoy a healthy and diversified economy. GYC intends to submit to FERC revised comments and recommendations for the New License consistent with the Agreement.

d. American Whitewater

American Whitewater Affiliation (AW) is a national organization with a membership of 8,000 individual whitewater boating enthusiasts and more than 160 local canoe club affiliates, representing approximately 80,000 whitewater paddlers. AW was founded in 1954 to protect and enhance the recreational enjoyment of private whitewater sports in America. AW is dedicated to safety, education, and the conservation of America's whitewater rivers. The mission of the organization is to conserve America's whitewater resources and to enhance opportunities to safely enjoy them. The AW web site is located at www.americanwhitewater.org. A significant percentage of the membership resides in the interior Rocky Mountains and has a direct interest in the outcome of the relicensing of hydropower projects located on the Bear River.

Explanatory Statement
for the Bear River Settlement Agreement

D. Operational Constraints

A critical component underlying the Agreement is the Parties' recognition that PacifiCorp's ability to manipulate reservoir levels and provide flows at the Projects is restricted by and subject to water rights and flood control responsibilities that are memorialized in part in water contracts and agreements, judicial decrees, and interstate compacts. These constraints arise in part out of historic practices that evolved over years of operating to satisfy the vested rights of irrigators and avoid court-imposed flooding liability. The Agreement stipulates that in no event shall PacifiCorp be required to breach or take any action inconsistent with such constraints, each of which are described in further detail below.

1. Sugar Company Contract

The Bear River/Bear Lake system was developed for irrigation. Work began in 1889 on the major irrigation canals near the mouth of the river and in 1902 on the diversion from Bear River into Bear Lake for storage to supply the irrigation canals. The promoter who commenced this work went broke, and the U&I Sugar Company acquired the promoter's position. The Sugar Company developed a small hydro plant near the intake of its canals to supply power to its sugar processing plant. In 1912, U&I Sugar Company conveyed all of its interest in its project, water rights, hydro plant, lands, easements and transmission lines to Utah Power & Light Company, PacifiCorp's predecessor, in return for an absolute guarantee in perpetuity to supply the Sugar Company and its successors with 900 cfs during the irrigation season and 150 cfs during the non-irrigation season. That transaction is called the 1912 Sugar Company Conveyance and Agreement (the "Sugar Company Contract").

The Sugar Company Contract is not a typical water supply contract where water is delivered for a fee. Its basis was a conveyance of real property (including water rights) to PacifiCorp in consideration for water delivery. The Utah Supreme Court held that the Sugar Company Contract is perpetual, and that the Sugar Company's shareholders own not "shares," but "deeds of perpetual water rights" based on the Sugar Company Contract. Holmgren v. Utah-Idaho Sugar Co., 582 P.2d 856 (Utah 1978).

PacifiCorp delivers the Sugar Company Contract water to the lower end of the Bear River. The canals are located at the Cutler hydroelectric project dam. In all but flood years, there is insufficient water flowing naturally in the Bear River to make the guaranteed water delivery, even without hydro generation at Cutler. PacifiCorp must pump water it has previously stored in Bear Lake into a canal, which flows into the Bear River above the Projects to make the guaranteed irrigation water deliveries. The contract provides that if any time PacifiCorp fails to release sufficient water to make the 900 cfs or the 150 cfs available to the Sugar Company, "the Power Company and its successors and assigns *on demand* will forthwith release a sufficient quantity of water from *its reservoir or reservoirs, (whether natural or artificial)*," or will allow the Sugar Company to operate its reservoirs to supply the contracted water. (Italics added). The obligation to supply irrigation water attaches to PacifiCorp's Project reservoirs on the Bear River

Explanatory Statement
for the Bear River Settlement Agreement

if necessary. PacifiCorp must balance operations at each Project with the overriding irrigation water delivery obligation.

2. Last Chance Canal Company Contract

PacifiCorp's contractual arrangement with the Last Chance Canal Company ("Last Chance") is almost as longstanding as its contract with the Sugar Company. Last Chance was the major named defendant in the litigation, Utah Power & Light v. Last Chance Canal Co., (the "Dietrich Decree") to apportion the waters of the Bear River. In the lawsuit, Last Chance filed a counterclaim alleging that PacifiCorp had interrupted the natural flow from the Bear Lake area to the Bear River, which accrued to the benefit of Last Chance's earlier priority natural flow water rights. In 1919, PacifiCorp formalized its Bear Lake relationship with Last Chance by entering into an irrigation contract with Last Chance for supplemental irrigation water stored in and released from Bear Lake. That contract is called the Last Chance Canal Company Contract.

3. Other Irrigation Company Contracts

PacifiCorp has entered into other contracts to supply Bear Lake storage water when the natural flow of the Bear River is insufficient to satisfy the water rights of mainstem irrigators. For example, the Cub River Irrigation Company and the West Cache Irrigation Company contracts were executed in 1916 and 1919, respectively. In 1989 and 1990, PacifiCorp entered into contracts with individual pumpers from the Bear River. These users had been diverting water for many decades, but previously had not been brought under regulation due to their small size. After executing the pumper contracts, PacifiCorp ceased executing new irrigation contracts because PacifiCorp's vested water rights in Bear Lake are fully allocated to the existing irrigation water supply contracts. Not only is there no Bear Lake storage water available for new irrigation contracts, there is no Bear Lake storage water available for relicensing purposes.

4. Judicial Decrees

There are two major court decrees regarding the Bear River between Bear Lake and the Great Salt Lake. The Dietrich Decree established rights in Idaho and, most unusually, recognized the Sugar Company's rights in Utah. Judge Kimball's decree in Utah Power & Light Co. v. Richmond Irrigation Co. (the "Kimball Decree") established rights in Utah while specifically recognizing Judge Dietrich's decree and PacifiCorp's rights to store and release water in Bear Lake.

In each of the decrees, the "aggregate quantity of water to be simultaneously diverted" by PacifiCorp and the Sugar Company for power generation and irrigation at what is now the Cutler hydroelectric plant, below the Projects, is limited, recognizing the intertwined nature of the two users. Additionally, Judge Dietrich recognized the special status of the Sugar Company contract in his decision rendered in connection with the 1920 decree:

Plaintiff's [PacifiCorp's] earlier rights in Utah were acquired by contract from the Utah-Idaho Sugar Company. In view of the peculiar character of the contract, no attempt will be made to define the several interests of the two companies, but the

Explanatory Statement
for the Bear River Settlement Agreement

appropriation in its entirety will be decreed without prejudice to any question that may arise between them touching their relative or separate interests. In the discussion which follows all the rights are referred to as those of plaintiff [PacifiCorp], but it will be understood that such rights include also the interest of the Sugar Company.

Dietrich Decree at 1.

5. Amended Bear River Compact

In 1980, Congress approved the Amended Bear River Compact, which had been ratified by the Wyoming, Idaho and Utah state legislatures the preceding year. Once ratified by Congress, the Compact became federal law. The Bear River Compact was created, among other things, “to accomplish an equitable apportionment of the waters of the Bear River among the compacting States.” Amended Compact, Art. I, A. It further states that “the physical and all other conditions peculiar to the Bear River constitute the basis for this Compact.” Amended Compact, Art. I, B.

In other words, the historic regulation of the Bear River system as well as the existing water rights of users in all three states at the time the Compact was ratified served as its foundation. Waters of the Bear River include Bear Lake. The states agreed to the Compact to protect their water rights and remove the cause of present and future controversy over the distribution and use of the waters of the Bear River. They rely on the Compact to ensure the equitable apportionment of their water entitlements. The longstanding historic management regime for Bear River and Bear Lake, which was the basis of the Bear River Compact, creates vested rights on which the states and the water rights holders rely.

One example of the Bear River Compact creating vested rights for irrigation is found in Article VI, D, where the irrigation reserve is established. Although PacifiCorp is the sole owner of the right to store and release water from Bear Lake, it may not release water from the lake except to satisfy the irrigation contracts when the lake is below the irrigation reserve, now calculated at over elevation 5914.70. Through experience with several droughts, PacifiCorp found that the Compact irrigation reserve did not adequately address evaporation on the lake and otherwise protect its ability to supply the irrigation contracts, so it established its own target irrigation reserve at approximately elevation 5918.00.

When Bear Lake falls below elevation 5912.00, storage of Bear River water upstream of Bear Lake is curtailed by the Compact. Extended droughts require greater irrigation releases from Bear Lake due to lower natural flows in the Bear River. During the non-irrigation season in extended droughts, PacifiCorp stores all available water in Bear Lake. Releases of Bear Lake storage water to satisfy instream flows not only would interfere with storage for irrigation, they would violate federal and state law (the Compact) when the lake is below the irrigation reserve and interfere with the vested rights to store water upstream when the lake is at elevation 5912.00 or lower.

Explanatory Statement
for the Bear River Settlement Agreement

6. Flood Control Liability and Operational Responsibility

In addition to the irrigation contracts, agreements and Compact described above, PacifiCorp's ability to manipulate flows at the Projects is also subject to PacifiCorp's flood control obligations. In Kunz v. Utah Power & Light Co., 526 F.2d 500 (9th Cir. 1975), the Ninth Circuit Court of Appeals imposed a duty of flood control on PacifiCorp. The Court found that, "in its installation and operation of the water storage system, Utah Power established a relationship in which the landowners had to rely on Utah Power to control the spring runoff." Id., at 503-4. The Court reasoned that PacifiCorp's duty of care extended to and required anticipation of extraordinary flood conditions. As a result, PacifiCorp can be held liable for failing to anticipate spring runoff and evacuating Bear Lake to provide room to capture it. In another case, Gossner v. Utah Power & Light Co., 612 P.2d 337 (Utah 1980), the Utah Supreme Court similarly imposed strict flood control liability on PacifiCorp. For these reasons, operation of the Projects is subject to PacifiCorp's flood control obligations.

7. Agreements with Wyoming, Idaho and Utah

As a condition to approval of the ScottishPower-PacifiCorp merger, the three Bear River Compact states required PacifiCorp to formalize its historic Bear River and Bear Lake operational practices. On October 5, 1999, PacifiCorp agreed that its "water rights are constrained by the historic practice of not making a delivery call for hydropower generation; and that Bear Lake is operated, consistent with long-standing historic practice and applicable laws, primarily as a storage reservoir to satisfy contracts for existing irrigation uses and flood control needs in the three States, with the use of water for hydropower generation being incidental to the other purposes for which the water is being released." October 5, 1999 Agreement with Wyoming, Idaho and Utah.

An April 18, 2000 Agreement with Wyoming, Idaho and Utah further described PacifiCorp's operation. A major concern of the states was that PacifiCorp continue to honor natural flow water rights on the Bear River, the majority of which are irrigation rights earlier in priority than PacifiCorp's water rights, and not alter its Project operations in any way to interfere with irrigation. PacifiCorp's historic operations had prioritized irrigation deliveries and flood control operations above hydropower generation where there was a potential for conflict.

PacifiCorp agrees to continue its historic practice of regulating operation at its hydroelectric plants to meet existing downstream demands, some of which have water rights which are earlier in priority than PacifiCorp's hydropower water rights. Such historic operation is consistent with PacifiCorp's FERC licenses.

April 18, 2000 Agreement, ¶ 3.B. Thus, under state law, PacifiCorp may not interfere with earlier priority irrigation water rights by its hydropower operation on the Bear River. Pursuant to the April 18, 2000 Agreement, its historic practice of non-interference with irrigation water rights became a vested right enforceable not only by those holding the irrigation water rights, but by the three Bear River Compact states.

Explanatory Statement
for the Bear River Settlement Agreement

During drought cycles, the natural flow in the Bear River is very low. It must be supplemented during the irrigation season by Bear Lake storage water releases for the irrigation contracts. After the irrigation season, all water at Stewart Dam is diverted into Bear Lake and stored to recover the lake and provide for the following year's irrigation supply. During high water cycles, natural flow in Bear River is high, and often Bear Lake is at a high elevation and must be evacuated. This makes flows in the river even higher. These conditions, together with the water contracts, agreements, Compact and judicial decrees discussed above, significantly constrain PacifiCorp's operation of the Projects. In developing the Agreement which is the subject of this Statement, the Parties considered these constraints and crafted provisions which maximize the benefits that can be provided to the important resources of the Bear River watershed, without requiring PacifiCorp to breach or otherwise act inconsistently with the constraints described in this section. For these reasons, it is important that FERC incorporate Appendix A of the Agreement without modification into the New Licenses.

III. The Affected Environment

There are six hydroelectric facilities located on the Bear River in Idaho and Utah. Described below is the environment near the Bear River Project involved in this relicensing proceeding.

A. Soda

The Soda facility consists of the Alexander Reservoir, dam, spillway, intake, gatehouse, flow conduit, powerhouse housing two vertical Francis turbines, and an adjacent substation. Approximately 16,300 acre-feet of storage are available in Alexander Reservoir. However, increased recreational use of the reservoir, combined with the coordinated control now required to operate the system, have reduced its usable capacity. The reservoir low water elevation cannot fall below the low-level discharge penstock elevation of 5,670.00. The combined authorized discharge for the Soda Plant is 2,624 cfs. The low-level discharge is capable of passing 900 cfs at a normal operating pool of 5,719.00. The maximum water surface level, due to the Probable Maximum Flood (PMF), is elevation 5,735.80.

The Soda facility is situated in the Basin and Range tectonic province of the Intermountain Seismic Belt, a region that extends from southern Montana, through eastern Idaho, western Wyoming and central Utah. Cover types in the Project area are composed of water, cropland/pastureland and sagebrush steppe. Emergent and scrub-shrub wetlands occur in the area, mostly associated with coves along Soda Reservoir. Kelsey's phlox, a sensitive plant species, occurs in the Soda Springs Natural Scenic Area at the north shore of Soda Reservoir. Sensitive wildlife species observed near the Project include the ESA-listed bald eagle, sharp-tailed grouse and trumpeter swan. Suitable habitat for sharp-tailed grouse is found above the ordinary high water, and the reservoir provides suitable habitat for bald eagles and trumpeter swans. Canada geese and mallard ducks have been observed nesting near Soda Reservoir.

Soda Reservoir is a moderately enriched reservoir, occasionally exceeding IDEQ's criterion of dissolved oxygen for cold water biota. The Soda reach is a 2.2 mile-long section of

Explanatory Statement
for the Bear River Settlement Agreement

the Bear River that extends from the Soda Dam to the upper end of the pool formed by the Last Chance Diversion Dam. Water quality in the Soda reach meets IDEQ standards with the occasional exception water temperature in summer. Soda Reservoir supports a warm water fish community primarily composed of yellow perch, common carp and Utah sucker. The game fish community downstream of powerhouse is dominated by stocked rainbow and brown trout, and there is no evidence of trout spawning in the river in the Soda reach.

There are three existing recreational facilities within the Soda Project boundary: a small day use area at the downstream end of Soda Reservoir near Soda Dam; a second day use area on the reservoir about 0.5 mile upstream of Soda Dam known locally as Second Bridge site; and the Oregon Trail Park on the reservoir near Soda Springs. PacifiCorp owns and maintains the day use site near the dam. The recreation facilities are weekend destinations to fish, motorboat and water ski. PacifiCorp estimates that current facilities are adequate to meet current and future demand. The river downstream of Soda Dam flows through a narrow rocky canyon for about two miles until it enters the Last Chance Division Dam impoundment. The river supports some limited fishing and conditions suitable for flatwater boating. PacifiCorp's relicensing studies identified eight sites near the Soda facility eligible for inclusion in the National Register of Historical Places (NRHP).

B. Grace-Cove

The Grace/Cove facility consists of two hydroelectric developments (total capacity of 40.5 MW) located on the Bear River in Caribou County near the town of Grace, Idaho. The facility consists of the Grace and Cove diversion dams, forebays, flow lines, and powerhouses.

The Grace forebay covers 38 surface acres and has a total storage capacity of 320 acre-feet. At full pool, the forebay has an average depth of about 14 feet, and the surface elevation varies by about 0.3 foot in any one day and about eight feet over a typical operating year. The Grace bypass is a 6.0-mile long section of the Bear River that extends from the Grace dam to the Grace powerhouse. The Cove forebay covers about 10 surface acres and storage capacity of 60 acre-feet. At full pool, the forebay has an average depth of about seven feet and may vary by about 0.1 foot in any one day and about four feet over a typical operating year. The Cove bypass is a 1.3-mile long section of the Bear River that extends from Cove dam to Cove powerhouse. Currently flows in the bypass reaches are provided by leakage from the dams and natural springs in the lower end of the Grace bypass reach.

Cover types in the area of the Grace/Cove facility consist of cropland/ pastureland, sagebrush steppe, and cliff/rock/talus. A small amount of emergent and scrub-shrub wetlands occur in the area, mostly associated with the Bear River upstream and downstream of Black Canyon and along the Cove Bypass. No ESA-listed or sensitive plant species are known to be present in the vicinity of the facility. The only sensitive wildlife species observed near the Project is the ferruginous hawk; suitable habitat for ferruginous hawk occurs above the ordinary high water and away from Grace/Cove facilities. Canada geese nest in the vicinity of the Grace and Cove forebays, and mallards have been observed nesting throughout the area. In addition to hydroelectric development, land use in the area includes agriculture crop production and livestock.

Explanatory Statement
for the Bear River Settlement Agreement

Grace forebay is meso-eutrophic, or moderately enriched. Water quality in the forebay meets all water quality standards established by IDEQ to support designated uses for the forebay with the exception of dissolved oxygen for cold water biota. While in summer DO levels in the forebay are occasionally less than the established standard, levels rarely drop below 3.9 milligrams per liter (mg/l). These DO levels would have little impact on the warm-water fish populations (carp, smallmouth bass, yellow perch, Utah sucker and redbreasted sunfish) that occur in the forebay since the low levels rarely occur and affect only the deepest portion of the forebay.

Grace Bypass is a 6.0-mile long section of the Bear River that extends from the Grace Dam to the Grace Powerhouse. Currently, flow in Grace Bypass is composed of leakage from Grace Dam (ranging from 1 to 10 cfs depending on the time of year and weather conditions), and contributions from five major springs (ranging from 40 to 70 cfs, depending on the time of year and weather conditions) that enter Grace Bypass about three miles downstream of Grace Dam.

Relicensing studies indicated that water quality in Grace and Cove Bypasses meet all water quality standards established by IDEQ to support designated uses in the bypass with the exception of water temperature to support salmonid spawning and cold water biota. Grace Bypass supports an IDFG-stocked fishery composed of juvenile and adult rainbow trout, primarily in the lower section of the bypass.

C. Oneida

The Oneida facility consists of the Oneida Reservoir, dam, spillway, three 12-foot diameter penstocks, a powerhouse housing three generating units rated at 30 MW, and other appurtenances. Oneida Reservoir is a long and narrow reservoir covering 480 surface acres with a usable storage capacity of 11,500 acre-feet. At full pool, the reservoir has an average depth of about 28 feet, with a maximum depth of about 85 feet.

Most of the cover types in the Oneida facility area are composed of juniper/maple woodland, sagebrush steppe, cropland/pasture, and water. Emergent, scrub-shrub and forested wetlands occur in the area, mostly associated with the upstream end of Oneida Reservoir and the Bear River downstream of Oneida Dam. Established riparian vegetation is composed of species tolerant of frequent watering. No TES plant species were found in the vicinity of the Oneida facility. Sensitive wildlife species observed in the vicinity of the Oneida facility include bald eagle, ferruginous hawk, sharp-tailed grouse, trumpeter swan, leopard frog and rock squirrel.

Relicensing studies indicated that Oneida Reservoir is meso-eutrophic, or moderately enriched. Water quality in the reservoir meets all water quality standards established by IDEQ to support designated beneficial uses with the exception of dissolved oxygen. Oneida Reservoir supports a warm water fish population primarily composed of walleye, carp and yellow perch. The nearest known populations of BCT near the project occur in headwater of tributaries such as Cottonwood Creek and Mink Creek. The Bear River from Oneida Dam to Oneida Powerhouse (Oneida Bypass) supports a naturally-reproducing population of brown trout, and the game fish

Explanatory Statement
for the Bear River Settlement Agreement

community in the Bear River downstream of powerhouse is dominated by a self-sustaining population of mountain whitefish and stocked brown and rainbow trout.

PacifiCorp studies show that the existing recreational facilities on Oneida Reservoir (Maple Grove Campground and Oneida Day Use Area) facilities are popular weekend destinations for camping, fishing, and boating. The recreational facility on the Bear River downstream of the Oneida facility owned by BLM (Redpoint Campground) also is a popular weekend destination where users camp, fish, wade, tube, and kayak the river. At high flows, the river downstream of the Oneida facility is a Class I or II whitewater boating opportunity suitable for beginners. Relicensing studies indicated that the carrying capacity for these recreational facilities is met or exceeded on about one-half of the weekends in summer. PacifiCorp currently accommodates fishing by limiting releases below the powerhouse to 500 cfs for several hours on weekends in the summer. Boaters/tubers have expressed a desire for higher and more reliable flows on weekends.

IV. Studies and Existing Information

Relicensing studies were conducted between 1996 and 1998 to assess the effects of the presence and operation of the Bear River projects (PacifiCorp 1999a, b, c). Applications submitted to the FERC on September 27, 1999, document the results of these studies, including:

- Water Quality studies
- Bathymetry studies
- Dissolved oxygen studies
- Sediment loading study
- Erosion and bank stability study (reported in Dobrowolski and Allred 1999)
- Fish community studies
- Fish littoral zone and habitat mapping studies
- Benthic macroinvertebrate studies
- Zooplankton studies
- Instream flow studies
- Juvenile fish stranding study
- Trout spawning gravel study
- Threatened and endangered wildlife species studies
- Migratory bird species surveys
- Vegetation cover type mapping
- Riparian zone vegetation studies
- Threatened and endangered botanical species studies
- Cultural resources studies
- Recreation resources studies
- Land use and aesthetics studies

In addition to studies conducted as part of project license preparation, PacifiCorp also conducted a number of studies in response to Additional Information Requests (AIRs) from the FERC, including:

- General investigations to clarify information to the FERC (PacifiCorp 2000, 2001a)

Explanatory Statement
for the Bear River Settlement Agreement

- Grace whitewater boating (PacifiCorp 2001b)
- Oneida recreation use (PacifiCorp 2001c)
- Wetland and riparian habitat assessment (PacifiCorp 2001d)
- Bonneville cutthroat trout restoration feasibility (PacifiCorp 2001e)
- Cove bypassed reach instream flow study (PacifiCorp 2001f)

Other information referred to in planning for Bonneville cutthroat trout restoration and discussed during settlement meeting included the *Range-wide Conservation Agreement and Strategy for Bonneville Cutthroat Trout* (RCAS 2000) and *Cutthroat Trout Management: A Position Paper, Genetic Considerations associated with Cutthroat trout Management* (CTMAPP 2000).

V. Implementation

A. Timing

A significant benefit provided by the Agreement is increased certainty concerning the timing and implementation of PM&E measures. The Parties have negotiated a comprehensive schedule for implementing such measures to ensure that beneficial measures are implemented in a timely way, recognizing the potential delays often encountered in the relicensing process. Such a schedule likewise enables PacifiCorp to better plan and coordinate its future capital expenditures.

The Parties have agreed to implement a suite of PM&E measures before the New Licenses issued by FERC become final. Such measures, which will be implemented upon FERC's issuance and PacifiCorp's acceptance of the New Licenses, include (1) funding for BCT measures such as genetic sampling and analysis, aerial photography, Geographic Information System depictions, and telemetry studies; (2) implementation of minimum flows at the Cove bypass; and (3) designation of representatives to an environmental decision-making committee, discussed in further detail below. Implementation of such measures immediately following issuance and acceptance of the New Licenses will allow the Parties to begin planning restoration and other important PM&E measures as soon as possible in the license terms.

B. Coordination and Decision Making

The Agreement creates an Environmental Coordination Committee ("ECC") whose responsibilities include, among other things, (1) facilitating coordination and consultation among the Parties on implementation of PM&E measures; (2) proposing and approving restoration and flow measures; (3) establishing monitoring criteria to evaluate the effects of PM&E measures; and (4) coordinating and implementing PM&E measures. Another important function of the ECC is to provide a forum for involvement by other interested parties. The ECC will be comprised of one representative from PacifiCorp, the Tribes, each Governmental Party, and each NGO. Each Party that is a member of the ECC will designate a representative to the ECC within sixty days of FERC's issuance and PacifiCorp's acceptance of the New Licenses.

Creation of the ECC will improve the protection of ecological, cultural, aesthetic, and recreational resources by ensuring that there is a high level of communication and coordination

Explanatory Statement
for the Bear River Settlement Agreement

among resource agencies, PacifiCorp and other members of the ECC prior to implementation of management actions. Creation of the ECC will also ensure a continued collaborative approach among the Parties, thus establishing an atmosphere of cooperation that will speed implementation of the Agreement and ensure its efficacy.

C. Duration

The Parties recommend that FERC adopt 30-year license terms for the New Licenses. This period provides PacifiCorp with sufficient certainty and gives the ECC sufficient time to implement significant resource measures to protect and enhance aquatic habitat.

VI. Rationale for PM&E Measures

A. Aquatic Resources

A history of water diversion for irrigation, hydropower development, and cattle grazing in the Bear River basin in Southeast Idaho has resulted in habitat degradation to native fish populations; impacts to riparian, wetland and other terrestrial habitat; a disruption of geomorphological processes; fragmentation of fish populations; and reduced water quality in the mainstem Bear River near the Project. Remedies to improve upon these conditions is complicated by human demands on the Bear River that are expected to continue through the next license period. Therefore, the Parties agreed that restoration of river processes, water quality, and habitat conditions should be the first step in mitigating effects of the Bear River Project. This, in addition to enhanced instream flows in river reaches affected by Project operations, may be expected to improve conditions in the mainstem Bear River near the Project.

The Parties will collaborate in the preparation of a plan for restoration of native fish and direct the use of mitigation funding. During the first few years of the new license, the Parties will conduct studies that will lead to the development of a BCT restoration plan. The restoration plan will provide a framework for the long-term protection, mitigation, and enhancement of habitats necessary to the persistence of BCT in the Bear River drainage. Implementation of conservation actions that are identified in the restoration plan will address the elimination or reduction of threats to the species' survival. Funding will also be available to conduct actions to restore aquatic habitat, acquire land and water rights from willing landowners in the area, and stock native fish species as habitat improvements are made.

B. Recreation Resources

Recreational boating has been a popular activity in the Bear River near the Project, but available flow in some sections of the river affected by Project operations have not in the past met the needs of some Parties. Inasmuch as water available for whitewater boating and power generation is subject to legally mandated water rights and multi-state agreements, the Parties agreed to increase recreational boating opportunities in the Grace bypass reach consistent with historic water uses and other priorities in the Bear River basin. As water is available, PacifiCorp will re-divert water from the project flowline to the bypass reach for specified time periods during spring and early summer each year, and notify the public when releases will occur. Put-in

Explanatory Statement
for the Bear River Settlement Agreement

and take-out access points will be improved. Monitoring studies of the effects of these high flows will be conducted during initial years of the new license to assure that recreational boating releases are consistent with native fish habitat restoration in the Grace bypass reach.

Camping and day use will continue to be popular activities during the next license period. The parties agreed that a relatively undeveloped and primitive experience is the desired condition, while maintaining safety for the public. Pursuant to these goals, PacifiCorp will develop a safety plan and provide funding for upgrading facilities near the Oneida development, and provide support to the county for recreation facilities at Soda reservoir.

C. Cultural Resources

PacifiCorp conducted inventories of cultural resources and historic properties during relicensing studies. As part of the Agreement, these resources will be conserved during the next license period. PacifiCorp will prepare an Historic Properties Management Plan to protect cultural resources potentially affected by project operations. The Plan will be developed consistent with the FERC guidelines and in consultation with the Tribes and state and federal agencies.

D. Land Management

PacifiCorp owns relatively little land near the Project. However, a Land Management Plan will be developed to protect resources on company lands due to Project operations. Consistent with identified goals of habitat restoration and improved water quality, PacifiCorp lessees will be required to maintain a buffer zone on parcels near project reservoirs and the Bear River in order to reduce grazing impacts to riparian vegetation. Further, PacifiCorp will fence a buffer zone on its property in the particularly impacted area of the Cove bypass reach.

VII. Conclusion

For the reasons set forth in this Statement and in the Agreement, the Parties believe that the Agreement is fair, reasonable, and in the public interest, and recommend that FERC accept and incorporate without modification the PM&E measures set forth in Appendix A of the Agreement as license articles in the New License.

VIII. Literature Cited

Dobrowolski, J. P. and M. D. Allred. 1999. Potential for bank stability decline due to drastic flow level change in the Bear River. Utah State Univ. final report submitted to PacifiCorp. December 8, 1999.

PacifiCorp. 1999a. Soda Hydroelectric Project License Application. FERC Project No. 2401. Portland, Oregon.

PacifiCorp. 1999b. Grace/Cove Hydroelectric Project License Application. FERC Project No. 20. Portland, Oregon.

Explanatory Statement
for the Bear River Settlement Agreement

PacifiCorp. 1999c. Oneida Hydroelectric Project License Application. FERC Project No. 472. Portland, Oregon.

PacifiCorp. 2000. Additional Information Request response. Report submitted to the FERC. June 8, 2000.

PacifiCorp. 2001a. Additional Information Request response. Report submitted to the FERC. July 24, 2001.

PacifiCorp. 2001b. Grace whitewater boating report. Additional Information Request response. Report submitted to the FERC. September 22, 2001.

PacifiCorp. 2001c. Oneida recreation use report. Additional Information Request response. Report submitted to the FERC. September 22, 2001.

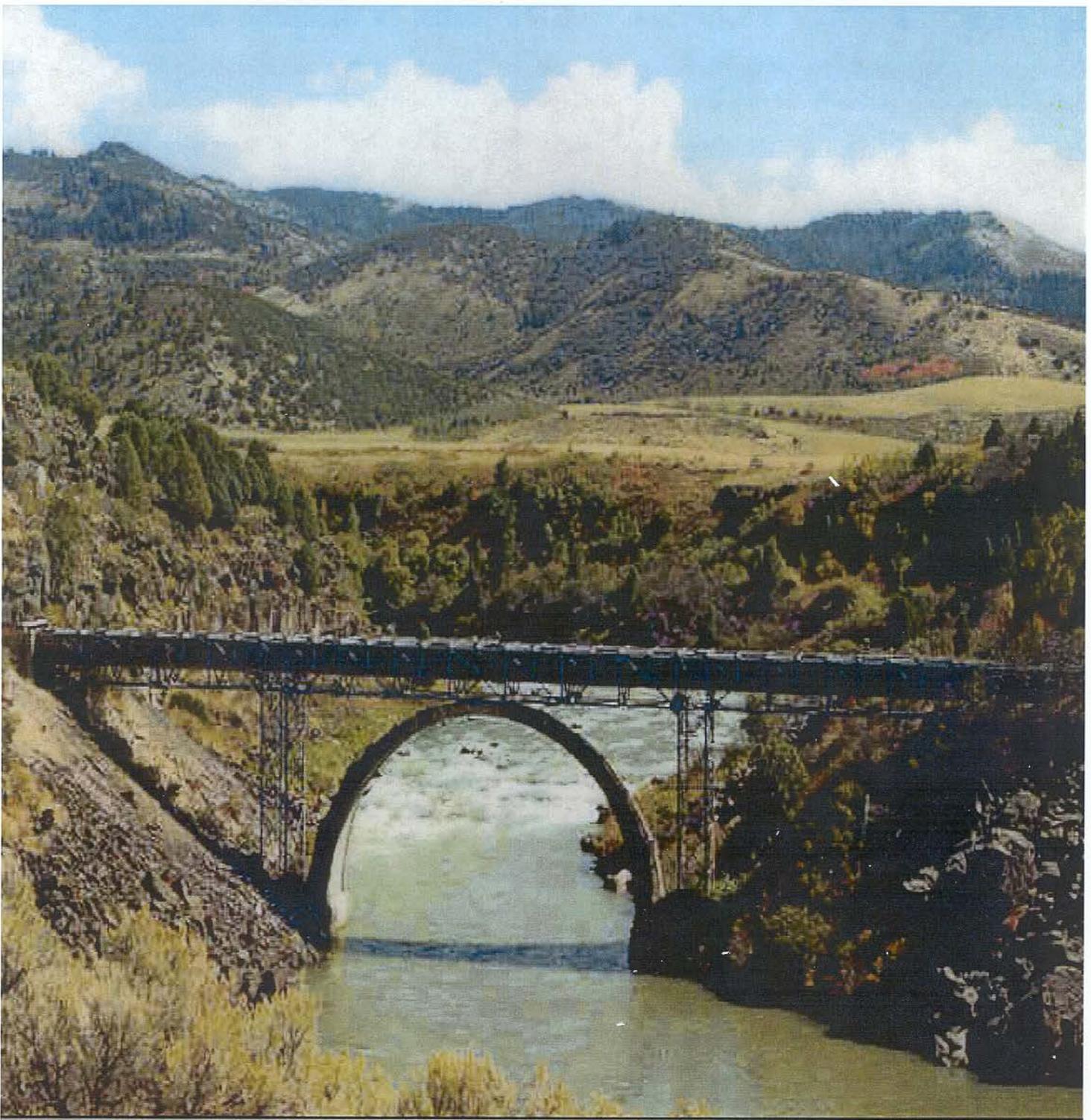
PacifiCorp. 2001d. Wetland and riparian habitat assessment. Additional Information Request response. Report submitted to the FERC. September 22, 2001.

PacifiCorp. 2001e. Bonneville cutthroat trout restoration feasibility plan. Additional Information Request response. Report submitted to the FERC. November 6, 2001.

PacifiCorp. 2001f. Cove bypassed reach instream flow study report. Additional Information Request response. Report submitted to the FERC. November 21 2001.

Utah Division of Wildlife Resources (RCAS). 2000. Range-wide Conservation Agreement and Strategy for Bonneville cutthroat trout. Publ. No. 00-19.

Utah Division of Wildlife Resources (CTMAPP). 2000. Cutthroat trout management: a position paper, genetic considerations associated with cutthroat trout management. Publ. No. 00-26.



SETTLEMENT AGREEMENT

**RESOLVING THE RELICENSING OF THE
BEAR RIVER HYDROELECTRIC PROJECTS**

DATED

AUGUST 28, 2002

SETTLEMENT AGREEMENT

AMONG
PACIFICORP
UNITED STATES FISH AND WILDLIFE SERVICE
UNITED STATES BUREAU OF LAND MANAGEMENT
UNITED STATES NATIONAL PARK SERVICE
USDA FOREST SERVICE
SHOSHONE-BANNOCK TRIBES
IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY
IDAHO DEPARTMENT OF FISH AND GAME
IDAHO DEPARTMENT OF PARKS AND RECREATION
IDAHO COUNCIL OF TROUT UNLIMITED
IDAHO RIVERS UNITED
GREATER YELLOWSTONE COALITION
AMERICAN WHITEWATER

DATED

AUGUST 28, 2002

CONCERNING THE RELICENSING OF THE
BEAR RIVER HYDROELECTRIC PROJECTS
FERC PROJECT NOS. 20, 472, AND 2401
CARIBOU AND FRANKLIN COUNTIES
IDAHO

Bear River Settlement Agreement

TABLE OF CONTENTS

	Page
PARTIES TO THE AGREEMENT.....	1
RECITALS	1
DEFINITIONS	3
SECTION 1: PURPOSE AND EFFECT OF THIS AGREEMENT	9
1.1. Purpose of Agreement.....	9
1.1.1. Section 18 of the FPA.....	9
1.1.2. Section 4(e) of the FPA.....	9
1.1.3. Section 10(j) of the FPA.....	10
1.1.4. Section 10(a) of the FPA.....	10
1.1.5. Treaty and Federal Trust.....	10
1.1.6. Threatened and Endangered Species.....	10
1.1.7. Water Quality Certification.....	11
1.2. NEPA Analysis.....	11
1.3. Limitations.....	11
1.4. Representations Regarding Consistency and Compliance with Statutory Obligations.....	12
1.5. Conditions Precedent and Conditions Subsequent.....	12
1.6. License Terms.....	12
1.7. Flow Terms Are Not State Water Rights.....	12
SECTION 2: ACTIONS UPON EXECUTION OF THIS AGREEMENT	13
2.1. FERC Filings.....	13
2.2. Permits.....	13
2.3. Communications with FERC and Other Government Agencies.....	13
2.4. Timing of Obligations.....	13
SECTION 3: PROTECTION, MITIGATION AND ENHANCEMENT MEASURES	14
3.1. Restoration Measures for Aquatic Resources.....	14
3.1.1. Preparation of BCT Restoration Plan.....	14
3.1.2. BCT Restoration Plan Elements.....	14
3.1.2.1. Genetic Sample Analysis.....	15
3.1.2.2. Aerial Photo Flight and Analysis.....	15
3.1.2.3. Irrigation Diversion Map.....	15
3.1.2.4. Telemetry Studies.....	15
3.1.2.5. Broodstock Development.....	15
3.1.2.6. Cove Feasibility Study.....	15
3.1.3. Conservation Hatchery Program.....	16
3.1.4. Habitat Enhancement and Restoration Actions.....	16
3.1.5. Land and Water Acquisition.....	16
3.1.6. Monitoring in Black Canyon.....	17
3.1.6.1. Monitoring Requirements.....	17
3.1.6.2. Funding of Monitoring.....	18
3.1.6.3. Response to Monitoring.....	18
3.2. Instream Flows.....	19

Bear River Settlement Agreement

3.2.1. Minimum Flow Schedules.....	19
3.2.1.1 Exceptions.....	19
3.2.1.2. Fish Recovery.....	19
3.2.2. Adaptive Flow Management.....	20
3.2.3. Kackley Springs.....	20
3.3. Ramping.....	20
3.3.1. Annual Maintenance.....	20
3.3.2. Increasing Ramp Rates.....	20
3.4. Recreation.....	21
3.4.1. Recreation Management Plan.....	21
3.4.1.1. Funding for Campgrounds.....	21
3.4.1.2. Traffic Safety Plan.....	21
3.4.1.3. Turn-around Loops.....	21
3.4.1.4. Law Enforcement.....	21
3.4.1.5. Dust Abatement.....	22
3.4.1.6. Upgrade Campground Facilities.....	22
3.4.2. Assistance to Caribou County.....	22
3.4.3. Improvements to Put-in and Take-out Facilities.....	22
3.4.3.1. Black Canyon.....	22
3.4.3.2. Oneida Narrows.....	22
3.4.4. Whitewater Boating Flows in Black Canyon.....	23
3.4.5. Whitewater Boating Flows in the Oneida Narrows.....	24
3.4.6. Bear River Flow Information.....	24
3.4.7. Deviations.....	25
3.5. Historic Properties and Cultural Resources.....	25
3.6. Land Management.....	25
3.6.1. Shoreline Buffer Zone.....	26
3.6.2. Fencing Within the Cove Bypass.....	26
SECTION 4: COORDINATION AND DECISION MAKING.....	27
4.1. Environmental Coordination Committee.....	27
4.2. Decision-Making Process.....	27
4.2.1. Decision Rule in the Absence of Consensus.....	28
4.2.2. Elevation of Decision Making.....	28
4.2.3. Teleconferencing.....	28
4.2.4. Designating a Proxy.....	29
4.3. Notice.....	29
4.4. Environmental Coordinator.....	29
4.5. Meetings.....	29
4.6. Reports.....	29
SECTION 5: IMPLEMENTATION OF AGREEMENT.....	31
5.1. Parties Bound.....	31
5.2. Resolution of Disputes Before Order Issuing New Licenses.....	31
5.3. Resolution of Disputes After Order Issuing New Licenses.....	32
5.3.1. New License Conditions Inconsistent with This Agreement.....	32

Bear River Settlement Agreement

5.3.2. PM&E Measures Omitted from New Licenses.	32
5.3.3. Change in Terms and Conditions During License Terms.	32
5.3.4. PacifiCorp Fails To Perform License Terms.	33
5.3.5. PacifiCorp Fails To Perform Covenants of This Agreement Not Included in the New Licenses.	33
5.3.6. Action by Third Party.	33
5.3.7. Review of FERC Actions.	33
5.3.8. Review of Other Agency Actions.	34
5.3.9. New ESA Listing.	34
5.4. Cooperation Among Parties.	34
5.4.1. Responsibility for Costs.	34
5.4.2. PacifiCorp Solely Responsible for Operations of Projects.	34
5.4.3. Availability of Funds.	35
5.4.4. Escalation of Costs.	35
5.5. Reopener, Modification, Review, or Amendment.	36
5.5.1. Reopener or Modification.	36
5.5.2. Amendment of Agreement.	36
5.6. Dispute Resolution.	36
5.6.1. General.	36
5.6.2. ADR Procedures.	36
5.6.3. Enforcement of Agreement After Dispute Resolution.	37
5.7. Withdrawal from Agreement.	37
5.7.1. Withdrawal of a Party from Agreement.	37
5.7.2. Method of Withdrawal.	37
5.7.3. Continuity After Withdrawal.	37
5.8. Termination of Agreement.	37
5.9. Manner of Funding.	37
5.10. Relationship to Water Contracts and Agreements, Interstate Compact, Water Rights, Judicial Decrees and Flood Control Responsibility.	38
SECTION 6: GENERAL PROVISIONS	40
6.1. No Third-Party Beneficiaries.	40
6.2. Successors and Assigns.	40
6.3. Failure to Perform Due to Force Majeure.	40
6.4. Governing Law.	40
6.5. Elected Officials Not to Benefit.	41
6.6. No Partnership.	41
6.7. Reference to Statutes or Regulations.	41
6.8. Notice.	41
6.9. Paragraph Titles for Convenience Only.	41
6.10. Entire Agreement.	41
6.11. Appendix A.	41
SECTION 7: EXECUTION OF AGREEMENT	42
7.1. Signatory Authority.	42
7.2. Signing in Counterparts.	42

Bear River Settlement Agreement

APPENDICES & EXHIBITS

Appendix A	Measures Recommended To Be Included in the New License and Final Terms and Conditions for the Bear River Projects
Appendix B	Representatives of the Parties
Appendix C	Relevant Water Contracts, Water Agreements, and Judicial Decrees
Appendix D	Draft Bear River 401 Certification Conditions
Exhibit 1	Implementation Schedule
Exhibit 2	Cost Calculation For Additional Instream Flows

**Parties to the
Agreement**

Bear River Settlement Agreement

PARTIES TO THE AGREEMENT

This Settlement Agreement (the "Agreement") is made as of the day that the last Party identified in this paragraph executes the Agreement (the "Effective Date") pursuant to Federal Energy Regulatory Commission ("FERC") Rule 602, 18 C.F.R. § 385.602, by and among PacifiCorp, an Oregon corporation; United States Fish and Wildlife Service ("USFWS"); United States Bureau of Land Management ("BLM"); United States National Park Service ("NPS"); USDA Forest Service ("USFS"); Shoshone-Bannock Tribes ("Tribes"); Idaho Department of Environmental Quality ("IDEQ"); Idaho Department of Fish and Game ("IDFG"); Idaho Department of Parks and Recreation ("IDPR"); Idaho Council of Trout Unlimited ("ITU"); Idaho Rivers United ("IRU"); Greater Yellowstone Coalition ("GYC"); American Whitewater ("AW"); and other intervenors to the FERC proceedings related to this Agreement who have executed this Agreement below, each referred to individually as a "Party" and collectively as the "Parties." The USFWS, BLM, NPS, USFS, IDEQ, IDFG and IDPR are also each a "Governmental Party" and are referred to collectively as the "Governmental Parties." The ITU, IRU, GYC and AW are also referred to collectively as the "Non-governmental Parties" ("NGOs").

RECITALS

A. PacifiCorp is the licensee for the Soda Hydroelectric Project (FERC No. 20), Grace/Cove Hydroelectric Project (FERC No. 2401) and Oneida Hydroelectric Project (FERC No. 472), (hereinafter "Soda Project," "Grace/Cove Project," and "Oneida Project," and collectively the "Bear River Projects" or "Projects"). The Projects are located on the Bear River in Caribou and Franklin Counties, Idaho, and are partially located on United States lands administered by BLM. Collectively, the Projects generate approximately 84.5 megawatts of electricity.

B. The FERC licenses for the Projects expired on October 1, 2001. Since that time, the Projects have been operating on annual licenses. Since 1996, PacifiCorp has been in the process of seeking New Licenses for the Projects by undertaking studies, consulting with state, federal and tribal resource agencies, preparing license applications, and responding to Additional Information Requests from FERC. Final license applications for the Projects were filed with FERC on September 27, 1999.

C. The Soda Project consists of: (1) the 103-foot-high and 433-foot-long concrete gravity Soda dam with a 114-foot-long spillway section; (2) the Soda reservoir with a surface area of 1,100 acres, and active storage capacity of 16,300 acre-feet, and a maximum water surface elevation of 5,720 feet; (3) the Soda powerhouse containing two units with a total installed capacity of 14 megawatts; and (4) other appurtenances.

Bear River Settlement Agreement

D. The Grace/Cove Project consists of the Grace and Cove developments. The Grace development consists of: (1) a 51-foot-high and 180-foot-long rock filled timber crib dam that creates a 250-acre forebay; (2) a 26,000-foot-long flowline and surge tanks; and (3) a powerhouse with three units with a total installed capacity of 33 megawatts. The Cove development consists of: (1) a 26.5-foot-high and 141-foot-long concrete dam containing a 60-acre forebay; (2) a 6,125-foot-long concrete and wood flume; (3) a 500-foot-long steel penstock; and (4) a powerhouse with a 7.5-megawatt unit.

E. The Oneida Project consists of: (1) the 111-foot-high and 456-foot-long concrete gravity Oneida dam; (2) the Oneida reservoir with an active storage of 10,880 acre-feet and a surface area of 480 acres; (3) a 16-foot-diameter, 2,240-foot-long flowline; (4) a surge tank; (5) three 12-foot-diameter, 120-foot-long steel penstocks; (6) the Oneida powerhouse with three units with a total installed capacity of 30 megawatts; and (7) other appurtenances.

NOW, THEREFORE, in consideration of their mutual covenants in this Agreement, the Parties agree as follows:

Bear River Settlement Agreement

DEFINITIONS

“401 Certification” is defined in Section 1.1.7 below.

“Action Area” refers to the Bear River and land drained by the Bear River and its tributaries below the point of confluence of the Bear Lake Outlet Canal with the mainstem Bear River and above the Idaho-Utah border.

“Alternative Dispute Resolution,” “ADR” or “ADR Procedure” refers to the dispute resolution process set forth in Section 5.6 below.

“Anniversary of the New Licenses becoming final” refers to each anniversary of the date upon which the New Licenses become final. For example, if the New Licenses become final on August 1, 2003, the first anniversary of the New Licenses becoming final will be August 1, 2004, the second anniversary will be August 1, 2005, et cetera.

“American Whitewater” or “AW” is a Missouri corporation and is listed as a Party in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

“Available,” when used in reference to flows of water to be obtained from a Project, refers to the inflow to the Project work on a given day that may be used for a Project purpose consistent with and subject to the obligations described in Section 5.10.

“BCT Restoration Plan” means the plan developed pursuant to Section 3.1 below for restoration of Bonneville cutthroat trout in the Action Area.

“Bear River Projects” is defined in Recital A.

“Clean Water Act” or “CWA” means the federal statute set forth at 33 U.S.C. §§ 1251-1387.

“Consensus” means that all ECC representatives who are present at a duly noticed meeting of the ECC are in unanimous agreement that a particular decision is acceptable or tolerable.

“Consistent” means measures which do not conflict with, add to or subtract from the measures outlined and commitments made in this Agreement.

“Cultural Resources Management Plan” or “CRMP” is defined in Section 3.5.

“*Cutthroat Trout Management: A Position Paper, Genetic Considerations Associated with Cutthroat Trout Management*” or “CTMAPP” means the document issued by the Utah Division of Wildlife Resources, Publication No. 00-26.

Bear River Settlement Agreement

“Decommission,” as used in this document, should be interpreted broadly, and refers to any action which modifies a Project’s operations or facilities in a manner that eliminates the generating capacity of a Project work and would include a range of actions from shutting down power operations to removing the Project.

“Decrees” is defined in Section 5.10.

“Effective Date” is defined in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

“Endangered Species Act” or “ESA” means the federal statute set forth at 16 U.S.C. §§ 1531-1544.

“Environmental Coordinator” or “EC” is defined in Section 4.4.

“Environmental Coordination Committee” or “ECC” is defined in Section 4.1.

“Environmental Impact Statement” or “EIS” refers to the detailed statement required by 42 U.S.C. § 4332(C) and referred to in Section 1.2.

“Federal Energy Regulatory Commission,” “the Commission” or “FERC” is the federal agency responsible for the regulation of hydroelectric power projects that are not federally owned.

“Federal Power Act” or “FPA” means the federal statute set forth at 16 U.S.C. §§ 791a-828c.

“Final Terms and Conditions” refers, individually and collectively, to the following terms, conditions, recommendations, and prescriptions filed with FERC by the Governmental Parties in final or modified form after the Effective Date: (1) final mandatory conditions filed under section 4(e) of the FPA; (2) prescriptions filed under section 18 of the FPA; (3) recommendations filed under sections 10(a) or 10(j) of the FPA; and (4) terms of the 401 Certification for the Projects issued by IDEQ, including any modifications or revisions to that Certification resulting from total maximum daily load (“TMDL”) determinations affecting the Projects. Final Terms and Conditions are distinct from any preliminary terms and conditions which may have been filed by the Parties prior to the Effective Date.

“Flood Control Responsibilities” is defined in Section 5.10.

“Grace/Cove Hydroelectric Project” or “Grace/Cove Project” is defined in Recital A and described in Recital D.

“Greater Yellowstone Coalition or “GYC” is a Montana corporation and is listed as a Party in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

Bear River Settlement Agreement

“Gross Domestic Product Implicit Price Deflator” or “GDP-IDP” is defined in Section 5.4.4.

“Governmental Party” and “Governmental Parties” are defined in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

“Idaho Council of Trout Unlimited” or “ITU” is listed as a Party in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

“Idaho Department of Fish and Game” or “IDFG” is listed as a Party in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

“Idaho Department of Parks and Recreation” or “IDPR” is listed as a Party in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

“Idaho Department of Environmental Quality” or “IDEQ” is listed as a Party in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

“Idaho Rivers United” or “IRU” is an Idaho corporation and is listed as a Party in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

“Implementation Schedule” means that schedule for implementation of PacifiCorp’s obligations under this Agreement which is attached as Exhibit 1.

“Inconsistent” means measures which conflict with, add to or subtract from the measures outlined and commitments made in this Agreement, including measures which would require modification of the FERC Project Boundaries (defined below) or require FERC jurisdiction over Bear Lake.

“Interstate Compact” is defined in Section 5.10.

“Issuance and acceptance of the New Licenses” means that IDEQ has issued its 401 Certification for all three Projects, FERC has issued the New Licenses for all three Projects, and PacifiCorp has accepted all 401 Certifications and New Licenses for the Projects, whether or not all appeals have been finally resolved or dismissed. If for any reason issuance and acceptance of the New Licenses for the three Projects does not occur on the same date, the term “issuance and acceptance of the New Licenses” refers to the date upon which the last of the three New Licenses has been issued and accepted.

“Land Management Plan” or “LMP” is defined in Section 3.6.

“License Terms” and “Terms of the New Licenses” are defined in Section 1.6.

“National Environmental Policy Act” or “NEPA” means the federal statute set forth at 42 U.S.C. §§ 4321-4370e.

Bear River Settlement Agreement

“New Licenses” means the licenses for the Projects issued by FERC under the FPA, 16 U.S.C. § 808.

“New Licenses become final” means that IDEQ has issued its 401 Certification for all three Projects, FERC has issued the New Licenses for all three Projects, PacifiCorp has accepted all 401 Certifications and New Licenses for the Projects, and all administrative and judicial appeals relating to each of the New Licenses have been finally adjudicated or dismissed. If for any reason the New Licenses for the three Projects do not become final on the same date, the term “New Licenses become final” refers to the date upon which the last of the three New Licenses becomes final.

“Non-governmental Organization” or “NGO” is defined in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

“Notice” is defined in Section 6.8.

“Oneida Hydroelectric Project” or “Oneida Project” is defined in Recital A and described in Recital E.

“Opportunistic,” as it refers to a whitewater boating release pursuant to Section 3.4.4 (second paragraph), means that available flow in the Grace forebay up to 400 cfs is diverted away from the Project intake and into the bypass reach by manipulating the dam stoplogs or spillgate when the Grace Project is spilling at least 500 cfs due to high flow conditions in the Bear River.

“Permits” is defined in Section 2.2.

“Proceeding” is defined in Section 2.2.

“Project Boundary” refers individually, and “Project Boundaries” refers collectively, to the boundary of each Project as described by FERC in the licenses for the Projects as they existed prior to October 1, 2001.

“Projects” is defined in Recital A.

“Protection, Mitigation, and Enhancement Measures” or “PM&E Measures” refers to the measures set forth in Section 3 of this Agreement for the protection and enhancement of the environment of the Projects and to mitigate for any adverse effects of the Projects.

Bear River Settlement Agreement

“Ramping” means those Project-induced increases (“up-ramping”) and decreases (“down-ramping”) in river discharge and associated changes in water surface elevation over time caused for the purpose of generating electricity in Project facilities, for Project maintenance or for scheduled whitewater flows. Ramping does not include changes in flows due to natural increases or decreases in stream flow. Ramping rates in this Agreement are stated in fractions of a foot change per hour. The distance between the highest and lowest water level measured at the applicable gauging station shall not vary by more than that amount during the relevant time period, but may vary within that range one or more times. For example, if the relevant ramping limitation is 0.1 feet per hour, and the river gage is at 4.0 feet at noon, then during the next hour the water elevation may vary no more than between 3.9 and 4.0 feet, between 4.0 and 4.1 feet, or between 3.95 feet and 4.05 feet. In each example, the amount of change between the lower and upper gage reading in a one-hour time period is not more than 0.1 feet, but could vary within that range more than once during such hour.

“*Range-wide Conservation Agreement and Strategy for Bonneville Cutthroat Trout*” or “RCAS” means the agreement signed by USFWS, BLM, USFS, IDFG, and other federal, state and tribal parties, which outlines a collaborative effort to ensure the long-term existence of Bonneville cutthroat trout within its historic range.

“Recreation Management Plan” or “RMP” is defined in Section 3.4.1.

“Relicensing” means the process of applying for and obtaining New Licenses for the Projects.

“Riparian Habitat” means land that is situated along the bank of a stream or other body of water and is characterized by vegetation, a microclimate influenced by perennial and/or intermittent water, and soils that exhibit some wetness characteristics in their profile.

“Scheduled,” as it refers to a whitewater boating flow, is a flow available in the Grace forebay of between 700 cfs and 1500 cfs that is diverted away from the Project intake and into the bypass reach by manipulating the dam stoplogs or spillgate.

“Soda Hydroelectric Project” or “Soda Project” is defined in Recital A and described in Recital C.

“Total Maximum Daily Load” or “TMDL” is a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific water body and pollutant, as required by the Clean Water Act, 33 U.S.C. § 1313(d), and defined at 40 C.F.R. § 130.2(h).

“United States Bureau of Land Management” or “BLM” is listed as a Party in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

“United States Fish and Wildlife Service” or “USFWS” is listed as a Party in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

Bear River Settlement Agreement

“United States National Park Service” or “NPS” is listed as a Party in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

“USDA Forest Service” or “USFS” is listed as a Party in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

“Water Agreements” is defined in Section 5.10.

“Water Contracts” is defined in Section 5.10.

**Section 1: Purpose
and Effect of this
Agreement**

Bear River Settlement Agreement

SECTION 1: PURPOSE AND EFFECT OF THIS AGREEMENT

1.1. Purpose of Agreement. The Parties have entered into this Agreement to resolve all issues regarding relicensing of the Bear River Projects, for the purpose of obtaining a FERC order issuing to PacifiCorp the New Licenses for the Projects, pursuant to the Protection, Mitigation and Enhancement (“PM&E”) Measures set forth in this Agreement and attached as Appendix A. For this purpose the Parties agree that this Agreement is fair and reasonable and in the public interest within the meaning of FERC Rule 602 governing offers of settlement. 18 C.F.R. § 385.602(g)(3). The Parties will request that FERC accept and incorporate, without material modification, as license articles in the New Licenses all of the measures set forth in Appendix A. The Parties will request that FERC refrain from including in the New Licenses inconsistent articles, except as may be necessary to enable FERC to ascertain and monitor PacifiCorp’s compliance with the New Licenses and its rules and regulations under the Federal Power Act (“FPA”) and other federal and state laws. Each of the Parties agree that, except as specifically provided below, PacifiCorp’s performance of its obligations under this Agreement and the Final Terms and Conditions will be consistent with and will fulfill PacifiCorp’s existing statutory and regulatory obligations as to each Party relating to relicensing of the Projects. Without limiting the generality of the preceding sentence, the Parties agree that PacifiCorp’s performance of its covenants in this Agreement and the Final Terms and Conditions are consistent with and will fulfill all obligations under the following laws, except as provided below:

1.1.1. Section 18 of the FPA. Section 18 of the FPA states that FERC shall require construction, maintenance, and operation by a licensee of such fishways as the Secretaries of the U.S. Departments of the Interior (through USFWS) and of Commerce (through the National Marine Fisheries Service (“NMFS”)) may prescribe. The measures contained in this Agreement will fulfill PacifiCorp’s obligations with respect to fish passage over the course of the license terms. USFWS intends that any Final Terms and Conditions under section 18 will be consistent with the relevant provisions of this Agreement, and that any inconsistency shall be resolved in accordance with Section 5 below. Should USFWS determine that conditions in the Bear River have become favorable for fish passage during the license terms, the cost to PacifiCorp of any such measures shall not exceed the funding described in Sections 3.1.4 and 3.1.5, as provided in Section 3.1 below. There are no NMFS-managed species occurring within the area affected by the Projects.

1.1.2. Section 4(e) of the FPA. Section 4(e) of the FPA states that FERC may issue a license for a project on a reservation only if it finds that the license will not interfere or be inconsistent with the purpose for which the reservation was created or acquired. Such reservations include, without limitation, BLM-administered lands. Section 4(e) of the FPA requires that a FERC license for a project located on these reservations include all terms and conditions that the secretary of the department under whose supervision the reservation falls may deem necessary for the adequate protection and utilization of such reservation. In this case, BLM will issue its Final Terms and Conditions under section 4(e) for BLM-administered lands. BLM agrees that its Final Terms and Conditions under section 4(e) will be consistent

Bear River Settlement Agreement

with the relevant provisions of this Agreement and that any inconsistency shall be resolved in accordance with Section 5 below. The Projects are not located within USFS reservations.

1.1.3. Section 10(j) of the FPA. Section 10(j) of the FPA requires FERC, when issuing a license, to consider and include conditions based on recommendations of federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act to “adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat)” affected by the Projects. USFWS and IDFG agree that their Final Terms and Conditions under section 10(j) will be consistent with the relevant provisions of this Agreement and that any inconsistency shall be resolved in accordance with Section 5 below. There are no NMFS-managed species occurring within the area affected by the Projects.

1.1.4. Section 10(a) of the FPA. Section 10(a) of the FPA requires that FERC consider the recommendations of federal and state agencies and affected Indian tribes in determining whether the Projects are adapted to any comprehensive plans for improving or developing the waterway for commerce, water-power development, the protection, mitigation and enhancement of fish and wildlife, and other beneficial public uses. The Governmental Parties and the Tribes agree that any final recommendations under section 10(a) will be consistent with the relevant provisions of this Agreement and that any inconsistency will be resolved in accordance with Section 5 below.

1.1.5. Treaty and Federal Trust. The federal agencies which are Parties to this Agreement and the Tribes agree that the measures contained in this Agreement will fulfill the United States’ fiduciary duties towards the Tribes and any obligations that PacifiCorp may have in regards to operation of the Projects over the terms of the New Licenses pursuant to the Fort Bridger Treaty of 1868 (15 Stat. 673) and other federal, state and tribal laws and regulations. The Projects are not located within tribal reservations.

1.1.6. Threatened and Endangered Species. Section 7 of the Endangered Species Act (“ESA”) requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species or result in the destruction or adverse modification of designated critical habitat. If FERC approves this Agreement, the “proposed action” for purposes of section 7 would be the operation of the Projects in accordance with this Agreement. As of the Effective Date, threatened bald eagles may occur in the areas affected by the Projects. USFWS anticipates that the proposed action, which includes those PM&E measures contained in this Agreement, will have no effect on bald eagles or, in the alternative, is not likely to adversely affect bald eagles. As such, the Parties anticipate that no formal consultation under the ESA will be required. Should the USFWS and FERC determine that formal consultation is required, USFWS anticipates that the measures contained in this Agreement will be adequate to minimize any incidental take occurring as a result of Project operations for presently listed threatened and endangered species. USFWS does not intend to predetermine the outcome of any consultation under the ESA and reserves its rights to take all actions required to comply with the ESA. If

Bear River Settlement Agreement

the outcome of any consultation requires measures that are inconsistent with this Agreement, the Parties will deal with such inconsistency in accordance with Section 5 below. Similarly, if inconsistent requirements result from a new listing during the terms of the New Licenses, such inconsistency will be handled in accordance with Section 5.3.9 below.

1.1.7. Water Quality Certification. FERC does not issue a license for a hydroelectric project unless the state water-quality-certifying agency has issued a water quality certification for the project or has waived certification ("401 Certification"). The state's authority to issue a 401 Certification is based upon Section 401(a)(1) of the Clean Water Act ("CWA"). For purposes of this Agreement, "401 Certification" refers to certification of (or waiver for) all three Bear River Projects, either collectively or individually. Section 401(d) of the CWA provides that state certification shall become a required condition on any federal license or permit that is issued. IDEQ is the state agency authorized to issue a 401 Certification for the Projects pursuant to the CWA and state water quality laws. Public notice and an opportunity for public comment is provided before IDEQ issues a 401 certification. As of the Effective Date, these prerequisites have not been satisfied, and no 401 Certification has been issued for the Projects.

IDEQ and PacifiCorp agree that, upon the Effective Date, PacifiCorp will withdraw its pending application for 401 Certification, and this Agreement will constitute PacifiCorp's reapplication for 401 Certification required for relicensing under the CWA. IDEQ will use its best efforts to submit to the Environmental Protection Agency for approval TMDLs required by the CWA for the Bear River basin by January 1, 2003. IDEQ intends that its 401 Certification conditions and implementation of TMDLs will be consistent with the terms contained in Appendix D to the maximum extent practicable and subject to IDEQ's consideration of public comment. Any inconsistency will be handled in accordance with Section 5 below.

1.2. NEPA Analysis. In connection with the issuance of the New Licenses, FERC will complete an environmental analysis under the National Environmental Policy Act ("NEPA"). The Parties request that FERC incorporate the PM&E Measures into the proposed action described and evaluated in the Environmental Impact Statement ("EIS"). If FERC alters any of the PM&E Measures following the NEPA process and a Party believes the measure, as modified, is inconsistent with this Agreement or the New Licenses, the inconsistency will be resolved pursuant to Section 5 below.

1.3. Limitations. This Agreement establishes no principle or precedent with regard to any issue addressed in this Agreement or with regard to any Party's participation in any other pending or future licensing proceeding. Further, no Party to this Agreement shall be deemed to have approved, accepted, agreed to, or otherwise consented to any operation, management, valuation, or other principle underlying any of the matters covered by this Agreement, except as expressly provided in this Agreement. By entering into this Agreement, no Party shall be deemed to have made any admission or waived any contention of fact or law that it did make or could have made in the Relicensing Proceeding. This Agreement shall not

Bear River Settlement Agreement

be offered in evidence or cited as precedent by any Party to this Agreement in any administrative or judicial litigation, arbitration, or other adjudicative proceeding, except in a proceeding to establish the existence of or to enforce or implement this Agreement. This Section 1.3 shall survive any termination of this Agreement.

1.4. Representations Regarding Consistency and Compliance with Statutory Obligations. By entering into this Agreement, the Governmental Parties represent that they believe their statutory and other legal obligations are, or can be, met through implementation of this Agreement and the Final Terms and Conditions. Nothing in this Agreement shall be construed to limit any government agency with jurisdiction directly related to the New Licenses from complying with its obligations under applicable laws and regulations or from considering public comments received in any environmental review or regulatory process related to the Projects in accordance with this Agreement. This Agreement shall not be interpreted to predetermine the outcome of any environmental or administrative review or appeal process.

1.5. Conditions Precedent and Conditions Subsequent. The Parties' respective obligations to perform this Agreement are subject to conditions precedent and conditions subsequent, as more fully set forth in Section 5 below.

1.6. License Terms. The Parties agree to recommend to FERC that the New Licenses shall be issued for 30-year terms. If any Party recommends a term of license inconsistent with this Agreement in (i) comments submitted or allowed to stand unamended 60 days after the Effective Date, or (ii) Final Terms and Conditions submitted to FERC, the inconsistency shall be resolved pursuant to Section 5. Except as used in the preceding sentences of this Section 1.6, "license terms" and "terms of the New Licenses" are used in this Agreement to refer to the 30-year terms discussed above, as well as any annual licenses issued by FERC after expiration of those 30-year terms. The Parties intend that the provisions of this Agreement shall continue during the terms of any such annual licenses, unless this Agreement is sooner terminated pursuant to Section 5 below.

1.7. Flow Terms Are Not State Water Rights. The terms "minimum flow," "available flows," "whitewater boating flows," "instream flows," "bypass flows," other flow terms related to PM&E measures, or any provisions relating to such terms in this Agreement are not intended to be nor shall they be interpreted to imply a state water right granted by the states of Wyoming, Idaho or Utah.

**Section 2: Actions
Upon Execution
of this Agreement**

Bear River Settlement Agreement

SECTION 2: ACTIONS UPON EXECUTION OF THIS AGREEMENT

2.1. FERC Filings. Following the Effective Date, the Parties shall jointly file with FERC a fully executed copy of this Agreement in accordance with FERC regulations at 18 C.F.R. § 385.602.

2.2. Permits. In accordance with this Agreement, PacifiCorp shall apply for and use reasonable efforts to obtain in a timely manner and in final form all applicable federal, state, regional, and local permits, licenses, authorizations, certifications, determinations, and other governmental approvals for purposes of implementing this Agreement and the New Licenses (“Permits”). PacifiCorp will likewise use reasonable efforts to obtain the New Licenses in a timely manner. The Parties shall cooperate during the permitting, environmental review, and implementation of this Agreement. Each Party shall bear its own costs of defense. Except as expressly provided in this Agreement, PacifiCorp shall not be required by this Agreement to implement any action under this Agreement or the Final Terms and Conditions until all applicable Permits required for that action are obtained in a form consistent with this Agreement and any and all applicable, prescribed periods for a petition for administrative or judicial review or appeal or any similar proceeding relating to any Permit (“Proceeding”) have expired without any such Proceeding having been commenced or, in the event any such Proceeding is commenced, until any such Proceeding is terminated on terms and conditions consistent with this Agreement. In the event any Proceeding is commenced, the Parties shall confer to evaluate the effect of such Proceeding on implementation of this Agreement.

2.3. Communications with FERC and Other Government Agencies. Except as provided in Section 1.1 above, or except as required to comply with applicable law, the Parties shall (1) be free to make statements of fact but shall otherwise make comments to FERC that are consistent with this Agreement; (2) make comments and respond to comments or responses to comments filed by them, to the extent any comments or responses are filed, with FERC and IDEQ in the context of the relicensings, 401 Certification and TMDL processes in a manner consistent with this Agreement; and (3) to the extent they participate in relevant regulatory proceedings, actively support this Agreement and incorporation of consistent terms into the 401 Certification and other Permits. If any Party advocates after the Effective Date, to FERC or in any other forum, conditions to the New Licenses or other measures that are inconsistent with this Agreement, or argues for the deletion or omission of any of the provisions of this Agreement from the New Licenses, then any other Party may initiate the ADR Procedure under Section 5.6 and, if dispute resolution is unsuccessful, may withdraw from this Agreement. With respect to the 401 Certification, IDEQ intends to advocate measures consistent with Appendix D.

2.4. Timing of Obligations. The implementation schedule attached as Exhibit 1 lists the schedule for implementation of the PM&E Measures. If there is a specific provision of this Agreement relating to the schedule for implementation of a particular PM&E Measure and that provision conflicts with Exhibit 1, the specific provision in this Agreement shall control. If there is no specific provision in this Agreement relating to the schedule for implementation of a particular PM&E Measure, the schedule for implementation set forth in Exhibit 1 shall control.

**Section 3: Protection,
Mitigation and
Enhancement Measures**

Bear River Settlement Agreement

SECTION 3: PROTECTION, MITIGATION AND ENHANCEMENT MEASURES

3.1. Restoration Measures for Aquatic Resources. This Section 3.1 describes measures to improve habitat for Bonneville cutthroat trout (“BCT”) and other aquatic species, and to improve recreational fishing in the Action Area, which may involve, without limitation, areas outside the FERC Project boundaries within the Action Area. Costs indicated below, described in 2002 dollars, represent the limit of PacifiCorp’s obligation pursuant to these measures, exclusive of the cost of PacifiCorp personnel time; funding provided by sources other than PacifiCorp may result in the total cost of the element exceeding the stated dollar amounts. Should the USFWS prescribe fish passage during the terms of the New Licenses, the cost to PacifiCorp of such action shall not exceed the funding described in the following Sections 3.1.4 and 3.1.5, which may be reallocated to provide fish passage pursuant to Section 4.2 below. In no event will PacifiCorp have any obligation to provide additional funding or resources under the terms of this Agreement. The preparation of a restoration plan for BCT (the “BCT Restoration Plan”) will include input from several elements as described below. All restoration measures undertaken pursuant to this Section 3.1 will be consistent with the BCT Restoration Plan, the *Range-wide Conservation Agreement and Strategy for Bonneville Cutthroat Trout* (“RCAS”), Utah Division of Wildlife Resources Publication No. 00-19, and *Cutthroat Trout Management: A Position Paper, Genetic Considerations Associated with Cutthroat Trout Management* (“CTMAPP”), Utah Division of Wildlife Resources Publication No. 00-26, or any updated version of such documents. At the ECC’s direction, the BCT Restoration Plan may consider actions and measures outside the Action Area, but nothing in the BCT Restoration Plan shall require PacifiCorp’s funding of actions outside the Action Area, other than as specifically provided in this Agreement. Implementation of the BCT Restoration Plan will be overseen and coordinated by the Environmental Coordination Committee (“ECC”) and the Environmental Coordinator (“EC”), as described in Section 4.

3.1.1. Preparation of BCT Restoration Plan. PacifiCorp will oversee the preparation of the BCT Restoration Plan document in consultation with and at the direction of the ECC and consistent with the RCAS and the CTMAPP, or any updated version of such documents. Preparation of the BCT Restoration Plan document shall begin after the third anniversary of the New Licenses becoming final. The cost to PacifiCorp of preparation of the BCT Restoration Plan document and any subsequent revisions to that document during the terms of the New Licenses will not exceed \$20,000, exclusive of the cost of PacifiCorp personnel time. This funding will not be available for any other purpose.

3.1.2. BCT Restoration Plan Elements. The BCT Restoration Plan will include elements described below. The final BCT Restoration Plan will be consistent with the RCAS and the CTMAPP, or any updated version of such documents, and will be approved by the ECC. Unless otherwise indicated, funding that is not completely expended by one element may be available for use in completion of other elements, but all funding by PacifiCorp under this Section 3.1.2 will be completed by the seventh anniversary of the New Licenses becoming final. Any funds remaining under this Section 3.1.2 at the seventh anniversary of the New Licenses becoming final will not be available for any purpose.

Bear River Settlement Agreement

3.1.2.1. Genetic Sample Analysis. Consistent with the RCAS and the CTMAPP, or any updated version of such documents, IDFG will arrange for collection and analysis of genetic samples of BCT from fish sampling of the mainstem or tributaries of the Bear River. These analyses will assist in future management decisions. This element will be implemented upon issuance and acceptance of the New Licenses, and the cost to PacifiCorp will not exceed \$40,000.

3.1.2.2. Aerial Photo Flight and Analysis. Aerial photography will be conducted to assist in understanding habitat features and identifying BCT restoration opportunities on the Bear River and its tributaries in the State of Idaho. This element will be implemented upon issuance and acceptance of the New Licenses, and the cost to PacifiCorp will not exceed \$125,000.

3.1.2.3. Irrigation Diversion Map. A Geographic Information System (“GIS”) layer depicting active diversions and other passage impediments will be completed in the Bear River drainage within the range of the BCT in the State of Idaho, based on a study already initiated by Utah State University. This element will be implemented upon issuance and acceptance of the New Licenses, and the cost to PacifiCorp will not exceed \$13,000.

3.1.2.4. Telemetry Studies. A BCT telemetry study will be conducted on the Bear River and its tributaries in the State of Idaho. This element will be implemented upon issuance and acceptance of the New Licenses. The cost to PacifiCorp will not exceed \$150,000 and annual expenditures in any year will not exceed \$50,000.

3.1.2.5. Broodstock Development. Consistent with the BCT Restoration Plan, the RCAS, and the CTMAPP, or any updated version of such documents, IDFG will develop localized broodstocks of BCT for stocking in the Action Area linked to native BCT protection and restoration efforts. Implementation of this element will begin after the fourth anniversary of the New Licenses becoming final, and funding will be completed by the seventh anniversary of the New Licenses becoming final. The cost of this element to PacifiCorp will not exceed \$100,000 per year for three years. The funds available for use under this section, if not used for broodstock development, may be reallocated for use under Sections 3.1.4 and 3.1.5 at the discretion of the ECC; provided that such funds must be used by end of seventh anniversary of the New Licenses becoming final and may not be carried over for use in any subsequent year.

3.1.2.6. Cove Feasibility Study. During the first year after the New Licenses become final, PacifiCorp will, in consultation with the ECC, conduct a feasibility study evaluating decommissioning of the Cove Project, other Project modifications that might provide fish passage at the Cove Project, or creation of fish passage facilities at that Project. PacifiCorp will deliver the feasibility study to the ECC on or before the first anniversary of the New Licenses becoming final. The ECC may consider reallocation of funds available under Sections 3.1.4 and 3.1.5 for the purposes described in the Cove Feasibility Study, provided that no implementation of an alternative studied under this paragraph shall be undertaken without PacifiCorp’s prior consent, which may be given or not at PacifiCorp’s discretion.

Bear River Settlement Agreement

3.1.3. Conservation Hatchery Program. Based on the development of a native BCT broodstock program and the long-term species restoration goals contained in the BCT Restoration Plan, the RCAS, and the CTMAPP, or any updated version of such documents, PacifiCorp's commitment to funding fish stocking in the Action Area will be directly linked to native BCT protection and restoration efforts. Stocking of BCT will be conducted in the Action Area by IDFG, based on the results of its broodstock development program and consistent with the BCT Restoration Plan, the RCAS, and the CTMAPP, or any updated version of such documents. Fish stocking paid for by monies allocated to this element by PacifiCorp shall be conducted in the Action Area. Funding for stocking will begin after the seventh anniversary of the New Licenses becoming final, and will continue throughout the license terms. The cost of this element to PacifiCorp will not exceed \$100,000 annually from the seventh anniversary of the New Licenses becoming final through the end of the license terms. To the extent that \$100,000 is not expended in one year, any remaining funds may be carried over to succeeding license years for fish stocking in accordance with this Section 3.1.3, or will be made available for habitat restoration actions (Section 3.1.4), land and water acquisition (Section 3.1.5), or enhancement and restoration of land or water acquired pursuant to Section 3.1.5. Funds will not expire during the license terms, and will be continuously carried over as described in this Section 3.1.3; however, any funds remaining at the end of the license terms will not be available for any other purpose. The ECC may consider stocking under this Section 3.1.3 outside the Action Area, but such actions will occur only at PacifiCorp's discretion.

3.1.4. Habitat Enhancement and Restoration Actions. Actions to benefit and restore aquatic and riparian habitat for BCT and other fish and wildlife resources will be conducted in the Action Area. Habitat restoration actions will begin after the first anniversary of the New Licenses becoming final and will continue throughout the license terms. The cost of restoration actions to PacifiCorp will not exceed \$167,000 annually from the first anniversary of the New Licenses becoming final through the end of the license terms. Based on decisions reached by the Environmental Coordination Committee ("ECC") (Section 4), funding for restoration actions may also be used for studies or monitoring effects of restoration actions. To the extent that \$167,000 is not expended in one year, any remaining funds may be carried over to succeeding license years for habitat enhancement and restoration actions in accordance with this Section 3.1.4, or will be made available for land and water acquisition (Section 3.1.5), enhancement and restoration of land or water acquired pursuant to Section 3.1.5, or for fish passage as prescribed in accordance with Sections 1.1.1 and 3.1. Funds will not expire during the license terms, and will be continuously carried over as described in this Section 3.1.4; however, any funds remaining at the end of the license terms will not be available for any other purpose. The ECC may consider habitat enhancement and restoration actions under this Section 3.1.4 outside the Action Area, but such actions will occur only at PacifiCorp's discretion.

3.1.5. Land and Water Acquisition. PacifiCorp will provide funds for the acquisition of land and water rights, if available, in the Action Area. The purpose of this fund is to take advantage of opportunities to purchase or lease and manage land and water rights and

Bear River Settlement Agreement

easements in accordance with Idaho water law and policy to benefit BCT and other fish and wildlife resources. The Parties agree to work collaboratively with local communities to acquire or lease water for non-consumptive uses, or land, all on a willing-buyer and willing-seller basis in the Action Area. PacifiCorp will transfer its interest in such land or water rights to a land trust or other nonprofit land conservation organization, or the Idaho Water Resources Board, as directed by the ECC in accordance with Idaho water law and policy. Funding will begin after the first anniversary of the New Licenses becoming final, and will continue throughout the license terms. The cost of land and water acquisition actions to PacifiCorp will not exceed \$300,000 annually from the first anniversary of the New Licenses becoming final through the end of the license terms. Funds remaining in any year may be carried over to succeeding license years, but shall not be available for any purpose other than for land and water acquisition, restoration of land acquired through this Section 3.1.5, or for fish passage as prescribed in accordance with Sections 1.1.1 and 3.1. Funds will not expire during the license terms, and will be continuously carried over as described in this Section 3.1.5; however, any funds remaining at the end of the license terms will not be available for any other purpose. The ECC may consider land and water acquisition under this Section 3.1.5 outside the Action Area, but such actions outside the Action Area shall not occur without PacifiCorp's prior consent, which may be given or not at PacifiCorp's discretion.

3.1.6. Monitoring in Black Canyon. Monitoring studies will be conducted as set forth in Section 3.1.6.1 during the first six years after the New Licenses become final, and thereafter at the discretion of the ECC. The purpose of monitoring studies is to assess (i) the effect of the 80 cfs minimum bypass flow regime in the Grace Bypass Reach on fish growth, survival, standing crop, and distribution, and on the quality of the angling experience; (ii) the effect of opportunistic whitewater boating flows during year one through three on fish displacement and invertebrate performance (drift and abundance); (iii) the effect of scheduled whitewater boating flows in years four, five and six on movement and growth rates of fish and invertebrates (drift and abundance); and (iv) channel shape and structure. The ECC will direct the design, peer review, and execution of scientific studies to test specific hypotheses for various ecological attributes. Studies will investigate long term trends as well as cause and effect relationships associated with changes in flow. The studies will contain specific objectives, expectations and measurable criteria designed to determine whether boatable flows have significant adverse effects on the ecological attributes of the Black Canyon. For the purposes of this Section 3.1.6., significant adverse effect is defined as a measured change that materially degrades ecological attributes including without limitation water quality, native fish and macroinvertebrate habitat and riparian habitat to the extent that the ability to achieve the management objectives of the BCT Restoration Plan, as it is completed, the RCAS and the CTMAPP is impaired. The results of the studies will assist the ECC in the development of an adaptive management program for whitewater boating flows, as set forth in Section 3.1.6.3.

3.1.6.1. Monitoring Requirements.

3.1.6.1.1 Creel Surveys. During years 1- 6 after the New Licenses become final, IDFG will conduct creel surveys to assess angler effort and the quality

Bear River Settlement Agreement

of the fishery under the new river management regime. The number of creel surveys conducted over this period will be determined by the IDFG. PacifiCorp will fund this element as provided in Section 3.1.6.2 below.

3.1.6.1.2 Grace Bypass Reach Telemetry Studies. During any year of years 1 - 6 after the New licenses become final, in which whitewater boating flows are provided, the ECC will select an independent contractor to conduct telemetry studies in the Grace Bypass Reach, to assess the effects of whitewater boating flows on catchable size and fingerling size BCT or surrogate fish species. PacifiCorp will fund this element as provided in section 3.1.6.2 below.

3.1.6.1.3 Macroinvertebrate Sampling Studies. During years 1 - 3 after the New Licenses become final, the ECC will select an independent contractor to conduct, and the contractor will conduct macroinvertebrate and primary productivity sampling studies to evaluate the biological response to the 80 cfs minimum flow in the Grace bypass reach. These studies will also consider potential changes in these biological communities in response to opportunistic whitewater boating flows during years 1- 3. During years 4 - 6 after the New Licenses become final, studies will be designed and implemented to evaluate the effect of scheduled whitewater boating flows on these biological communities. These studies may include monitoring immediately before, during, and after the whitewater releases. PacifiCorp will fund this element as provided in section 3.1.6.2 below.

3.1.6.2. Funding of Monitoring. Funding for monitoring provided in Section 3.1.6.1 shall be provided by PacifiCorp upon the New Licenses becoming final, and funding will terminate on the seventh anniversary of the New Licenses becoming final. The cost of this element to PacifiCorp will not exceed \$35,000 per year for the first seven years after the New Licenses become final. To the extent that annual funding described in this Section 3.1.6.2 is not expended in any one year, remaining funds in that year may be carried over to succeeding license years for monitoring as described in this Section 3.1.6.1. To the extent that funding described in this Section 3.1.6.2 is not expended by the seventh anniversary of the New Licenses becoming final, remaining funds may be carried over for the Conservation Hatchery Program in accordance with Section 3.1.3. Such funds carried over to the Conservation Hatchery Program shall remain available during the license terms; however, any funds remaining at the end of the license terms will not be available for any other purpose.

3.1.6.3. Response to Monitoring. In years 7 and subsequently after the New Licenses become final, the ECC may adjust the whitewater boating flows (amount, frequency or timing) if monitoring pursuant to Section 3.1.6 demonstrates that the scheduled whitewater boating flows cause significant adverse effects on the ecological attributes of the Grace bypass reach as defined in Section 3.1.6. In any such adjustment, the ECC will consider alternatives to address the ecological concerns. At the ECC's discretion, funding allocated under Section 3.1.4 may be used to study the effect of whitewater boating flows on BCT in the Bear River below the Grace Dam over the course of the license term. In no event shall scheduled whitewater boating flows in the Grace bypass reach exceed the limits defined in Section 3.4.4.

Bear River Settlement Agreement

3.2. Instream Flows.

3.2.1. Minimum Flow Schedules. PacifiCorp will maintain a minimum flow in the reach below Soda dam of the lower of 150 cfs or inflow into Soda reservoir. PacifiCorp will implement minimum flow schedules for the other Projects as follows:

- a. Grace bypass: the lower of 80 cfs or inflow, in addition to current leakage from Grace dam;
- b. Cove bypass: the lower of 10 cfs or inflow from October 1 through March 31 of each year; and the lower of 35 cfs or inflow from April 1 through September 30 of each year, in addition to current leakage from Cove dam;
- c. Oneida reach below the powerhouse: the lower of 250 cfs or inflow, in addition to current leakage from Oneida dam.

Maintenance of the above minimum flows will begin upon the New Licenses becoming final and will continue throughout the license terms, except that minimum flows at Cove bypass will commence upon issuance and acceptance of the New License for the Cove Project. Leakage flows at the Grace and Oneida dams will be measured upon the New Licenses becoming final, and at Cove upon issuance and acceptance of its New License, and the amount measured for each dam will be added to the minimum flow requirement for that respective Project as indicated above. Reservoir levels will be maintained in accordance with restrictions and responsibilities described in Section 5.10.

3.2.1.1 Exceptions. PacifiCorp may suspend the flows described in this subsection on a temporary basis to facilitate regular maintenance or emergency repairs, or for equipment failures or unforeseen hydrologic events. PacifiCorp will consult with the ECC regarding when to schedule and how to conduct regular maintenance routines including draw down and Project shut-down activities and will implement such routines and activities so that aquatic resources -- including fish spawning and rearing -- are protected to the maximum extent practicable. To the extent practicable, PacifiCorp will consult with the ECC in emergency situations. PacifiCorp will minimize the number of such Project maintenance shut-downs, draw downs, and spillway tests and will attempt to schedule such activities at times that will not interfere with trout spawning or harm incubating trout eggs.

3.2.1.2. Fish Recovery. PacifiCorp, in consultation with the ECC and IDFG, shall develop and implement a plan to minimize fish stranding due to the operation of the Projects. For the purposes of this section, "operation of the Projects" does not include changes in inflow to the Projects, maintenance of reservoir levels, or unforeseen hydrologic events.

Bear River Settlement Agreement

3.2.2. Adaptive Flow Management. No sooner than the tenth anniversary of the New Licenses becoming final, the ECC may prescribe increases in minimum flows. Annual funding limits described in Sections 3.1.4 and 3.1.5 will be decreased commensurate with the cost of loss of generation due to such minimum flow increases, based on the official forward pricing curve of the Northwest Power Planning Council or suitable substitute (if such pricing curve ceases to be available), to be calculated annually for the following year's additional flows. The value of lost generation will be determined as set forth in Exhibit 2. Flow increases will not exceed the funding remaining available in Sections 3.1.4 and 3.1.5 (which may have been reallocated for other purposes).

3.2.3. Kackley Springs. Upon the fifth anniversary of the New Licenses becoming final, and in accordance with the direction of the ECC, PacifiCorp will either redivert Kackley Springs into the Cove bypass with the exception of 0.30 cfs, which will continue to flow to the Kackley property, or will maintain Kackley Springs in a configuration which benefits aquatic resources in the Bear River. The construction cost of this measure to PacifiCorp will not exceed \$10,000.

3.3. Ramping. PacifiCorp will implement the following maximum ramp rates in the Bear River associated with hydroelectric generation of the Projects according to the following:

- a. 1.2 feet per hour in the Soda reach, ascending and descending as measured at USGS Gage No. 10079500;
- b. 3.0 inches every 15 minutes on the descending arm of the ramp in the Oneida reach below the powerhouse as measured at USGS Gage No. 10086500.

Restrictions on ramp rates will begin upon the New Licenses becoming final and will continue throughout the license terms.

3.3.1. Annual Maintenance. PacifiCorp will consult with the ECC regarding scheduling annual maintenance and will implement such maintenance to minimize to the extent practicable effects to aquatic resources including spawning, incubation of trout eggs, and rearing.

3.3.2. Increasing Ramp Rates. PacifiCorp may increase the ramp rates described in this Section 3.3 in case of the following:

- a. emergency or to avoid damage to life or property;
- b. compliance with legal constraints described in Section 5.10;
- c. utilization of spinning reserve for the PacifiCorp Eastern System control area, in compliance with the Northern Energy Reliability Council guidelines; or

Bear River Settlement Agreement

- d. compliance with Article 401 of the FERC license for the Cutler Project (Project No. 2420-001).

Upon request of the Parties, PacifiCorp will explain deviations from the ramp rates as allowed by this Section 3.3.2.

3.4. Recreation.

3.4.1. Recreation Management Plan. PacifiCorp will develop a Recreation Management Plan (“RMP”) in cooperation with BLM to address existing and projected recreational needs for recreation sites within the Oneida Project area. This RMP will replace and supercede any previous recreation management agreements between PacifiCorp and the BLM other than this Agreement. The RMP will include consideration of improvements, operations and maintenance of existing campgrounds, and safety issues along the Oneida Project road as described in the following Sections 3.4.1.1 through 3.4.1.6. In no event will the RMP require PacifiCorp to implement actions costing more than is provided in Sections 3.4.1.1 through 3.4.1.6 without PacifiCorp’s prior consent, which may be given or not at its discretion.

3.4.1.1. Funding for Campgrounds. PacifiCorp shall provide an annual reimbursement of up to \$10,000 to the BLM for the management and maintenance of Maple Grove and Redpoint Campgrounds. This funding will commence upon the New Licenses becoming final and continue through the end of the license terms. To the extent that \$10,000 is not expended in one year, any remaining funds will not be carried over to the next license year.

3.4.1.2. Traffic Safety Plan. Upon the New Licenses becoming final, PacifiCorp shall prepare for implementation, as described in the following Sections 3.4.1.3 through 3.4.1.5, a Traffic Safety Plan (“TSP”) for the Oneida Project road along the Oneida Project. The cost to PacifiCorp shall not exceed \$100,000 for this purpose. In addition, PacifiCorp shall maintain traffic signs along the Oneida Project Road at a cost to PacifiCorp not to exceed \$1,000 annually. This action will commence upon the New Licenses becoming final and continue through the end of the license terms. Annual funding for maintenance will not carry over to subsequent license years.

3.4.1.3. Turn-around Loops. PacifiCorp will construct one turn-around loop at or near the day use area to improve safety and maneuverability for vehicles along the Oneida Project road. PacifiCorp will provide a sign to indicate vacancy availability at the Maple Grove Campground to be located at the day use area. The cost of this action to PacifiCorp will not exceed \$10,000 and will be completed by the first anniversary of the New Licenses becoming final.

3.4.1.4. Law Enforcement. PacifiCorp shall provide annual funding to a local governmental law enforcement agency for law enforcement from May 1 through

Bear River Settlement Agreement

October 1 along the Oneida Project road. Annual funding from PacifiCorp shall not exceed \$3,000 commencing upon the New Licenses becoming final and continuing through the end of the license terms. Further, PacifiCorp will provide the use of the company's radio frequency between Memorial Day and Labor Day each year to federal, state, or county law enforcement officers to facilitate law enforcement activities along the Oneida Project road. To the extent that \$3,000 is not expended in one year, any remaining funds will not be carried over to the next license year.

3.4.1.5. Dust Abatement. As necessary, but no more frequently than twice annually, PacifiCorp will implement dust abatement measures along the Oneida Project road adjacent to and up to 100 feet on either side of the Maple Grove and Redpoint Campgrounds from Memorial Day to Labor Day. This action will be implemented upon the New Licenses becoming final and will continue through the end of the license terms.

3.4.1.6. Upgrade Campground Facilities. PacifiCorp shall provide funding to the BLM to upgrade and improve facilities at the Maple Grove and Redpoint Campgrounds. PacifiCorp shall provide a total of \$50,000 to the BLM for this purpose upon the New Licenses becoming final.

3.4.2. Assistance to Caribou County. PacifiCorp will provide funding to Caribou County for operation and maintenance of recreation sites at Soda reservoir. Annual funding from PacifiCorp not to exceed \$3,000 per year will begin upon the New Licenses becoming final and will continue throughout the license terms. To the extent that \$3,000 is not expended in one year, any remaining funds will not be carried over to the next license year.

3.4.3. Improvements to Put-in and Take-out Facilities.

3.4.3.1. Black Canyon. PacifiCorp will make improvements to the put-in and take-out access points in the Grace bypass upon the New Licenses becoming final. The put-in access at the Highway 34 Bridge downstream of the Grace dam will be improved by developing a gravel parking lot for 15 vehicles, providing one portable or permanent restroom, at PacifiCorp's option, and providing graveled access to Bear River. Weather permitting, PacifiCorp will open and maintain the restroom between April 1 and October 31 of each year. PacifiCorp will provide a staff gage to indicate flow level, and a rating table to translate flow level to cfs, near the put-in. The parking lot at the take out will be improved by graveling.

3.4.3.2. Oneida Narrows. PacifiCorp will make improvements to the put-in and take-out access points in the Oneida reach below the powerhouse upon the New Licenses becoming final. The put-in access at the bridge downstream of Oneida powerhouse will be improved by adding a gravel parking area for 10 vehicles, providing one portable or permanent restroom, at PacifiCorp's option, and providing graveled access to the river. PacifiCorp will provide a staff gage to indicate flow level, and a rating table to translate flow level to cfs, near the put-in. The take-out access at the cattle guard in Oneida Canyon will be

Bear River Settlement Agreement

improved by adding gravel parking for 10 vehicles, providing one portable or permanent restroom, at PacifiCorp's option, and providing graveled access to the river. Weather permitting, PacifiCorp will open and maintain the restrooms between April 1 and October 31 of each year.

3.4.4. Whitewater Boating Flows in Black Canyon. PacifiCorp will modify the Grace dam to release, and will release if available, whitewater boating flows in the amounts specified below to provide whitewater boating opportunities in the Grace bypass (Black Canyon), subject to the obligations specified in Section 5.10. If water is available, such releases may occur between April 1 and July 15 each year, except as that schedule may be modified by the ECC pursuant to Section 3.1.6 above. For the purposes of this Section 3.4.4, inflow to Grace shall be equal to inflow to Soda Reservoir on that day minus irrigation deliveries to Last Chance Canal Company and Bench B and minus leakage from Grace facilities. Daily mean flow from tributaries into Soda Reservoir will be estimated and included as inflow to Grace. All such inflows shall be deemed to be "available" for whitewater boating flows, as that term is defined above and as it is used in this Section 3.4.4 below. Inflows to Soda Reservoir will be determined at USGS Gage No. 10075000. This gage is located on the left bank 800 feet upstream of the Bailey Creek Road bridge and 2 miles south of Soda Springs.

During years 1 - 3 after the New Licenses become final, when available inflow results in at least 500 cfs spill in the Grace bypass reach, PacifiCorp will release additional flow in the bypass reach by use of the spillgate or dam stoplogs such that the total flow in the bypass reach is up to but does not exceed a total of 900 cfs in the bypass reach on up to 16 separate occasions in any one year (opportunistic releases). No limits on ramping rates will be imposed during this time period. Beginning upon the New Licenses becoming final, the ECC shall determine, as provided in Section 3.1.6, any monitoring conditions necessary prior to or during releases of boatable flows in Black Canyon.

During years 4 - 6 after the New Licenses become final, PacifiCorp will release whitewater boating flows in the Grace bypass of between 700 and 1500 cfs, if available as inflow (scheduled releases). Such flows will total no more than 96 hours of foregone generation at 1050 cfs in any year during specified time periods between April 1 and July 15. Such flows will be provided, if available, in 16 separate releases of six hours in length on weekend days. The Grace Project will not operate during such releases unless available inflow is greater than the scheduled whitewater boating flow, and then the Project will operate with that portion of the inflow that exceeds the scheduled whitewater boating flow. Feasible ramping rates will be determined by the ECC, in consultation with PacifiCorp, and the cost of ramping rates (including foregone energy generation) will be borne by PacifiCorp.

In year 7 and subsequently after the New Licenses become final, PacifiCorp will release whitewater boating flows between 700 and 1500 cfs for 96 hours per year between April 1 and July 15 each year, if available as inflow, unless the monitoring results show significant adverse effects on ecological attributes in Black Canyon as defined in Section 3.1.6, in which event the

Bear River Settlement Agreement

ECC may adjust the whitewater boating flow schedule as provided in Section 3.1.6.3. In no event shall PacifiCorp be obligated to provide more than 96 hours of scheduled whitewater boating flows in any given year at an average of 1050 cfs.

On or about March 1 of each year after the New Licenses become final, PacifiCorp will forecast the availability of inflow for whitewater boating flows consistent with the obligations stated in Section 5.10, and will announce the initial water year forecast. Shortly after this announcement, PacifiCorp will consult with AW on the distribution of whitewater releases, and will forward a recommendation regarding such releases to the ECC. The ECC will make a final determination regarding distribution of whitewater boating flow releases into Black Canyon. If the forecast is such that flows may be conducive to whitewater boating flows for a total of more than 96 hours, then the ECC will determine the days upon which such flows will be released.

3.4.5. Whitewater Boating Flows in the Oneida Narrows. PacifiCorp will consult with IDEQ to develop an operational regime that minimizes the frequency of river level fluctuations below the Oneida powerhouse, in compliance with PacifiCorp's 401 Certification and consistent with obligations described in Section 5.10. Pursuant to this goal and subject to those obligations, target flows below the powerhouse will be greater than 900 cfs between Memorial Day and Labor Day, if available. Existing flow conditions will be posted on the Flow Phone and website (Section 3.4.6).

3.4.6. Bear River Flow Information. PacifiCorp, in collaboration with the ECC, will provide a flow information website and a toll-free number. The website will present in monthly calendar format the scheduled dates for flow releases into Black Canyon, identified by the ECC after PacifiCorp announces the annual irrigation allocation to the Bear River irrigators, and updated weekly between April 1 and July 15 each year. Current and past flow conditions will be provided on the website for locations between the Outlet Canal and the Bear River below the Oneida Project, including the Bear River above Soda dam (USGS Gage No. 10075000), the Bear River below Grace dam (USGS Gage No. 10080000), and the Bear River below the Oneida powerhouse (USGS Gage No. 10086500). The gages will provide a telephone uplink with existing equipment to a website, provided and maintained by PacifiCorp from March 1 to November 30 each year, and flow data will be expressed in hourly averages (cfs) for the current and prior 6 days. Data from the gages will be presented graphically and updated to the website every 4 hours. The website will include 7-day forecasts of project flows in the Black Canyon and below the Oneida powerhouse. Due to the changing nature of flows in the Bear River system, the website will include disclaimers for accuracy and predictability.

The toll free flow phone will include the last recorded flow for the three gages each day. The flow phone will also list the next four scheduled release dates, identified by the ECC after PacifiCorp announces the annual irrigation allocation to the Bear River irrigators, and including any updates since March 1. The recorded message will indicate that releases into the

Bear River Settlement Agreement

Black Canyon occur, based on available flow, when inflow into Soda Reservoir less irrigation withdrawals between Soda Dam and Grace Dam plus leakage from the Grace flowline is equal to or greater than 700 cfs, and that releases into Black Canyon will not exceed 1500 cfs. The Bear River website and flow phone will be implemented upon the New Licenses becoming final, and will continue through the license terms.

3.4.7. Deviations. Upon request of the Parties, PacifiCorp will explain deviations from the flows indicated in Sections 3.4.4 and 3.4.5 above as allowed by this Agreement.

3.5. Historic Properties and Cultural Resources. PacifiCorp has conducted historic properties inventories within the area of potential affect, and PacifiCorp will ensure that such inventories are sufficient to satisfy the National Historic Preservation Act (“NHPA”) and its implementing regulations. PacifiCorp will prepare Historic Properties Management Plans (“HPMPs”) for each of the Projects. The HPMPs will define and describe the manner in which historic properties will be protected and how effects to these properties will be mitigated over the terms of the New Licenses, and will demonstrate how each Project will comply with the NHPA and its implementing regulations. PacifiCorp will ensure that the HPMPs are consistent with FERC’s *Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects* (May 20, 2002) (“FERC HPMP Guidelines”), and NHPA implementing regulations at 36 C.F.R. Part 800 (effective January 11, 2001). In addition, HPMPs should be developed and implemented in accordance with additional guidelines set forth in applicable project-specific programmatic agreement(s) developed pursuant to NHPA implementing regulations at 36 C.F.R. Part 800. Programmatic agreements will be negotiated prior to the development of HPMPs. HPMPs will be completed by the first anniversary of the New Licenses becoming final in consultation with the State Historic Preservation Office, BLM and the Tribes. PacifiCorp will be financially responsible for implementing actions necessary to satisfy its obligations under the HPMPs and programmatic agreements.

In conducting activities pursuant to this Agreement, PacifiCorp will cooperate with FERC and other federal agencies in efforts to ensure the Projects comply with the Native American Graves Protection and Repatriation Act and the American Indian Religious Freedom Act.

3.6. Land Management. PacifiCorp, in consultation with the ECC, will prepare and implement Land Management Plans (“LMPs”) for each of the Projects. The LMPs will define and describe the manner in which PacifiCorp-owned lands within the FERC Project boundary will be managed during the license terms to minimize effects to natural resources, while providing for ongoing operations and maintenance activities for the Projects and subject to the rights of lessees under existing leases. Preparation of the LMPs will be completed by the second anniversary of the New Licenses becoming final, and will include the provisions set forth in Sections 3.6.1 and 3.6.2 below.

Bear River Settlement Agreement

3.6.1. Shoreline Buffer Zone. Beginning upon the New Licenses becoming final, PacifiCorp will establish a shoreline buffer zone on PacifiCorp-owned lands along the Bear River and reservoirs and around wetlands and springs for each of the Projects within the FERC Project boundaries, subject to the rights of lessees under existing leases. The purpose of the buffer zone is to protect riparian habitat and elements that contribute to restoration of fish habitat. A buffer zone provision, which will at a minimum provide for the exclusion of livestock from riparian and wetland areas, will be incorporated into all PacifiCorp-issued leases.

3.6.2. Fencing Within the Cove Bypass. Beginning upon the first anniversary of the New Licenses becoming final, PacifiCorp will fence the buffer zone on PacifiCorp-owned land within the Cove Project bypass to prevent the encroachment of livestock and protect riparian vegetation. Fencing will be constructed to exclude livestock while allowing access by big game and other wildlife. In addition, PacifiCorp will fund 25% of the cost of fencing the buffer zone on non-PacifiCorp private land in the Cove bypass for landowners who consent to fencing and to provide the balance of the funding. PacifiCorp will also pay 100% of the ongoing costs for normal fencing maintenance on non-PacifiCorp private land within the Cove bypass, with the consent of the landowners. This maintenance on non-PacifiCorp land will not include paying for repairs resulting from intentional destruction or vandalism.

Section 4: Coordination and Decision Making

Bear River Settlement Agreement

SECTION 4: COORDINATION AND DECISION MAKING

4.1. Environmental Coordination Committee. PacifiCorp will convene an Environmental Coordination Committee (“ECC”) consisting of one representative from PacifiCorp, each Governmental Party, the Tribes, and each NGO. Within 60 days of the issuance and acceptance of the New Licenses, each Party that is a member of the ECC will designate one representative to the ECC. Each other Party that is not a member of the ECC is entitled to participate in duly noticed ECC meetings but shall not be required for decision-making pursuant to Section 4.2. AW’s representative shall be designated by AW after AW meets and confers with other Parties that are not members of the ECC and which represent whitewater boating interests. Consistent with this Agreement, the ECC will be responsible for:

- a. Facilitating coordination and consultation between PacifiCorp and the other Parties on plans developed by PacifiCorp for the implementation of PM&E Measures;
- b. Proposing and approving appropriate restoration and additional flow measures pursuant to Sections 3.1 and 3.2.2 of this Agreement and consistent with the RCAS and the CTMAPP, or any updated version of such documents;
- c. Establishing appropriate monitoring criteria to evaluate the effects of PM&E Measures implemented pursuant to this Agreement;
- d. Coordinating the implementation of the PM&E Measures;
- e. Establishing appropriate procedures for conducting its activities consistent with this Section 4, including protocols for public involvement and outreach, as appropriate; and
- f. Establishing such subcommittees as it deems necessary for the purpose of achieving the objectives described in a. through e. above and determining, as appropriate, the size, membership, and procedures of such committees.

Nothing in this Section 4.1 shall be construed as conferring any authority upon the ECC to cause the release of water from Bear Lake for any purpose.

4.2. Decision-Making Process. The ECC will endeavor to conduct its business by consensus of the representatives present at duly noticed meetings. When consensus may not reasonably be reached, the ECC will follow the procedures set forth below in this Section 4.2. Decisions of the ECC will not usurp the authority of the individual Parties. In no event shall the ECC increase the monetary, resource or other commitments made by PacifiCorp in this Agreement, override any other limitations set forth in this Agreement, including those set forth

Bear River Settlement Agreement

in Section 5.10, or require PacifiCorp to decommission or, except as explicitly set forth in Section 3.2.3, otherwise modify Project facilities without PacifiCorp's prior written consent, which may be withheld in PacifiCorp's discretion.

4.2.1. Decision Rule in the Absence of Consensus. When consensus may not reasonably be reached as described in this Section 4.2 regarding measures to be undertaken pursuant to Sections 3.1 and 3.2.2, decisions of the ECC shall require both:

- a. A majority vote of the representatives present and voting at a duly noticed meeting of the ECC at which a vote is scheduled on the meeting agenda; and
- b. Unanimity of the representatives present of the USFWS, IDFG, and IDEQ. In addition to USFWS, IDFG and IDEQ, unanimity of the representatives of USFS, BLM, and/or the Tribes will be required if the measure under consideration would occur within lands administered by USFS, BLM or the Tribes, respectively, and unanimity of IDPR will be required for measures under consideration pursuant to Section 3.1.6.3. If any of the Parties required for unanimity fails to attend a duly noticed meeting of the ECC where such a vote is scheduled on the meeting agenda, its vote shall not be required for unanimity under this Section 4.2.1(b).

4.2.2. Elevation of Decision Making. The ECC will refer an issue to the appropriate policy makers designated by each Party when:

- a. Either PacifiCorp or at least two representatives to the ECC determine that a vote pursuant to Section 4.2.1 has resulted in a decision which is inconsistent with this Agreement, or the ECC's failure to take a vote or approve a measure is inconsistent with this Agreement; or
- b. The ECC cannot reach consensus on any issue not decided by vote pursuant to Section 4.2.1 and at least three Parties believe the issue should be elevated;

If the policy makers are unable to resolve the issue by consensus within 30 days after referral to that group, any remaining dispute will be resolved in accordance with Section 5.6.

4.2.3. Teleconferencing. When a representative to the ECC is unable to attend a duly noticed meeting of the ECC in person, but attends the meeting via teleconference, the representative will be considered present for purposes of decision making under this Section 4.2.

Bear River Settlement Agreement

4.2.4. Designating a Proxy. When a representative to the ECC will not be able to attend a duly noticed meeting of the ECC by phone or in person, that representative may designate in writing another Party's representative who will represent it for purposes of determining consensus and voting under Section 4.2, and determining whether to elevate decision making under Section 4.2.2, and the representative will be considered present for purposes of decision making under this Section 4.2.

4.3. Notice. Members of the ECC will be given a minimum of 30 days notice prior to any meeting, unless the ECC by consensus authorizes shorter notice. The same notice of ECC meetings will also be provided to the Bear River Commission, all Parties which are not members of the ECC, and to a representative of each of the Bear River Compact states.

4.4. Environmental Coordinator. PacifiCorp will designate an Environmental Coordinator ("EC") in consultation with the Parties to oversee the coordination and implementation of PM&E measures. The ECC, after meeting with a candidate for the EC position, may forward a letter to PacifiCorp with its comments regarding the suitability of the candidate. The EC will be under the employ of PacifiCorp, and will act as PacifiCorp's representative to the ECC. The EC will (1) provide reasonable administrative and clerical support to the ECC; (2) function as a point of contact for the ECC and Parties to this Agreement that are not ECC members; (3) seek additional funds through grant writing when appropriate; (4) attempt to identify willing landowners for implementation of Section 3.1.5; and (5) apply for permits required to carry out the actions that PacifiCorp has agreed to take under this Agreement. When appropriate and at the direction of the ECC, the EC may be a public advocate for the measures and operations implemented in accordance with this Agreement. The cost to PacifiCorp of maintaining an EC will not exceed the cost of one full-time employee and associated administrative costs, including office space, supplies, and other overhead. Any additional required costs beyond one full-time employee will be provided through funding described in Section 3.1.4 and Section 3.1.5.

4.5. Meetings. The EC will arrange an annual meeting of the ECC as well as any additional meetings deemed necessary by the Parties to coordinate activities, inform the Parties concerning the status or implementation of PM&E measures, take and submit for ratification meeting notes at the ECC's request, distribute such notes to ECC members and other Parties to this Agreement, and otherwise assist the ECC in its responsibilities under Section 4.1 above.

4.6. Reports. The EC will prepare a detailed annual report on the activities of the ECC and on the implementation of the PM&E measures during the previous year. Preparation of such reports will commence during the first year following issuance and acceptance of the New Licenses and will recur annually through the seventh year following the New Licenses becoming final. Thereafter, preparation of such reports will recur every five years during the terms of the New Licenses unless the ECC decides to prepare reports more frequently, in which case the members of the ECC will contribute to the preparation of reports. The EC will prepare these reports in consultation with the members of the ECC and will provide such members with at least 30 days to comment on a draft report prior to completing a final report.

Bear River Settlement Agreement

Final detailed annual reports will be filed with FERC, and copies provided to all signatories of this Agreement. In those years during which a detailed annual report is not prepared, the EC will prepare an annual accounting report, including a summary of activities during that year, and submit such report to the ECC and other signatories to this Agreement.

Section 5: Implementation of Agreement

Bear River Settlement Agreement

SECTION 5: IMPLEMENTATION OF AGREEMENT

5.1. Parties Bound. The Parties shall be bound by this Agreement for the terms of the New Licenses unless this Agreement is sooner terminated as provided in Section 5.7, except that if a Party withdraws as allowed by this Agreement, that Party shall not be bound following such withdrawal.

5.2. Resolution of Disputes Before Order Issuing New Licenses. If any of the following occur after the Effective Date and prior to FERC granting the New Licenses:

- a. 401 Certification for any of the three Projects is denied or issued with conditions inconsistent with Section 1.1.7 and Appendix D;
- b. A TMDL determination is made that is inconsistent with Section 1.1.7 and Appendix D;
- c. The final biological opinion developed pursuant to the ESA requires measures inconsistent with Section 1.1.7 and Appendix D; or
- d. Final Terms and Conditions under FPA sections 4(e), 18, 10(a) or 10(j) are filed with FERC by a Party that are inconsistent with this Agreement;
- e. Comments or recommendations are filed with FERC by a Party that are inconsistent with this Agreement;
- f. A Party encourages a non-Party to file Final Terms and Conditions under FPA sections 4(e), 18, 10(a) or 10(j), or other comments or recommendations that are inconsistent with this Agreement; or
- g. A Party petitions FERC or otherwise seeks to (i) impose additional provisions for environmental, cultural, public recreation, fishery, wildlife, land management, operational, and related measures, (ii) impose any provision inconsistent with the Agreement, (iii) change the Project boundaries, or (iv) challenge in any forum FERC's jurisdiction over Bear Lake; or otherwise breaches this Agreement,

then this Agreement shall be deemed modified to conform to the action above, unless any Party (i) provides notice to the other Parties that it objects to the event within 30 days after the Party has actual knowledge of the occurrence of the event, (ii) appeals during the applicable appeal period under the conditioning agency's regulations, if applicable, and (iii) initiates the ADR Procedures. Notification of a Party under Section 6.8 of this Agreement, when effective, shall constitute actual knowledge. Service of process on a Party's registered agent shall also constitute actual knowledge. Any Party may, in addition, initiate the appeal procedure

Bear River Settlement Agreement

described in Sections 5.3.7 and 5.3.8. If the Parties complete ADR and the relevant appeals, or abandon appeals, and one or more of the above items remains inconsistent with this Agreement, the Party or Parties that objected to an event listed above may, within 60 days after completion of ADR and the relevant appeals, withdraw from this Agreement. Further, if IDEQ includes in its 401 Certification conditions inconsistent with Section 1.1.7 and Appendix D, PacifiCorp may withdraw from this Agreement in accordance with this Section 5.7.

5.3. Resolution of Disputes After Order Issuing New Licenses.

5.3.1. New License Conditions Inconsistent with This Agreement. If the New Licenses issued by FERC, either initially or following conclusion of appeals, contain any modification of the PM&E Measures stated in this Agreement, include additional measures related to the matters covered by this Agreement (referred to as the New Licenses being “inconsistent with this Agreement”), or include changes to the Project boundaries, this Agreement shall be deemed modified to conform to the New Licenses, unless a Party provides notice to the other Parties that it objects to the modification, addition, or deletion and initiates ADR Procedures within 30 days after the date of the license order or the conclusion of all appeals, as appropriate. The disputing Party or Parties may, in addition, initiate the rehearing procedure described in Sections 5.3.7 and 5.3.8 and such Party’s rehearing request shall constitute notice to the other Parties of the dispute. If the New Licenses become final, after any appeals or after the Parties abandon further appeals, and remain inconsistent with this Agreement, then a Party whose interests are affected by an inconsistency may withdraw from this Agreement.

5.3.2. PM&E Measures Omitted from New Licenses. If the New Licenses issued by FERC, either initially or following conclusion of appeals, fail to include any PM&E Measures included in this Agreement, the Parties agree that they shall petition FERC for rehearing with the goal of having such measures included. If, after any rehearing and judicial review, the New Licenses do not contain all of the PM&E measures stated in Appendix A because of a determination that FERC does not have jurisdiction to adopt or enforce the omitted measures, the Parties agree that they shall be bound by the entire Agreement, including the omitted measures, provided the New Licenses contain those PM&E measures stated in Appendix A over which FERC determines it does have jurisdiction and the New Licenses are otherwise consistent with this Agreement. The Parties shall be entitled to enforce the omitted measures in any state or federal court with jurisdiction.

5.3.3. Change in Terms and Conditions During License Terms. If (i) any Party changes its Final Terms and Conditions applicable to PacifiCorp, (ii) except as provided in Appendix D, any Governmental Party changes certifications or permits under its own legal authorities that affect the Projects, (iii) any Party petitions FERC to change the terms of the New Licenses or Project boundaries (whether or not the petition to FERC is allowed under Section 5.5.1), or (iv) any Party challenges in any forum FERC’s jurisdiction over Bear Lake, any Party may give notice that it believes such action or petition is inconsistent with this Agreement and may commence ADR Procedures. A Party may also seek rehearing or appeal

Bear River Settlement Agreement

of such action as provided in Sections 5.3.7 and 5.3.8 below. If, after conclusion of ADR and after completion or abandonment of appeals, the inconsistent condition sought by a Party is imposed by FERC and is inconsistent with this Agreement, any Party may withdraw from this Agreement.

5.3.4. PacifiCorp Fails To Perform License Terms. If PacifiCorp fails to perform any of the provisions of this Agreement included in the New Licenses and is not excused by force majeure, a Party may give PacifiCorp notice and an opportunity to cure within 30 days of such notice. If PacifiCorp fails to cure the problem within that period, or if such failure is not curable within 30 days and PacifiCorp has not commenced a cure within that period and diligently completed such cure, any Party who objects to such failure to perform may give notice to the other Parties and commence ADR Procedures. In addition, the aggrieved Party or Parties may petition FERC to enforce such provision and, if unsuccessful, seek rehearing or appeal or, if and as appropriate, the remedies of mandamus or specific performance. The Parties reserve any remedies under applicable law to enforce the PM&E Measures contained in this Agreement but not enforced by FERC. If, after all remedies at FERC are exhausted, FERC does not enforce the provision and PacifiCorp fails to perform the provision, any Party may withdraw from this Agreement.

5.3.5. PacifiCorp Fails To Perform Covenants of This Agreement Not Included in the New Licenses. If PacifiCorp fails to perform any of its obligations under this Agreement that are not included as terms in the New Licenses, any Party may give PacifiCorp notice of the failure and an opportunity to cure within 30 days of such notice. If PacifiCorp fails to cure the problem within that period, or if such failure is not curable within 30 days and PacifiCorp has not commenced a cure within that period and diligently completed such cure, the Party may seek specific performance of this Agreement. If PacifiCorp's performance of the obligation is not obtained and if PacifiCorp's failure is inconsistent with the terms of this Agreement, the aggrieved Party may withdraw from this Agreement. The Parties reserve any remedies under applicable law to enforce the PM&E Measures contained in this Agreement.

5.3.6. Action by Third Party. If, during the terms of the New Licenses, a third party successfully petitions FERC or obtains a court order modifying the operation of one or all of the Projects in a manner that is inconsistent with this Agreement, then any Party who objects to such order may give notice to the other Parties and commence ADR Procedures to determine whether such inconsistency can be mitigated by agreement of the Parties. In addition, the aggrieved Party or Parties may seek rehearing or appeal of such order. If, after pursuit of the ADR Procedures or other proceedings, the order complained of remains in effect, or as modified is still inconsistent with this Agreement, any Party may withdraw from this Agreement.

5.3.7. Review of FERC Actions. Any Party may petition FERC for rehearing and may seek judicial review of any FERC act or omission, at or subsequent to the New Licenses becoming final, that is inconsistent with this Agreement. The ADR Procedures do not preclude any Party from timely filing for and pursuing rehearing under 18 C.F.R. §

Bear River Settlement Agreement

385.713(b), or judicial review, of the inconsistent action. However, the Parties shall follow the ADR Procedures to the extent reasonably practicable while such appeal of an inconsistency is pursued. If a Party has filed for rehearing or judicial review of any inconsistent action and the Parties subsequently agree unanimously to modify this Agreement to conform to the inconsistent action, the filing Party or Parties shall withdraw the appeal, or recommend such withdrawal, as appropriate.

5.3.8. Review of Other Agency Actions. To the extent provided by applicable law, PacifiCorp or other Party may seek administrative rehearing and judicial review of any action by a Governmental Party inconsistent with this Agreement. The ADR Procedures do not preclude any Party from timely filing and pursuing an appeal under the respective Governmental Parties' applicable rules, or judicial review, of any such action that is inconsistent with this Agreement, or any other final condition that relates to subjects not resolved by this Agreement. However, the Parties shall follow ADR Procedures to the extent reasonably practicable while any such appeal of an inconsistency is pursued. If a Party has filed for administrative rehearing or judicial review of any inconsistent action and the Parties subsequently agree to modify this Agreement to conform to the inconsistent action, the filing Party or Parties shall withdraw the appeal, or recommend such withdrawal, as appropriate.

5.3.9. New ESA Listing. Should any species which may be affected by the Projects be listed as threatened or endangered during the terms of the New Licenses, including any annual licenses issued in accordance with this Agreement, PacifiCorp will consult with FERC to determine how to proceed. USFWS or NMFS may, if necessary to comply with their mandates under the ESA with respect to a newly listed species, petition FERC to reopen the New Licenses. Should consultation under ESA Section 7 be required and result in the imposition of measures which are inconsistent with the terms of the New Licenses or this Agreement, the effect of such inconsistency on this Agreement will be resolved in accordance with Section 5.6.

5.4. Cooperation Among Parties. The Parties shall cooperate in the performance of this Agreement and compliance with related license articles. Among other things, the Parties shall cooperate in implementing the PM&E Measures, conducting studies, performing monitoring, and conducting all other activities related to the implementation of this Agreement.

5.4.1. Responsibility for Costs. PacifiCorp shall pay for the cost of actions required of PacifiCorp by this Agreement and by the New Licenses. PacifiCorp shall have no obligation to reimburse or otherwise pay any other Party for its assistance, participation, or cooperation in any activities pursuant to this Agreement or the New Licenses.

5.4.2. PacifiCorp Solely Responsible for Operations of Projects. By entering into this Agreement, none of the Parties, except for PacifiCorp, have accepted any legal liability or responsibility for the operation of the Projects.

Bear River Settlement Agreement

5.4.3. Availability of Funds. Implementation of this Agreement for a Party that is a federal agency is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1519, and the availability of appropriated funds. Nothing in this Agreement is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The Parties acknowledge that the Governmental Parties that are federal agencies shall not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized official of each such agency affirmatively acts to commit such expenditures, as evidenced in writing. Implementation of this Agreement by Governmental Parties that are state agencies is subject to the availability of appropriated funds. Nothing in this Agreement is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the Treasury of the State of Idaho. The Parties acknowledge that the Governmental Parties that are state agencies shall not be required under this Agreement to expend any appropriated funds unless and until an authorized official of each such agency affirmatively acts to commit such expenditures, as evidenced in writing.

5.4.4. Escalation of Costs. Unless otherwise indicated, all costs or payment amounts specified in dollars shall be deemed to be stated as of the year 2002, and PacifiCorp shall escalate such sums as of January 1 of each following year (starting in January 2003) according to the following formula:

$$AD = D \times \frac{(NGDP)}{IGDP}$$

WHERE:

- AD = Adjusted dollar amount as of January 1 of the year in which the adjustment is made.
- D = Dollar amount prior to adjustment.
- IGDP = GDP-IPD for the third quarter of the year before the previous adjustment date (or, in the case of the first adjustment, the third quarter of the year before the Effective Date).
- NGDP = GDP-IPD for the third quarter of the year before the adjustment date.

"GDP-IPD" is the value published for the Gross Domestic Product Implicit Price Deflator by the U.S. Department of Commerce, Bureau of Economic Analysis in the publication Survey of Current Business, Table 7.1 (being on the basis of 1996 = 100), in the third month following the end of the applicable quarter. If that index ceases to be published, any reasonably equivalent index published by the Bureau of Economic Analysis may be substituted by the Parties. If the base year for GDP-IPD is changed or if publication of the index is discontinued, the Parties shall promptly make adjustments or, if necessary, select an appropriate alternative index to achieve the same economic effect.

Bear River Settlement Agreement

5.5. Reopener, Modification, Review, or Amendment.

5.5.1. Reopener or Modification. During the terms of the New Licenses, except as provided in the Final Terms and Conditions and this Agreement, the Parties may not seek to modify or add to the PM&E Measures or other obligations of PacifiCorp or seek to amend the New Licenses pursuant to standard FERC reopener provisions, except: (A) as provided pursuant to Sections 1.1.1, 1.1.6, 1.1.7 or 5.3.9; (B) as required by statutes enacted or amended after the date of the final order issuing the New Licenses; or (C) if significant new information not known or understood as of the date of issuance of the New Licenses reasonably demonstrates that the Agreement does not continue to satisfy PacifiCorp's obligations under Sections 1.1.1, 1.1.6, 1.1.7 or 5.3.9, or any subsequently enacted or amended statute. If a Party seeks to modify, amend or add to the New Licenses under requirement of such new statutes, the acting Party shall provide PacifiCorp at least 90 days' notice to consider the Party's position. A Party shall not be required to comply with this 90-day-notice provision if it believes an emergency situation exists, or if required to meet its responsibilities under statutes or regulations enacted or amended after the date of the final order issuing the New Licenses. If a Party modifies or adds to the PM&E Measures or other obligations of PacifiCorp or succeeds in amending the New Licenses pursuant to this Section 5.5.1, the other Parties may object and respond in accordance with Section 5.3.3 above.

5.5.2. Amendment of Agreement. This Agreement may be amended at any time during the terms of the New Licenses with the unanimous agreement of all Parties. Any amendment of this Agreement shall be in writing and executed by all Parties. As appropriate, the Parties will submit a statement to FERC in support of the amendment.

5.6. Dispute Resolution.

5.6.1. General. Except to the extent that FERC or other agency with jurisdiction over the Project has a procedure that precludes implementation of Sections 5.6.1 through 5.6.3, all disputes among the Parties regarding the obligations of the Parties under this Agreement shall, at the request of any Party, be the subject of a nonbinding alternative dispute resolution ("ADR") procedure among the disputing Parties, as stated in Sections 5.6.1 through 5.6.3 (the "ADR Procedures"). Each Party shall cooperate in good faith to promptly schedule, attend, and participate in the ADR. The Parties agree to devote such time, resources, and attention to the ADR as are needed to attempt to resolve the dispute at the earliest time possible. Each Party shall implement promptly all final agreements reached, consistent with its applicable statutory and regulatory responsibilities. Nothing in Sections 5.6.1 through 5.6.3 is intended or shall be construed to affect or limit the authority of FERC, the Governmental Parties, or other agency with jurisdiction over the Projects to resolve a dispute brought before it in accord with its own procedure and applicable law, or to alter the statute of limitations or other requirements for administration or judicial review of action of Governmental Parties.

5.6.2. ADR Procedures. A Party claiming a dispute shall give notice of the dispute within 30 days of the Party's actual knowledge of the act, event, or omission that gives rise to the dispute, unless this Agreement provides otherwise. Notification under Section 6.8 of this Agreement, when effective, shall constitute actual knowledge. Service of process on a

Bear River Settlement Agreement

Party's registered agent shall also constitute actual knowledge. At a minimum and in any dispute subject to these ADR Procedures, the Parties shall hold two informal meetings within 30 days after notice to attempt to resolve the disputed issue(s). If the informal meetings fail to resolve the dispute, the Parties may attempt to resolve the dispute using a neutral mediator jointly selected within 15 days after notice by a Party that the informal meetings did not resolve the dispute. If mediation is initiated, the mediator shall mediate the dispute during the next 60 days after their selection. Any of these time periods may be reasonably extended or shortened by agreement of the Parties, or as necessary to conform to the procedure of an agency or court with jurisdiction over the dispute. Unless otherwise agreed among the Parties, each Party shall bear its costs for its own participation in the ADR Procedures and jointly share the costs of any neutral mediator. Pending resolution of any dispute under these ADR Procedures, and subject to the authority of FERC or other agency with jurisdiction to order otherwise, PacifiCorp may continue operating the Projects in the manner of their operation prior to the time the dispute arose.

5.6.3. Enforcement of Agreement After Dispute Resolution. Any Party may seek specific performance of this Agreement by any other Party, in a court of competent jurisdiction after compliance with the ADR Procedures. No Party shall be liable in damages for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement, except that a Party may seek specific performance to secure payment of money as provided in this Agreement or monetary penalties under applicable law. Nothing in Sections 5.6.1 through 5.6.3 is intended or shall be construed to affect or limit the jurisdiction of any agency or court as established under applicable law.

5.7. Withdrawal from Agreement.

5.7.1. Withdrawal of a Party from Agreement. A Party may withdraw from this Agreement only as expressly provided in this Section 5 and in Section 2.3.

5.7.2. Method of Withdrawal. A Party may exercise its right to withdraw from this Agreement by 60 days' advance notice.

5.7.3. Continuity After Withdrawal. The withdrawal of a Party does not terminate this Agreement for the remaining Parties. However, if any Party that is a member of the ECC withdraws from this Agreement, any other Party may elect to withdraw without further ADR Procedures, after providing notice, within 60 days of the withdrawal of the other Party. If a Party withdraws from this Agreement, the withdrawing Party shall not be bound by any term contained in this Agreement, except as provided in Section 1.3.

5.8. Termination of Agreement. This Agreement may be terminated by mutual agreement of the Parties, by withdrawal of all Parties, or upon withdrawal of PacifiCorp.

5.9. Manner of Funding. Except as otherwise provided in this Section 5.9, funds to

Bear River Settlement Agreement

be provided by PacifiCorp, described in Section 3, will remain in PacifiCorp's control until individual PM&E measures are implemented. PacifiCorp will pay for individual PM&E measures as they are implemented, in accordance with the designated implementation schedules, and at the direction of the ECC. Funds described in Section 3.4.1.1 and 3.4.1.6 will be forwarded at the time designated in such sections to BLM, and funds described in Section 3.4.2 will be forwarded at the time designated in that section to Caribou County. All funds specified in this Agreement to carry out PM&E measures include the costs of permitting such measures and any other associated costs. Where funds are not expended in a given year and are allowed to be carried over to a subsequent year, such funds will bear interest but will not be further escalated pursuant to Section 5.4.4 above. Upon expenditure of carried over funds, one half of the accrued interest will belong to PacifiCorp and the remainder may be expended under this Agreement.

5.10. Relationship to Water Contracts and Agreements, Interstate Compact, Water Rights, Judicial Decrees and Flood Control Responsibility. PacifiCorp's ability to manipulate reservoir levels and provide flows at the Projects is restricted by and subject to historic practices, water rights and flood control responsibilities that are memorialized in water contracts, water agreements, and judicial decrees and opinions. Agreements to supply irrigation water from Bear Lake are referred to in this Agreement as "Water Contracts." In addition, the Bear River Compact, as amended and ratified by Wyoming, Idaho and Utah and ratified by Congress, restricts PacifiCorp from releasing water from Bear Lake except to satisfy the irrigation contracts when the lake is below an irrigation reserve ("Interstate Compact"). The October 5, 1999 Agreement Regarding the Bear River System and the April 18, 2000 Operations Agreement for PacifiCorp's Bear River System, both among Wyoming, Idaho, Utah and PacifiCorp, further formalize historic operations on Bear River and Bear Lake, restricting PacifiCorp's ability to interfere with other water rights by its operation of the Projects ("Water Agreements"). In addition to the aforementioned restrictions, any manipulation of flows at the Projects is subject to flood control measures that PacifiCorp must undertake to avoid possible liability for downstream flooding ("Flood Control Responsibilities"). The Parties agree that in no event shall this Agreement require PacifiCorp to breach or take any action inconsistent with its water rights, Water Contracts, Judicial Decrees, the Interstate Compact, or Water Agreements described herein, or to in any way impinge upon PacifiCorp's Flood Control Responsibilities. Relevant Water Contracts, Water Agreements and Judicial Decrees are listed in Appendix C. If actual flows and ramping rates are materially inconsistent with the requirements of Sections 3.2, 3.3, or 3.4, a Party may raise a claim under Section 5.6 that PacifiCorp did not reasonably act to prevent or mitigate that inconsistency. For greater clarity, if instream flows are less than the stated amounts notwithstanding that a Party believes the flows are available, or if operations are materially inconsistent with the stated ramping rates notwithstanding that a Party believes that such ramping rates could be achieved consistent with the restrictions contained in this Section 5.10, that Party may initiate dispute resolution under Section 5.6. In addition to dispute resolution among the Parties, any Party may commence a proceeding at the FERC seeking to enforce the minimum stream flows and ramping restrictions provided in this Agreement.

Bear River Settlement Agreement

Nothing in this Agreement shall authorize any action inconsistent with the Water Contracts, Judicial Decrees, the Interstate Compact, Water Agreements or Flood Control Responsibilities that would result in the release of water from Bear Lake, or the use of PacifiCorp's water rights in Bear Lake, for the purposes of the Projects or this Agreement.

**Section 6: General
Provisions**

Bear River Settlement Agreement

SECTION 6: GENERAL PROVISIONS

6.1. No Third-Party Beneficiaries. Without limiting the applicability of rights granted to the public pursuant to applicable law, this Agreement shall not create any right or interest in the public, or any member of the public, as a third-party beneficiary of this Agreement and shall not authorize any non-Party to maintain a suit at law or equity pursuant to this Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties shall remain as imposed under applicable law.

6.2. Successors and Assigns. This Agreement shall apply to and be binding on the Parties and their successors and approved assigns. Upon completion of a succession or assignment, the initial Party shall no longer be a Party to this Agreement, but shall remain secondarily liable for the performance of the assignee. No change in ownership of the Projects or transfer of the existing or New Licenses by PacifiCorp shall in any way modify or otherwise affect any other Party's interests, rights, responsibilities, or obligations under this Agreement. Unless prohibited by applicable law, PacifiCorp shall provide in any transaction for a change in ownership of the Projects or transfer of the existing or New Licenses that such new owner or owners shall be bound by and shall assume the rights and obligations of this Agreement upon completion of the change of ownership and approval by FERC of the license transfer or transfers. A transferring or assigning Party shall provide notice to the other Parties at least 60 days prior to completing such transfer or assignment.

6.3. Failure to Perform Due to Force Majeure. No Party shall be liable to any other Party for breach of this Agreement as a result of a failure to perform or for delay in performance of any provision of this Agreement if such performance is delayed or prevented by force majeure. The term "force majeure" means any cause reasonably beyond the affected Party's control, whether unforeseen, foreseen, foreseeable, or unforeseeable, and without the fault or negligence of the affected Party. Force majeure may include, but is not limited to, natural events, labor or civil disruption, breakdown or failure of Project works, orders of any court or agency having jurisdiction of the Party's actions, delay in the New Licenses becoming final, or delay in issuance of any required permit. Increased cost for the performance of any PM&E Measures or change in market conditions for the sale of electricity shall not be deemed to constitute force majeure, provided that PacifiCorp will not be obligated to perform measures in excess of the commitments specified in this Agreement. The Party whose performance is affected by force majeure shall notify the other Parties in writing within seven days after becoming aware of any event that such affected Party contends constitutes force majeure. Such notice will identify the event causing the delay or anticipated delay, estimate the anticipated length of delay, state the measures taken or to be taken to minimize the delay, and estimate the timetable for implementation of the measures. The affected Party shall make all reasonable efforts to promptly resume performance of this Agreement and, when able, to resume performance of its obligations and give the other Parties written notice to that effect.

6.4. Governing Law. The New Licenses and any other terms of this Agreement over which a federal agency has jurisdiction shall be governed, construed, and enforced in

Bear River Settlement Agreement

accordance with the statutory and regulatory authorities of such agency. This Agreement shall otherwise be governed and construed under the laws of the state of Idaho. By executing this Agreement, no federal agency is consenting to the jurisdiction of a state court unless such jurisdiction otherwise exists. By executing this Agreement, no state agency or officer is consenting to the jurisdiction of a federal court unless such jurisdiction otherwise exists. All activities undertaken pursuant to this Agreement shall be in compliance with all applicable law.

6.5. Elected Officials Not to Benefit. No member of or delegate to Congress shall be entitled to any share or part of this Agreement or to any benefit that may arise from it.

6.6. No Partnership. Except as otherwise expressly set forth herein, this Agreement does not, and shall not be deemed to, make any Party the agent for or partner of any other Party.

6.7. Reference to Statutes or Regulations. Any reference in this Agreement to any federal or state statute or regulation shall be deemed to be a reference to such statute or regulation or successor statute or regulation in existence as of the date of the action.

6.8. Notice. Except as otherwise provided in this Section 6.8, any notice required by this Agreement shall be written. It shall be sent by first-class mail or comparable method of distribution to all Parties still in existence and shall be filed with FERC. For the purpose of this Agreement, a notice shall be effective seven days after the date on which it is mailed or otherwise distributed. When this Agreement requires notice in less than seven days, notice shall be provided by telephone, facsimile, or electronic mail and shall be effective when provided. For the purpose of notice, the list of authorized representatives of the Parties as of the Effective Date is attached as Appendix B. The Parties shall provide notice of any change in the authorized representatives designated in Appendix B, and PacifiCorp's Environmental Coordinator shall maintain the current distribution list of such representatives.

6.9. Paragraph Titles for Convenience Only. The titles for the paragraphs of this Agreement are used only for convenience of reference and organization, and shall not be used to modify, explain, or interpret any of the provisions of this Agreement or the intentions of the Parties. Reference to a given section of this Agreement shall be deemed to include all subsections of that section.

6.10. Entire Agreement. This Agreement sets forth the entire agreement and process of the Parties with regard to the environmental, historical, cultural, public recreation, fishery, wildlife, land management, operational, and related measures, including all PM&E Measures, relating to the relicensing of the Bear River Projects.

6.11. Appendix A. PacifiCorp intends to request that FERC consolidate the Bear River Projects and issue one license for the three Projects. If FERC issues one license for the Projects, references to "New Licenses" and associated language in this Agreement should be read in the singular. If FERC issues more than one license for the Projects, the Parties agree to accept as consistent with this Agreement only those changes to Appendix A necessary to separate recommended license articles into three separate licenses.

**Section 7: Execution
of Agreement**

Bear River Settlement Agreement

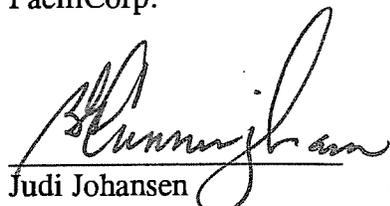
SECTION 7: EXECUTION OF AGREEMENT

7.1. Signatory Authority. Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and to legally bind the Party he or she represents, and that such Party shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such Party.

7.2. Signing in Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument as if all the signatory Parties to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures, and may be attached to another counterpart of this Agreement identical in form having attached to it one or more signature pages.

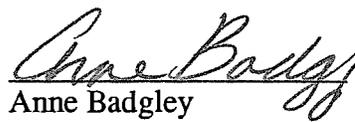
The Parties execute this Agreement as of the day that the last signatory executes the Agreement.

PacifiCorp:



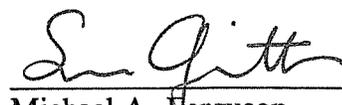
Judi Johansen date
Chief Executive Officer

United States Fish and Wildlife Service:



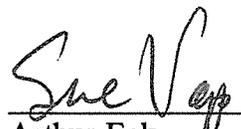
Anne Badgley date
Regional Director

United States Bureau of Land Management:



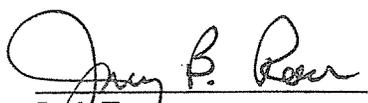
Michael A. Ferguson date
Acting State Director

United States National Park Service:



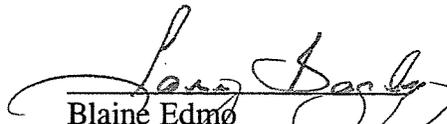
Arthur Eck date
Acting Regional Director

USDA Forest Service:



Jack Troyer date
Regional Forester

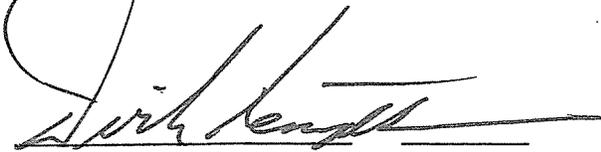
Shoshone-Bannock Tribes:



Blaine Edmo date
Chairman, Fort Hall Business Council

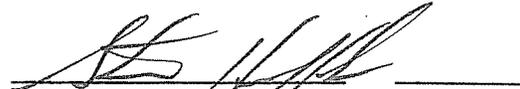
Bear River Settlement Agreement

State of Idaho:



DIRK KEMPTHORNE date
Governor

Idaho Department of Fish and Game:



Steven M. Huffaker date
Director

Idaho Department of Environmental Quality:



C. Stephen Allred date
Director

Idaho Department of Parks and Recreation:



Rick Collignon date
Director

Idaho Rivers United:

 8/29/07

William Sedivy date
Executive Director

Idaho Council of Trout Unlimited:

 for

Ken Retallic date
President

Greater Yellowstone Coalition:



Marv Hoyt date
Idaho Representative

American Whitewater:

 for

John Gangemi date
Conservation Director

date

date

Bear River Settlement Agreement

Charles L. Vincent

Charles L. Vincent 9/6/02
date

date

Lawrence B. Doro

Lawrence B. Doro 9.10.02
date

date

date

date

Bear River Settlement Agreement

_____ date

Bear River Settlement Agreement

APPENDIX A MEASURES RECOMMENDED TO BE INCLUDED IN THE NEW LICENSE AND FINAL TERMS AND CONDITIONS FOR THE BEAR RIVER PROJECT

The following license articles were developed as part of a negotiated settlement agreement and are hereby included as articles to this license. The parties to the August 28, 2002 Settlement Agreement (the "Settlement Agreement") intend that if the Settlement Agreement is terminated in accordance with its provisions, the following license articles may, after notice and hearing before FERC, pursuant to any reopener provision of the license or as otherwise allowed under the Federal Power Act, be modified by the Commission to alter the Licensee's funding obligations under Articles 3, 4, and 5, and as otherwise required by the Federal Power Act.

Article 1. The Licensee shall convene an Environmental Coordination Committee ("ECC") and shall designate an Environmental Coordinator ("EC") to represent the Licensee to the ECC and oversee the coordination and implementation of Articles 2-13. The cost to the Licensee of participation in an ECC shall not exceed the cost of one full-time employee and associated administrative costs, including office space, supplies and other overhead. The EC shall be under the employ of the Licensee, and shall act as the Licensee's representative to the ECC. The EC shall (1) provide reasonable administrative and clerical support to the ECC; (2) function as a point of contact for the ECC; (3) seek additional funds through grant writing when appropriate; and (4) attempt to identify willing landowners for implementation of license Article 5; and (5) apply for permits, as necessary to accomplish actions proposed by the ECC consistent with license compliance. The EC shall prepare a detailed annual report on the activities of the ECC and on the implementation of the protection, mitigation and enhancement measures during the previous year. Preparation of such reports shall commence during the first year following the license becoming final¹ and will recur annually through the seventh year after the license becomes final. Thereafter, preparation of such reports shall recur every five years during the term of the license unless the ECC determines to prepare reports more frequently, in which case the members of the ECC will contribute to the preparation of reports. Final detailed annual reports shall be filed with the Commission.

¹ "License becomes final" means that the Idaho Department of Environmental Quality ("IDEQ") has issued the 401 Certification for the Projects, the Commission has issued the license for the Soda, Grace/Cove, and Oneida Projects (the "Projects"), the Licensee has accepted the 401 Certification and license for the Projects, and all administrative and judicial appeals relating to the license have been finally adjudicated or dismissed. If for any reason the Commission issues separate licenses for the Projects and the licenses do not become final on the same date, the term "license becomes final" refers to the date upon which the last of the three licenses becomes final.

Bear River Settlement Agreement

Article 2. To improve habitat for Bonneville cutthroat trout (“BCT”) and other aquatic species, and to improve recreational fishing in the Action Area,² the Licensee shall oversee the preparation of a BCT Restoration Plan document for BCT in consultation with and at the direction of the ECC and consistent with the *Range-wide Conservation Agreement and Strategy for Bonneville Cutthroat Trout* (“RCAS”), Utah Division of Wildlife Resources Publication No. 00-19 (signed by the U.S. Fish and Wildlife Service, the U.S. Bureau of Land Management, the USDA Forest Service, the Idaho Department of Fish and Game, and other federal, state and tribal parties), and with *Cutthroat Trout Management: A Position Paper, Genetic Considerations Associated with Cutthroat Trout Management* (“CTMAPP”), Utah Division of Wildlife Resources Publication No. 00-26, or any updated version of such documents. At the ECC’s direction, the BCT Restoration Plan may consider actions and measures outside of the Action Area, but nothing in the BCT Restoration Plan shall require the Licensee’s funding of actions outside the Action Area, other than as specifically provided in these license articles. Preparation of the BCT Restoration Plan document shall begin after the third anniversary of the license becoming final. The cost to the Licensee of preparation of the BCT Restoration Plan document and any subsequent revisions to that document during the term of the license shall not exceed \$20,000, exclusive of the cost of the Licensee’s personnel time and exclusive of the costs of elements a) through f) below, and this funding shall not be available for any other purpose.

Information to be used in development of the BCT Restoration Plan shall include elements a) through f), below. Unless otherwise indicated, funding that is not completely expended by one element may be available for use in completion of other elements, but all funding by the Licensee shall be completed by the seventh anniversary of the license becoming final. Funds not fully expended in a given year may be carried over for use in completing BCT Restoration Plan elements in the succeeding year. Carried-over funds shall bear interest but shall not further escalate. Upon expenditure, one half of the accrued interest shall belong to the Licensee, and one half of the interest shall be available for the elements under this Article. Any funds remaining under this Article at the seventh anniversary of the license becoming final shall not be available for other purposes.

- a) The Licensee shall provide funding not to exceed \$40,000 for the purpose of collecting and analyzing genetic samples of BCT in the mainstem or tributaries of the Bear River. Funding shall be provided on a cost of services basis.³ Collection of

² “Action Area” refers to the Bear River and its tributaries below the point of confluence of the Bear Lake outlet canal with the mainstem Bear River and above the Idaho-Utah border.

³ “Cost of services basis” means that the Licensee shall reimburse or provide funding for services or products upon receipt of invoices at the time such services begin or are authorized.

Bear River Settlement Agreement

genetic samples shall not be conducted by the Licensee. This element shall be implemented upon issuance and acceptance⁴ of the license.

b) The Licensee shall provide funding not to exceed \$125,000 for the purpose of conducting aerial photography to assist in understanding habitat features and identifying BCT restoration opportunities on the Bear River and its tributaries in the State of Idaho. Funding shall be provided on a cost of services basis. This element shall be implemented upon issuance and acceptance of the license.

c) The Licensee shall provide funding not to exceed \$13,000 for the purpose of a Geographic Information System (“GIS”) layer depicting active diversions and other passage impediments in the Bear River drainage within the range of the BCT in the State of Idaho. Funding shall be provided on a cost of services basis. This element shall be implemented upon issuance and acceptance of the license.

d) The Licensee shall provide funding not to exceed \$150,000, with annual expenditures not exceeding \$50,000, for the purpose of conducting a BCT telemetry study on the Bear River and its tributaries in the State of Idaho. Funding shall be provided on a cost of services basis. This element shall be implemented upon issuance and acceptance of the license.

e) The Licensee shall provide funding not to exceed \$100,000 per year for three years for the purpose of developing localized broodstocks of BCT for stocking in the Action Area linked to native BCT protection and restoration efforts. Funding shall be provided on a cost of services basis. Implementation of this element shall begin after the fourth anniversary of the license becoming final, and funding shall be completed by the seventh anniversary of the license becoming final. Funds available for use under this section, if not used for broodstock development, may be reallocated for use under Articles 4 and 5; provided that such funds must be used by end of seventh anniversary of the license becoming final and shall not be carried over for use in any subsequent year.

f) The Licensee shall, in consultation with the ECC, prepare a feasibility study evaluating decommissioning of the Cove Project, other Project modifications that might provide fish passage at the Cove project, or creation of fish passage facilities at that Project. This element shall be implemented during the first year after the license

⁴ “Issuance and acceptance of the license” means that IDEQ has issued its 401 Certification for the Projects, FERC has issued the license for the Projects, and PacifiCorp has accepted the 401 Certification and license for the Projects, whether or not all appeals have been finally resolved or dismissed. If for any reason the Commission issues separate licenses for the Projects and issuance and acceptance of the licenses does not occur on the same date, the term “issuance and acceptance of the license” refers to the date upon which the last of the three licenses has been issued and accepted.

Bear River Settlement Agreement

becomes final. Funds allocated under Articles 4 and 5 may be reallocated for the purposes described in the feasibility study, provided that no implementation of an alternative studied under this paragraph shall be made without the Licensee's prior consent, which may be given or not at the Licensee's discretion.

Article 3. The Licensee shall provide funding not to exceed \$100,000 annually, except for funds carried over from previous years as described in this Article, from the seventh anniversary of the license becoming final through the end of the license term for the purpose of stocking native BCT in the Action Area. Funding shall be provided on a cost of services basis. To the extent that \$100,000 is not expended in one year, any funds not expended shall be carried over to succeeding years during the term of the license and may be expended for fish stocking in accordance with this Article, or shall be made available for habitat restoration actions (Article 4), land and water acquisition (Article 5), or enhancement and restoration of land or water acquired pursuant to Article 5. Funds not fully expended in a given year may be carried over for use in completing BCT Restoration Plan elements in the succeeding year. Carried-over funds shall bear interest but shall not further escalate. Upon expenditure, one half of the accrued interest shall belong to the Licensee, and one half of the interest shall be available for mitigation under this Article. Any funds not expended by the end of the license term shall not be available for any other purpose. Stocking under this Article shall not occur outside the Action Area without the Licensee's prior consent, which may be withheld at the Licensee's discretion.

Article 4. The Licensee shall provide funding not to exceed \$167,000 annually, except for funds carried over from previous years as described in this Article, from the first anniversary of the license becoming final through the end of the license term for the purpose of actions to benefit and restore aquatic and riparian habitat for BCT and other fish and wildlife resources in the Action Area, which may involve, without limitation, areas outside the Project boundary. Funding shall be provided on a cost of services basis. Funding for restoration actions may also be used for studies or monitoring effects of restoration actions. To the extent that \$167,000 is not expended in one year, any funds not expended shall be carried over to succeeding license years during the term of the license and may be expended for habitat enhancement and restoration actions in accordance with this Article, or shall be made available for land and water acquisition (Article 5), enhancement and restoration of land or water acquired pursuant to Article 5, or fish passage as described in this Article. Funds not fully expended in a given year may be carried over for use in completing BCT Restoration Plan elements in the succeeding year. Carried-over funds shall bear interest but shall not further escalate. Upon expenditure, one half of the accrued interest shall belong to the licensee, and one half of the interest shall be available for mitigation under this Article. Any funds not expended by the end of the license term shall not be available for any purpose. Habitat enhancement and restoration actions under this Article shall not occur outside the Action Area without the Licensee's prior consent, which may be withheld at the Licensee's discretion. Should the USFWS prescribe fish passage during the term of the license, funds described in this Article shall be used to pay for such fish passage before other uses, and the Licensee shall not be required to provide funds above and beyond what is provided in this Article for any other use.

Bear River Settlement Agreement

Article 5. The Licensee shall provide funding not to exceed \$300,000 annually, except for funds carried over from previous years as described in this Article, from the first anniversary of the license becoming final through the end of the license term for the purpose of acquisition of land and water rights, if available, in the Action Area. Funding shall be provided on a cost of services basis. The purpose of this funding is to take advantage of opportunities to purchase or lease and manage land and water rights and easements in accordance with Idaho water law and policy to benefit BCT and other fish and wildlife resources. The Licensee shall work collaboratively with agencies and local communities to acquire or lease water for non-consumptive use, or land, all on a willing-buyer and willing-seller basis in the Action Area. The Licensee shall transfer its interest in such land or water rights to a land trust or other nonprofit land conservation organization, or the Idaho Water Resources Board. To the extent that \$300,000 is not expended in one year, any funds not expended shall be carried over to succeeding license years during the terms of the license, and shall only be available for land and water acquisition, restoration of land acquired through this Article, or fish passage as described in this Article. Funds not fully expended in a given year may be carried over for use in completing BCT Restoration Plan elements in the succeeding year. Carried-over funds shall bear interest but shall not further escalate. Upon expenditure, one half of the accrued interest shall belong to the licensee, and one half of the interest shall be available for mitigation under this Article. Any funds not expended by the end of the license term shall not be available for any purpose. Land and water acquisition under this Article shall not occur outside the Action Area without the Licensee's prior consent, which may be withheld at the Licensee's discretion. Should the USFWS prescribe fish passage during the term of the license, funds described in this Article shall be used to pay for such fish passage before other uses, and the Licensee shall not be required to provide funds above and beyond what is provided in this Article for any other use.

Article 6. The Licensee shall provide funding not to exceed \$35,000 per year through the seventh anniversary of the license becoming final, for the purpose of creel surveys, Grace bypass reach telemetry studies, and macroinvertebrate sampling studies (hereinafter referred to as "monitoring"). To the extent that \$35,000 is not expended in one year, any funds not expended shall be carried over to succeeding license years during the term of the license and may be expended for monitoring as described in this Article. To the extent that funding described in this Article is not expended by the seventh anniversary of the license becoming final, any funds not expended shall be carried over for the conservation hatchery program (Article 3). Funds not fully expended in a given year may be carried over for use in completing monitoring in the succeeding year. Carried-over funds shall bear interest but shall not further escalate. Upon expenditure, one half of the accrued interest shall belong to the licensee, and one half of the interest shall be available for monitoring under this Article. Any funds not expended by the end of the license term shall not be available for any purpose.

Article 7. The Licensee shall maintain a minimum flow in the reach below Soda dam of the lower of 150 cfs or inflow into Soda reservoir. The Licensee shall implement minimum flow schedules for the other developments as follows:

Bear River Settlement Agreement

- a) Grace bypass: the lower of 80 cfs or inflow, in addition to current leakage from Grace dam;

- b) Cove bypass: the lower of 10 cfs or inflow from October 1 through March 31 of each year; and the lower of 35 cfs or inflow from April 1 through September 30 of each year, in addition to current leakage from Cove dam;

- c) Oneida reach below the powerhouse: the lower of 250 cfs or inflow, in addition to current leakage from Oneida dam.

Maintenance of the above minimum flows shall begin upon the license becoming final and shall continue throughout the license term, except that minimum flows at Cove bypass will commence upon the issuance and acceptance of the license for the Cove Project. Leakage flows at the Grace and Oneida dams will be measured upon the license becoming final, and at Cove upon issuance and acceptance of its license, and the amount measured for each dam will be added to the minimum flow requirement listed above for that respective Project. The Licensee shall maintain reservoir levels in accordance with historic practices, water rights and flood control responsibilities that are memorialized in water contracts and agreements, an interstate compact and its subsequent amendments, and judicial decrees and opinions.

The Licensee may suspend the flows described in this Article on a temporary basis to facilitate regular maintenance or emergency repairs, or for equipment failures or unforeseen hydrologic events. The Licensee shall consult with the ECC regarding when to schedule and how to conduct regular maintenance, and will consult with the ECC to the extent practicable in emergency situations. The Licensee will implement regular maintenance routines including draw down and Project shut-down activities so that aquatic resources are protected to the maximum extent practicable. The Licensee shall minimize the number of such Project maintenance shut-downs, draw downs, and spillway tests and shall attempt to schedule such activities at times that will not interfere with trout spawning or harm incubating trout eggs.

The Licensee, in consultation with the ECC, shall develop and implement a plan to minimize fish stranding due to the operation of the Project. For the purposes of the preceding sentence, "operation of the Project" does not include changes in inflow to the Project, unforeseen hydrologic events, or maintenance of reservoir levels in accordance with the historic practices, water rights and flood control responsibilities that are memorialized in water contracts and agreements, an interstate compact and its subsequent amendments, and judicial decrees and opinions described in Section 5.10 and Appendix C of the August 28, 2002 Settlement Agreement.

After the tenth anniversary of the license becoming final, the Licensee, at the direction of the ECC, may implement increases in minimum flows. Annual funding limits described in Articles 4 and 5 shall be decreased commensurate with the cost of loss of generation due to such minimum flow increases, based on the official forward pricing curve of the Northwest Power Planning Council or suitable substitute (if such pricing curve ceases to be available), to

Bear River Settlement Agreement

be calculated annually for the following year's additional flows. The value of lost generation shall be determined by multiplying the proposed increase in flows, in cfs, times the megawatts generated per cfs at the affected facilities, times the price per megawatt hour shown on the forward pricing curve, for the period of increased flows. Flow increases shall not exceed the funding remaining available in Articles 4 and 5, which may have been allocated for other purposes.

Upon the fifth anniversary of the license becoming final, the Licensee shall either divert Kackley Springs into the Cove bypass with the exception of 0.30 cfs, which shall continue to flow to the Kackley property, or shall maintain Kackley Springs in a configuration which benefits aquatic resources in the Bear River. The cost to the Licensee of diverting Kackley Springs shall not exceed \$10,000.

Nothing in this Article shall require the Licensee to violate its obligations under, or permit or require any action inconsistent with, the water contracts and agreements, interstate compact, judicial decrees, state water rights, and flood control responsibilities described in Section 5.10 and Appendix C of the August 28, 2002 Settlement Agreement, attached as Exhibit ___ to the license.

Article 8. The Licensee shall implement the following maximum ramp rates in the Bear River associated with hydroelectric generation of the Project according to the following:

- a) 1.2 feet per hour in the Soda reach, ascending and descending, as measured at USGS Gage No. 10075000;
- b) 3.0 inches every 15 minutes on the descending arm of the ramp in the Oneida reach below the powerhouse, as measured at USGS Gage No. 10086500.

Restrictions on ramp rates shall begin upon the license becoming final and shall continue throughout the license term. The Licensee shall consult with the ECC regarding scheduling annual maintenance and shall schedule and implement annual maintenance to minimize to the extent practicable effects to aquatic resources including spawning, incubation of trout eggs, and rearing. The Licensee may increase the ramp rates described in this Article in case of the following:

- i) emergency or to avoid damage to life or property;
- ii) compliance with historic practices, water rights and flood control responsibilities that are memorialized in water contracts and agreements, an interstate compact and its subsequent amendments, state water rights, and judicial decrees and opinions, as described in Section 5.10 and Appendix C of the August 28, 2002 Settlement Agreement, attached as Exhibit ___ to the license.

Bear River Settlement Agreement

- iii) utilization of spinning reserve for the PacifiCorp Eastern System control area, in compliance with the Northern Energy Reliability Council guidelines; or
- iv) compliance with Article 401 of the Commission's license for the Cutler Project (Project No. 2420-001).

Nothing in this Article shall require the Licensee to violate its obligations under, or permit or require any action inconsistent with, the water contracts and agreements, interstate compact, judicial decrees, state water rights, and flood control responsibilities described in Section 5.10 and Appendix C of the August 28, 2002 Settlement Agreement, attached as Exhibit ___ to the license.

Article 9. The Licensee shall develop a Recreation Management Plan ("RMP") to address existing and projected recreational needs for recreation sites within the Oneida Project area. In no event shall the RMP require the Licensee to implement actions costing more than is provided in this Article without the Licensee's prior consent, which may be given or not at its discretion. The RMP shall include consideration of improvements, operations and maintenance of existing campgrounds, and safety issues along the Oneida Project road as follows:

- a) The Licensee shall provide an annual reimbursement of up to \$10,000 to the Bureau of Land Management ("BLM") for the management and maintenance of Maple Grove and Redpoint Campgrounds. This funding shall commence upon the license becoming final and continue through the end of the license term. To the extent that \$10,000 is not expended in one year, any remaining funds shall not be carried over to the next license year.
- b) Upon the license becoming final, the Licensee shall prepare for implementation, as described in the following sections c) through e), a Traffic Safety Plan ("TSP") for the Oneida Project road along the Oneida Project. The cost to the Licensee shall not exceed \$100,000 for this purpose. In addition, the Licensee shall maintain traffic signs along the Oneida Project road at a cost to the Licensee not to exceed \$1,000 annually. This annual funding shall commence upon the license becoming final and continue through the end of the license term. Annual funding for maintenance will not carry over to subsequent license years.
- c) The Licensee shall construct one turn-around loop at or near the day use area to improve safety and maneuverability for vehicles along the Oneida Project road. The Licensee shall provide a sign to indicate vacancy availability at the Maple Grove Campground to be located at the day use area. The cost of this action to the Licensee shall not exceed \$10,000 and shall be completed by the first anniversary of the license becoming final.

Bear River Settlement Agreement

d) The Licensee shall provide annual funding to a local governmental law enforcement agency for law enforcement from May 1 through October 1 along the Oneida Project road. Annual funding by the Licensee shall not exceed \$3,000 commencing upon the license becoming final and continuing through the end of the license term. Further, the Licensee shall provide the use of the company's radio frequency between Memorial Day and Labor Day each year to federal, state, or county law enforcement officers to facilitate law enforcement activities along the Oneida Project road. To the extent that \$3,000 is not expended in one year, any remaining funds shall not be carried over to the next license year.

e) As necessary, but no more frequently than twice annually, the Licensee shall implement dust abatement measures along the Oneida Project road adjacent to and up to 100 feet on either side of the Maple Grove and Redpoint Campgrounds from Memorial Day to Labor Day. This action shall be implemented upon the license becoming final and shall continue through the end of the license term.

f) The Licensee shall provide funding to the BLM to upgrade and improve facilities at the Maple Grove and Redpoint Campgrounds. The Licensee shall provide a total of \$50,000 to the BLM for this purpose upon the license becoming final.

Article 10. The Licensee shall provide funding not to exceed \$3,000 annually beginning upon the license becoming final to Caribou County for operation and maintenance of recreation sites at Soda reservoir. Funding shall begin upon the license becoming final and shall continue throughout the license term. To the extent that \$3,000 is not expended in one year, any remaining funds shall not be carried over to the next license year.

Article 11. The following shall be required under the license to improve whitewater boating opportunities. Under no circumstances shall the following terms require the Licensee to violate its obligations under, or permit or require any action inconsistent with, the water contracts and agreements, interstate compact, judicial decrees, state water rights, and flood control responsibilities described in Section 5.10 and Appendix C of the August 28, 2002 Settlement Agreement, attached as Exhibit ___ to the license:

a) The Licensee shall make improvements to the put-in and take-out access points in the Grace bypass upon the license becoming final. The put-in access at the Highway 34 Bridge downstream of the Grace dam shall be improved by developing a gravel parking lot for 15 vehicles, one portable or permanent restroom, at the Licensee's option, and providing graveled access to Bear River. Weather permitting, the Licensee shall open and maintain the restroom between April 1 and October 31 of each year. The Licensee shall provide a staff gage to indicate flow level, and a rating table to translate flow level to cfs, near the put-in. The parking lot at the take-out shall be improved by graveling.

b) The Licensee shall make improvements to the put-in and take-out access points in the Oneida reach below the powerhouse upon the license becoming final. The put-in

Bear River Settlement Agreement

access at the bridge downstream of Oneida powerhouse shall be improved by adding a gravel parking area for 10 vehicles, one portable or permanent restroom, at the Licensee's option, and providing graveled access to the river. The Licensee shall provide a staff gage to indicate flow level, and a rating table to translate flow level to cfs, near the put-in. The take-out access at the cattle guard in Oneida Canyon shall be improved by adding gravel parking for 10 vehicles, one portable or permanent restroom, at the Licensee's option, and providing graveled access to the river. Weather permitting, the Licensee shall open and maintain the restrooms between April 1 to October 31 of each year.

c) The Licensee shall modify the Grace dam to release, and shall release if available,⁵ whitewater boating flows in the amounts specified in the subsections below to provide whitewater boating opportunities in the Grace bypass (Black Canyon), subject to the obligations specified in Section 5.10 and Appendix C of the August 28, 2002 Settlement Agreement, attached as Exhibit __. Such releases shall occur between April 1 and July 15 each year, except that the schedule may be modified in accordance with section f), below. For the purposes of this Article, inflow to Grace shall be equal to inflow to Soda Reservoir on that day minus irrigation deliveries to Last Chance Canal Company and Bench B and minus leakage from Grace facilities. Daily mean flow from tributaries into Soda Reservoir shall be estimated and included as inflow to Grace. All such inflows shall be deemed to be "available" for whitewater boating flows, as that term is defined herein and used in this Article. Inflows to Soda Reservoir shall be determined at USGS Gage No. 1007500.

d) During years 1 - 3 of the license becoming final, when available inflow results in at least 500 cfs spill in the Grace bypass reach, the Licensee shall release additional flow in the bypass reach by use of the spillgate or dam stoplogs such that the total flow in the bypass reach is up to but does not exceed a total of 900 cfs in the bypass reach on up to 16 separate occasions in any one year (opportunistic releases). No limits on ramping rates shall be imposed during this time period.

e) During years 4 - 6 after the license becomes final, the Licensee shall release flows in the Grace bypass of between 700 and 1500 cfs, if available as inflow (scheduled releases). Such flows will total no more than 96 hours of foregone generation at 1050 cfs in any year during specified time periods between April 1 and July 15. Such flows will be provided, if available, in 16 separate releases of six hours in length on weekend days. The Grace Project will not operate during such releases unless available inflow is greater than the scheduled whitewater boating flow, and then the Project will operate with that portion of the inflow that exceeds the scheduled whitewater boating flows.

⁵ "Available," when used in reference to flows of water to be obtained from a Project, refers to the inflow to the Project work on a given day that may be used for a Project purpose consistent with and subject to the obligations described in Section 5.10 of the Settlement Agreement.

Bear River Settlement Agreement

Feasible ramping rates will be determined by the ECC, in consultation with the Licensee, and the cost of such ramping rates (including foregone energy generation) shall be borne by the Licensee.

f) In year 7 and subsequently after the license becomes final, the Licensee shall release whitewater boating flows between 700 and 1500 cfs for 96 hours per year between April 1 and July 15 each year, if available as inflow, unless monitoring results show significant adverse effects on ecological attributes in Black Canyon. For the purposes of this section f), "significant adverse effect" is defined as a measured change that materially degrades ecological attributes including without limitation water quality, native fish and macroinvertebrate habitat and riparian habitat to the extent that the ability to achieve the management objectives of the BCT Restoration Plan, as it is completed, the RCAS and the CTMAPP is impaired. In such an event, the whitewater boating flows schedule may be adjusted as directed by the ECC. In no event shall the Licensee be obligated to provide more than 96 hours of scheduled whitewater boating flows in any given year at an average of 1050 cfs.

g) On or about March 1 of each year after the license becomes final, the Licensee shall forecast the availability of inflow for whitewater boating flows consistent with the obligations stated in Section 5.10 and Appendix C of the August 28, 2002 Settlement Agreement, attached as Exhibit ___ to the license, and will announce the initial water year forecast. Shortly after this announcement, the Licensee will consult with American Whitewater on the distribution of whitewater releases, and will forward a recommendation regarding such releases to the ECC. The ECC will make a final determination regarding distribution of whitewater boating flow releases into Black Canyon. If the forecast is such that flows may be conducive to whitewater boating flows for a total of more than 96 hours, then the ECC will determine the days upon which such flows will be released.

h) The Licensee shall consult with IDEQ to develop an operational regime that minimizes the frequency of river level fluctuations below the Oneida powerhouse, in compliance with the Licensee's Clean Water Act Section 401 Certification and consistent with historic practices, water rights and flood control responsibilities that are memorialized in water contracts and agreements, an interstate compact and its subsequent amendments, and judicial decrees and opinions. Pursuant to this goal and subject to those obligations, flows below the powerhouse shall be greater than 900 cfs between Memorial Day and Labor Day, if available.

i) The Licensee shall provide a flow information website and a toll-free number. The website shall present in monthly calendar format the scheduled dates for flow releases into Black Canyon, identified by the ECC after the Licensee announces the annual irrigation allocation to the Bear River irrigators, and updated weekly between April 1 and July 15 each year. The website shall provide current and past flow conditions for locations between the Outlet Canal and the Bear River below the Oneida Project,

Bear River Settlement Agreement

including the Bear River above Soda dam (USGS Gage No. 10075000), the Bear River below Grace dam (USGS Gage No. 10080000), and the Bear River below the Oneida powerhouse (USFS Gage No. 10086500). The gages shall provide a telephone uplink with existing equipment to a website, provided and maintained by the Licensee from March 1 to November 30 each year, and flow data shall be expressed in hourly averages (cfs) for the current and prior 6 days. The website shall present data from the gages graphically and such data shall be updated every 4 hours. The website shall include 7-day forecasts of Project flows in the Black Canyon and below the Oneida powerhouse. The website shall include disclaimers for accuracy and predictability. The toll free flow phone shall include the last recorded flow for the three gages each day. The flow phone will also list the next four scheduled release dates, identified by the ECC after the Licensee announces the annual irrigation allocation to the Bear River irrigators, and including any updates since March 1. The recorded message shall indicate that releases into the Black Canyon occur, based on available flow, when inflow into Soda Reservoir less irrigation withdrawals between Soda Dam and Grace Dam plus leakage from the Grace flowline is equal to or greater than 700 cfs, and that releases into Black Canyon will not exceed 1500 cfs. The Bear River website and flow phone shall be implemented upon the license becoming final, and shall continue through the license term.

Article 12. The Licensee shall ensure that its historic properties inventories are sufficient to satisfy the National Historic Preservation Act (“NHPA”) and its implementing regulations. The Licensee will prepare a Historic Properties Management Plan (“HPMP”) for the Project. The HPMP shall define and describe the manner in which historic properties will be protected and how effects to these properties will be mitigated over the term of the license, and will demonstrate how each Project will comply with the NHPA and its implementing regulations. The Licensee shall ensure that the HPMP is consistent with the Commission’s *Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects* (May 20, 2002) (“FERC HPMP Guidelines”), and NHPA implementing regulations at 36 C.F.R. Part 800 (effective January 11, 2001). In addition, the Licensee shall develop and implement the HPMP in accordance with additional guidelines set forth in applicable project-specific programmatic agreement(s) developed pursuant to NHPA implementing regulations at 36 C.F.R. Part 800, which will be negotiated prior to the development of the HPMP. The Licensee shall complete the HPMP by the first anniversary of the license becoming final in consultation with the State Historic Preservation Office, BLM and the Shoshone-Bannock Tribes. The Licensee shall be financially responsible for implementing actions necessary to satisfy its obligations under the HPMP and programmatic agreements.

Article 13. The Licensee, in consultation with the ECC, shall prepare and implement a Land Management Plan (“LMP”) for the Project. The LMP shall define and describe the manner in which Licensee-owned lands within the Project boundary shall be managed during the license term to minimize effects to natural resources, while providing for ongoing operations and maintenance activities for the Project and subject to the rights of lessees under existing leases.

Bear River Settlement Agreement

Preparation of the LMP shall be completed by the second anniversary of the license becoming final, and shall include the following provisions:

- a) Beginning upon the license becoming final, the Licensee shall establish a shoreline buffer zone on Licensee-owned lands along the Bear River and reservoirs and around wetlands and springs for each of the developments within the Project boundary, subject to the rights of lessees under existing leases. A buffer zone provision, which will at a minimum provide for the exclusion of livestock from riparian and wetland areas, shall be incorporated into all Licensee-issued leases.

- b) Beginning upon the first anniversary of the license becoming final, the Licensee shall fence the buffer zone on Licensee-owned land within the Cove Project bypass to prevent the encroachment of livestock and protect riparian vegetation. Fencing shall be constructed to exclude livestock while allowing access by big game and other wildlife. In addition, the Licensee shall fund 25% of the cost of fencing the buffer zone on non-Licensee private land in the Cove bypass for landowners who consent to fencing and to providing the balance of the funding. The Licensee shall also pay 100% of the ongoing costs for normal fencing maintenance on non-Licensee private land within the Cove bypass with the consent of the landowners. This maintenance on non-Licensee land shall not include paying for repairs resulting from intentional destruction or vandalism.

Bear River Settlement Agreement

APPENDIX B
REPRESENTATIVES OF THE PARTIES

PacifiCorp

Bill Eaquinto
Managing Director, Hydro Relicensing
PacifiCorp
825 NE Multnomah
Portland, OR 97232
Phone: (503) 813-5730
Facsimile: (503) 813-6633

With Additional Copies To:

Randy Landolt
Managing Director, Hydro Resources
PacifiCorp
825 NE Multnomah
Portland, OR 97232
Phone: (503) 813-6650
Facsimile: (503) 813-6659

Jerry Fish
Attorney
Stoel Rives LLP
900 SW Fifth Ave. Suite 2600
Portland, OR 97204
Phone: (503) 224-9593
Facsimile: (503) 220-2480

United States Fish and Wildlife Service

Supervisor, Eastern Idaho Field Office
U.S. Fish and Wildlife Service
4425 Burley Dr., Suite A
Chubbuck, ID 83202
Phone: (208) 237-6975
Facsimile: (208) 237-821316

With Additional Copies To:

Regional Director
U.S. Fish and Wildlife Service
911 NE 11th Ave.
Portland, OR 97232-4181
Phone: (503) 231-6118
Facsimile: (503) 872-2716

FERC Coordinator
U.S. Fish and Wildlife Service
911 NE 11th Ave.
Portland, OR 97232-4181
Phone: (503) 231-6118
Facsimile: (503) 872-2716

Bear River Settlement Agreement

United States Bureau of Land Management

Michael A. Ferguson
Acting State Director
Bureau of Land Management
1387 South Vinnell Way
Boise, ID 83709-1657
Phone: (208) 373-4001
Facsimile: (208) 373-3899

With Additional Copies To:
Upper Snake River District Manager
Bureau of Land Management
1405 Hollipark Drive
Idaho Falls, ID 83401-2100
Phone: (208) 524-7500
Facsimile: (208) 524-7505

Frank Wilson
Office of the Regional Solicitor
500 N.E. Multnomah St., Suite 607
Portland, OR 97213
Phone: (503) 231-2132
Facsimile: (503) 231-2166

United States National Park Service

Susan Rosebrough
Outdoor Recreation Planner
National Park Service
909 First Avenue
Seattle, WA 98104-1060
Phone: (206) 220-4121
Facsimile: (206) 220-4161

USDA Forest Service

Jack Troyer
Regional Forester
USDA Forest Service
324 25th Street
Ogden, UT 84401
Phone: (801) 625-5605
Facsimile: (801) 625-5127

With Additional Copy To:
Jerry Reese
Forest Supervisor
USDA Forest Service
1405 Hollipark Drive
Idaho Falls, ID 83403
Phone: (208) 524-7500
Facsimile: (208) 557-5827

Bear River Settlement Agreement

Shoshone-Bannock Tribes

Fort Hall Business Council Chairman
Shoshone-Bannock Tribes
P.O. Box 306
Fort Hall, ID 83203
Phone: (208) 478-3802
Facsimile: (208) 237-0797

With Additional Copy To:
Office of Tribal Attorneys
Shoshone-Bannock Tribes
P.O. Box 306
Fort Hall, ID 83203
Phone: (208) 478-3822
Facsimile: (208) 237-9736

Idaho Department of Environmental Quality

C. Stephen Allred
Director
Idaho Department of Environmental Quality
1410 N Hilton
Boise, ID 83706-1255
Phone: (208) 373-0240
Facsimile: (208) 373-0417

With Additional Copies To:

Mark Dietrich
Pocatello Regional Administrator
Idaho Department of Environmental Quality
444 Hospital Way, #300
Pocatello, ID 83201
Phone: (208) 236-6160
Facsimile: (208) 236-6168

Douglas Conde
Deputy Attorney General
1410 N Hilton
Boise, ID 83706-1255
Phone: (208) 373-0494
Facsimile: (208) 373-0487

Idaho Department of Fish And Game

Steven M. Huffaker
Director
Idaho Department of Fish and Game
600 S. Walnut St.
Boise, ID 83707
Phone: (208) 334-5159
Facsimile: (208) 334-4885

(continued next page)

Bear River Settlement Agreement

With Additional Copies To:

Harriet Hensley
Office of the Attorney General
Natural Resources Division
P.O. Box 83720
Boise, ID 83720-0010
Phone: (208) 334-4543
Facsimile: (208) 334-2690

Tracey Trent
Idaho Department of Fish and Game
600 S. Walnut Street
P.O. Box 25
Boise, ID 83707
Phone: (208) 334-3180
Facsimile: (208) 334-2114

Idaho Department of Parks And Recreation

Rick Collignon
Director
Idaho Department of Parks and Recreation
5657 Warm Springs Avenue
Boise, ID 83716
Phone: (208) 334-4187
Facsimile: (208) 334-3741

With Additional Copies To:

Mary Lucachick
Resource Staff Specialist
Idaho Department of Parks and Recreation
5657 Warm Springs Avenue
Boise, ID 83716
Phone: (208) 334-4187
Facsimile: (208) 334-3741

Harriet Hensley
Office of the Attorney General
Natural Resources Division
P.O. Box 83720
Boise, ID 83720-0010
Phone: (208) 334-4543
Facsimile: (208) 334-2690

Idaho Council of Trout Unlimited

Ken Retallic
President
Idaho Council of Trout Unlimited
P.O. Box. 4643
Ketchum, ID 83340
Phone: (208) 725-5949
Facsimile: (208) 726-2329

With Additional Copy To:

Scott Yates
Director, Western Native Trout Programs
Idaho Council of Trout Unlimited
258 N. Water Ave., Suite 5
Idaho Falls, ID 83402
Phone: (208) 552-0891
Facsimile: (208) 552-0899

Bear River Settlement Agreement

Utah Council of Trout Unlimited

Wes Johnson
Chairman, Utah Council of Trout Unlimited
1471 East Canyon Drive
South Weber, UT 84405-9629
Phone: (801) 479-8846
Facsimile: (801) 538-7378

Idaho Rivers United

William Sedivy
Executive Director
Idaho Rivers United
P.O. Box 633
Boise, ID 83701
Phone: (208) 343-7481
Facsimile: (208) 343-9376

With Additional Copy To:

Sara Eddie
Director of Hydropower and Energy Programs
Idaho Rivers United
P.O. Box 633
Boise, ID 83701
Phone: (208) 343-7481
Facsimile: (208) 343-9376

Greater Yellowstone Coalition

Marv Hoyt
Idaho Representative
Greater Yellowstone Coalition
162 N Woodruff Ave.
Idaho Falls, ID 83401-4335
Phone: (208) 522-7927
Facsimile: (208) 522-1048

With Additional Copy To:

Michael Scott
Executive Director
Greater Yellowstone Coalition
P.O. Box 1874
Bozeman, MT 59771
Phone: (406) 586-1593
Facsimile: (406) 586-0851

Bear River Settlement Agreement

American Whitewater

John T. Gangemi
Conservation Director
American Whitewater
482 Electric Avenue
Bigfork, MT 59911-3641
Phone: (406) 837-3155
Facsimile: (406) 837-3156

With Additional Copies To:

Rick Hoffmann
963 South Diestel Road
Salt Lake City, UT 84105
Phone:
Facsimile:

Larry Dunn
720 North Hilltop Road
Salt Lake City, UT 84103
Phone: (801) 359-1091
Facsimile: (801) 524-4030

Dino Lowry
Eagle Rock Boating Club
169 6th Street
Idaho Falls, ID 83401-4705
Phone:
Facsimile:

Charlie Vincent
1884 S. 1600 E.
Salt Lake City, UT 84105
Phone: (801) 467-4190
Facsimile: (801) 467-4190

Jean Lown
USU Kayak Club
Utah State University, UMC 2910
Salt Lake City, UT 84322
Phone: (435) 797-1569
Facsimile: (435) 797-3845

Bear River Settlement Agreement

Additional Signatories

Name: *With Additional Copy To:*
Title/Affiliation:
Address:

Phone:
Facsimile:

Name: *With Additional Copy To:*
Title/Affiliation:
Address:

Phone:
Facsimile:

Name: *With Additional Copy To:*
Title/Affiliation:
Address:

Phone:
Facsimile:

Name: *With Additional Copy To:*
Title/Affiliation:
Address:

Phone:
Facsimile:

Name: *With Additional Copy To:*
Title/Affiliation:
Address:

Phone:
Facsimile:

Name: *With Additional Copy To:*
Title/Affiliation:
Address:

Phone:
Facsimile:

Bear River Settlement Agreement

APPENDIX C
RELEVANT WATER CONTRACTS, WATER AGREEMENTS,
AND JUDICIAL DECREES

Utah Power & Light Company v. Last Chance Canal Company, et al., In Equity No. 203, July 14, 1920 (the “Dietrich Decree”).

Utah Power & Light Company v. Richmond Irrigation Company, February 21, 1922 (the “Kimball Decree”).

Conveyance and Agreement, December 30, 1912, between Utah-Idaho Sugar Company and Utah Power & Light Company.

Reaffirmation of Conveyance and Agreement, August 17, 1988, between Bear River Canal Company, successor in interest to Utah-Idaho Sugar Company, and Utah Power & Light Company.

Last Chance Bear Lake Storage Water Agreement, November 16, 1999, between Last Chance Canal Company and PacifiCorp.

Agreement, June 19, 1919, between West Cache Irrigation Company and Utah Power & Light Company.

Bear Lake Storage Water Use Agreement, October 20, 1998, between West Cache Irrigation Company and PacifiCorp.

West Cache Irrigation Company Amendatory Agreement, November 11, 1999, between West Cache Irrigation Company and PacifiCorp.

Contract, April 3, 1916, between Lewiston-Bear Lake Irrigation Company (known now as Cub River Irrigation Company) and Utah Power & Light Company.

Revised and Reformed Irrigation Agreement, November 2, 1998, between PacifiCorp and 105 individual small irrigators diverting directly from the Bear River outside of the major irrigation company contracts.

Bear Lake Settlement Agreement, April 10, 1995, among Last Chance Canal Company, Cub River Canal Company, West Cache Canal Company, Bear River Canal Company, Idaho Pumpers Association, Utah Pumpers Association, the Bear River Water Users Association, Bear Lake Watch, Emerald Beach, Bear Lake East, Jim Kimbal and PacifiCorp.

Bear River Settlement Agreement

Agreement Regarding the Bear River System, October 5, 1999, among the State of Idaho, the State of Utah, the State of Wyoming, PacifiCorp and Scottish Power PLC.

Operations Agreement for PacifiCorp's Bear River System, April 18, 2000, among the State of Idaho, the State of Utah, the State of Wyoming and PacifiCorp.

Bear River Settlement Agreement

APPENDIX D
DRAFT BEAR RIVER 401 CERTIFICATION CONDITIONS

GRACE/COVE PROJECT—GRACE BYPASS

1. PacifiCorp shall conduct the following described monitoring in the Grace bypass:
 - a. PacifiCorp shall develop a water quality monitoring plan (“Grace WQMP”) to monitor for temperature, dissolved oxygen, nutrients, specific conductance, and turbidity. The purpose of the Grace WQMP is to characterize water quality conditions in the Grace bypass reach and determine the Project’s contribution to any violation of water quality criteria as set forth in the Idaho Water Quality Standards and Wastewater Treatment Requirements, IDAPA 58.01.02 (Water Quality Standards). The Grace WQMP will record at a minimum of hourly intervals, dissolved oxygen (DO), temperature, turbidity, and specific conductance at four sites in Black Canyon between July 1 and September 30. The four sites will be: 1) the top of the Grace forebay, 2) upstream of the springs, 3) at the downstream end of Grace bypass and 4) a site to be determined by IDEQ and PacifiCorp in the vicinity of the Cove Project. The data will be collected continuously for a 7-day period during the first half of each month. Concurrent with continuous monitoring at the four sites, PacifiCorp will collect one sample during each 7-day period for nutrients [frequency to be discussed with IDEQ](i.e.- nitrogen and phosphorus species). PacifiCorp will monitor flows in the Grace bypass reach; the flow data shall at a minimum be sufficient to determine average daily flows as recorded at the gaging station below the Grace Dam. PacifiCorp shall implement the Grace WQMP upon IDEQ approval pursuant to paragraph 7 below.
 - b. The Grace WQMP shall be conducted for a six-year period. PacifiCorp will submit on an annual basis a report of data collected under the Grace WQMP. Based on review of these annual data reports, PacifiCorp and/or IDEQ may deem changes to be necessary to either the duration or scope of monitoring. Incorporation of proposed changes to the plan and subsequent implementation will be based on mutual agreement between IDEQ and PacifiCorp.
2. If IDEQ determines, based upon data collected by PacifiCorp (as reflected in PacifiCorp’s annual reports submitted to IDEQ in November of each year, containing the results of water quality monitoring) and any other relevant information, that operation of the Grace/Cove Project causes or contributes to a violation of the Water Quality Standards in the Grace bypass, then within 90 days of IDEQ’s request, PacifiCorp shall submit a Grace Bypass Mitigation Plan to IDEQ for approval that describes those measures PacifiCorp shall take to address the violations caused by the Grace/Cove Project. PacifiCorp must obtain approval of the Grace Bypass Mitigation Plan consistent with the requirements of this certification within 180 days of its submittal. PacifiCorp shall implement and comply with the Grace Bypass Mitigation Plan once it is approved by IDEQ. PacifiCorp’s failure to submit a Mitigation Plan

Bear River Settlement Agreement

consistent with the requirements of this certification, or a failure to comply with an approved Mitigation Plan is a violation of the terms of this certification and the FERC license for the projects.

ONEIDA PROJECT— BEAR RIVER DOWNSTREAM OF THE ONEIDA DAM

3. PacifiCorp shall maintain the following ramping rates associated with the Oneida project: 3.0 inches every 15 minutes on the descending arm of the ramp in the Oneida reach below the powerhouse as measured at USGS Gage No. 1008650. PacifiCorp shall conduct continuous monitoring of flows at the gage station (USGS Gage No. 10086500) below the Oneida powerhouse to determine compliance with the ramping requirement at this downstream location. Implementation of ramping rates and flow monitoring shall begin when the new license for the Oneida Project has been issued by FERC and accepted by PacifiCorp and will be continued by PacifiCorp throughout the term of the license. These data shall be made available to IDEQ in electronic format on request.

4. At the November meeting of the Bear River Commission, PacifiCorp shall provide IDEQ a report for the preceding water year that describes PacifiCorp's operation at the Oneida Project. The report shall set forth a record showing the times during the preceding water year when PacifiCorp released water for power production, flood control, irrigation delivery, facility maintenance or for other reasons. The annual report shall be delivered to IDEQ each year during the term of the New License.

5. PacifiCorp shall develop a water quality monitoring plan (Oneida WQMP) to monitor for temperature, dissolved oxygen, specific conductance, sediment, nutrients and turbidity. The purpose of the Oneida WQMP is to characterize water quality conditions in the Bear River from Oneida powerhouse to the Idaho/Utah border ("Oneida reach") and to determine the Project's contribution to any violations of water quality criteria as set forth in the Idaho Water Quality Standards and Wastewater Treatment Requirements, IDAPA 58.01.02 (Water Quality Standards). Continuous monitoring consisting of temperature, specific conductance, dissolved oxygen and turbidity will be conducted downstream of Riverdale (at the location identified in paragraph 3) and data will be recorded at a minimum of hourly intervals for a minimum period of 18 months commencing after the new license has been issued by FERC and accepted by PacifiCorp. Monitoring for suspended sediment and nutrients (at a minimum, total and dissolved phosphorus) shall be conducted to establish a statistically significant relationship between these parameters and turbidity as recorded by the continuous monitoring station (i.e., approximately 30 samples during the 18-month monitoring period). Sampling for suspended sediment and nutrients shall be collected to represent the range of flows experienced through course of the annual hydrograph in the Oneida reach. PacifiCorp shall implement the Oneida WQMP upon IDEQ approval pursuant to paragraph 7 below.

Bear River Settlement Agreement

6. If IDEQ determines, based upon data collected by PacifiCorp and any other relevant information, that the operation of the Oneida Project causes or contributes to a violation of Water Quality Standards in the Bear River downstream of the Oneida reach, then within 90 days of IDEQ's request, PacifiCorp shall submit an Oneida Reach Mitigation Plan to IDEQ for approval that describes those measures PacifiCorp shall take, to address the violations caused by the Oneida Project. PacifiCorp must obtain approval of the Oneida Reach Mitigation Plan consistent with the requirement of this certification within 180 days of its submittal. PacifiCorp shall implement and comply with the Mitigation Plan once it is approved by IDEQ. Failure to submit an Oneida Reach Mitigation Plan consistent with this Certification or failure to comply with an approved Mitigation Plan is a violation of the terms of this certification and the FERC license for the Projects.

BEAR RIVER PROJECTS MONITORING PLAN

7. Within 30 days of Federal Energy Regulatory Commission (FERC) issuance and PacifiCorp's acceptance of new licenses for the Bear River Projects, PacifiCorp, will submit the Grace and Oneida WQMP's (collectively called the Bear River Projects Monitoring Plan) for IDEQ approval. At a minimum, the Bear River Projects Monitoring Plans will identify the sites for the monitoring and the manner in which PacifiCorp shall collect and report the data, including QA/QC requirements, in order to meet the requirements set forth in this certification. PacifiCorp must obtain the approval of the Plan within 90 days of its submittal. PacifiCorp shall implement and comply with the Plan once it is approved by IDEQ.

OTHER PROVISIONS

8. IDEQ reserves the authority to amend this certification to require additional plans, corrective actions or other requirements if information acquired since the date of this certification indicates the Bear River Projects cause or contribute to violations of Water Quality Standards not covered by the Grace or Oneida Mitigation Plans, if any. This includes the authority to amend this certification as a result of TMDLs for waters of the Bear River basin affected by the Projects.

9. IDEQ agrees that in no event shall the Mitigation Plans or any other plans, actions or requirements developed or submitted pursuant to this certification require PacifiCorp to breach or take action inconsistent with the relevant Water Contracts and Agreements listed in Appendix C. In addition, IDEQ shall, if requested, consider site specific criteria, variances and designated use changes when IDEQ reviews and makes determinations regarding water quality, whether the operation of the Bear River Projects causes or contributes to a violation of Water Quality Standards and plans, actions or requirements under this certification. If a request for a variance is made, IDEQ shall, in accordance with the variance provisions of the Water Quality Standards, consider whether it is feasible to alter the operation of the Projects in a manner to attain Water Quality Standards. IDEQ's actions with respect to plans, actions or requirements developed or submitted pursuant to this certification shall be governed by the applicable provisions of the Environmental Protection and Health Act, Idaho Code sections 39-

Bear River Settlement Agreement

101 et seq., the Rules of Administrative Procedure Before the Board of Environmental Quality, IDAPA 58.01.23, and the Idaho Administrative Procedures Act, Idaho Code section 67-5279. Nothing in this paragraph shall create any rights or liabilities that do not otherwise exist under applicable laws.

EXHIBIT 1
IMPLEMENTATION SCHEDULE

Proposed measures for Bear River relicensing

	1	2	3	4	5	6	7	8	9	10	30
<u>BONNEVILLE CUTTHROAT TROUT</u>											
Genetic Sample Analysis (\$40,000)											
Aerial Photography (\$125,000)											
Irrigation Diversion Map (\$13,000)											
Telemetry Studies (\$150,000; not exceeding \$50,000/yr)											
Restoration Plan (\$20,000)											
Trout broodstock development (\$100,000/yr for 3 years)											
Cove Feasibility Study											
Monitoring (\$35,000/yr)											
Conservation Hatchery Program (\$100,000/yr)											
Habitat restoration actions \$167,000/yr)											
Land and water acquisition program (\$300,000/yr)											
<u>MINIMUM FLOWS</u>											
Maintain 150 cfs in Soda reach											
Implement 80 cfs in Grace bypass											
Implement 10-35 cfs in Cove bypass											
Implement 250 cfs in Oneida reach											
Kackley Springs diversion											
<u>RAMPING</u>											
Implement ramp rate of 1.2 ft/hr in below Soda											
3 in/15 min. on descending arm of ramp below Oneida											

Bear River Settlement Agreement

EXHIBIT 2
COST CALCULATION FOR ADDITIONAL INSTREAM FLOWS

The calculation for determining the cost of additional instream flows pursuant to Section 3.2.2 of the Settlement Agreement is $F \times G \times P$, where F = Proposed Flow (cfs); G = Generation Provided By Flow (mwh/cfs)¹; and P = Price of Power (Cost/mwh).²

Example Calculation:

Price of Power = on-peak price X on-peak proportion of generation + off-peak price X off-peak proportion (on-peak/off-peak ratio for run-of-river project = .57/.43)

¹ Generation provided per cfs varies among the Soda, Grace, Cove, and Oneida power plants.

² This power-price forecast can be obtained from the director of the Power Division, Northwest Power Planning Council. Updates usually occur on an annual basis. Prices shown as the annual average on-peak and off-peak prices for a period of 20 years.

ATTACHMENT 7

E. Threatened and Endangered Species Protection

E.1 Yes. In a letter dated April 15, 2002, the US Fish and Wildlife Service (USFWS) stated that the threatened bald eagle (*Haliaeetus leucocephalus*) occurs in the area of the Soda development, with the potential for occurrence of the threatened Canada lynx (*Lynx canadensis*) and threatened Ute's Ladies' tresses (*Spiranthes diluvialis*) in the lower Bear River Basin. After completion of Endanger Species Act Section 7 consultation by USFWS on the new project license, bald eagles were federally delisted.

Two plant species that, according to the project Environmental Impact Statement (EIS), were state listed in 2002 are found in the area: Kelsey's phlox (*Phlox kelseyi*), and red glasswort (*Salicornia rubra*). However, only the red glasswort is currently listed by the Idaho Native Plant Society (as sensitive). Neither species is federally listed.

As a signatory to the Settlement Agreement, USFWS stated that it anticipated that the operation of the projects, with the provisions of the agreement, would have no effect on, or is not likely to adversely affect, the bald eagle, nor did USFWS anticipate adverse impacts to other listed species. In the project EIS, FERC staff concluded that current and proposed project operations would not affect the bald eagle or any other listed or candidate species.

ATTACHMENT 8

F. Cultural Resource Protection

F.1 Yes. Article 423 of the Federal Energy Regulatory Commission (FERC) project license requires PacifiCorp to implement the “Programmatic Agreement Among The Federal Energy Regulatory Commission And The Idaho State Historic Preservation Officer For Managing Historic Properties That May Be Affected By A License Issuing To PacifiCorp For The Continued Operation and Maintenance Of The Soda Project (FERC No. 20), Grace-Cove Project (FERC No. 2401) And Oneida Project (FERC No. 472) In Caribou And Franklin Counties, Idaho,” executed on February 25, 2003. As previously noted, the Soda, Oneida, and Grace facilities were subsequently licensed as one project under FERC license No. 20.

Consistent with the Programmatic Agreement, PacifiCorp filed a draft Historic Properties Management Plan with FERC on March 29, 2005. The State Historic Preservation Office (SHPO) had comments on the draft that were reconciled in a subsequent draft with which SHPO concurred on July 16, 2007. The final Historic Properties Management Plan was approved by FERC Order dated June 17, 2008. The Programmatic Agreement also requires PacifiCorp to prepare an annual report of activities implemented pursuant to the Historic Properties Management Plan and file it with FERC, SHPO, the Shoshone-Bannock Tribes, and the Bureau of Land Management (BLM). The first report was filed in January 2010. Activities implemented to date have been summarized in the project Annual Reports (to access the 2006 - 2013 Annual Reports, follow the Annual Reports link on the Bear River project homepage: <http://www.pacificorp.com/es/hydro/hl/br.html>).

ATTACHMENT 9

G. Recreation

G.1 Yes. The facility is in compliance with the recreational access, accommodation, and facilities conditions in the Federal Energy Regulatory Commission (FERC) project license. Per Article 416 of the license, PacifiCorp completed a revised Recreation Management Plan which was approved by FERC on October 11, 2005. PacifiCorp has also provided \$50,000 to the US Bureau of Land Management (BLM) to upgrade the Maple Grove and Redpoint campgrounds. Annual payments of \$10,000 (in 2002 dollars escalated annually by GDPI) to the BLM for management of these campgrounds are ongoing per the terms of the license. PacifiCorp is also making annual payments of up to \$3,000 to Caribou County for management of recreational sites at the Alexander reservoir and an additional \$3,000 to Franklin County Sheriff for law enforcement assistance in the Oneida Canyon (in 2002 dollars escalated annually by GDPI).

In 2005, in accordance with Article 416 of the project license, PacifiCorp improved the boater put-in and take-out access points in the Grace bypass reach and in the Oneida reach downstream of the powerhouse. Each of the four access points now includes a hand-launch boat ramp, gravel parking area, and portable restroom. PacifiCorp has also made river flow information for the Grace bypass and Oneida reaches available through a website and toll-free phone number.

In addition, per Article 418 of the project license, PacifiCorp consulted with the Bear River Environmental Coordination Committee (ECC) to prepare a Boating Flow Release Plan that was approved by FERC Order dated August 11, 2005. The Plan centers on the installation of a spill gate in Grace dam to facilitate whitewater releases required under Article 419. The facility has been releasing the flows pursuant to Article 419 since 2008. Annual whitewater release calendars are prepared in consultation with American White Water and approved by the ECC. The first release calendar was submitted to FERC in 2008.

Implementation measures are summarized in the project Annual Reports (to access the 2006 - 2013 Annual Reports, follow the Annual Reports link on the Bear River project homepage: <http://www.pacificorp.com/es/hydro/hl/br.html>).