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Federal
Energy
Regulatory
Commission

Office of
Energy
Projects

April 2003

FERC/FEIS – 0153F

Final Environmental Impact Statement

Bear River
(FERC Project Nos. 20, 2401, & 472)

888 1st Street, N.E., Washington, DC 20426

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FEDERAL ENERGY REGULATORY COMMISSION
Washington, DC 20426

TO THE PARTY ADDRESSED

Attached is the final Environmental Impact Statement (EIS) for PacifiCorp's application for a new license (relicense) for three existing hydroelectric projects in the Bear River Basin in Caribou and Franklin counties, Idaho. This final EIS was prepared pursuant to requirements of the National Environmental Policy Act of 1969 (NEPA) and the Federal Energy Regulatory Commission (Commission) Regulations Implementing NEPA (18 CFR Part 380).

The final EIS documents the views of government agencies, nongovernmental organizations, affected Native American Tribes, the public, the license applicant, and the Commission's staff. It contains staff's recommendations on licensing for the Soda Project (FERC No. 20-019), Grace-Cove Project (FERC No. 2401-007), and Oneida Project (FERC No. 472-017). The final EIS also includes staff's biological assessment of the potential effects of the relicensing of these projects on federally listed threatened or endangered species, pursuant to Section 7 of the Endangered Species Act.

Before the Commission makes a licensing decision, it will take into account all concerns relevant to the public interest. The final EIS will be part of the record from which the Commission will make its decision. The final EIS was sent to the Environmental Protection Agency and made available to the public on or before April 14, 2003.

Copies of the final EIS are available for review in the Commission's Public Reference Branch, Room 2-A, located at 888 First Street, N.E., Washington, D.C. 20426. The final EIS may also be viewed on the Commission's website at http://www.ferc.gov using the "FERRIS" link. Enter the docket number (prefaced by P-), excluding the last three digits in the docket number field, to access the document. For assistance, call (202) 502-8222 or (202) 502-8659 (for TTY).

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September 1997 indicates that discharges from the Oneida powerhouse currently extend over a wide range of flows in short periods of time. Daily flow fluctuations of 700 cfs or more are common during much of the year. Inflow from tributaries and attenuation result in a dampening of both the level and rate of change for these fluctuations, by the time they reach the Idaho/Utah state line. For example, daily flows commonly fluctuated between about 140 to 1,800 cfs downstream of the Oneida powerhouse in January 1996; daily flows fluctuated between about 270 to 1,000 cfs at the state line. PacifiCorp does not currently limit ramping rates at the Oneida Project. Under current operations, it takes about 7 minutes to ramp the units in the Oneida powerhouse from flows of about 240 to 1,200 cfs.

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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:

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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

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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 redivert 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 rediverting 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.

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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.

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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

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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.

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[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.

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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,

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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 BCC 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 BCC, 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.

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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.

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Bear River Settlement Agreement

APPENDIX B
REPRESENTATIVES OF THE PARTIES

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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.

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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.

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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

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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.

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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-

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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.

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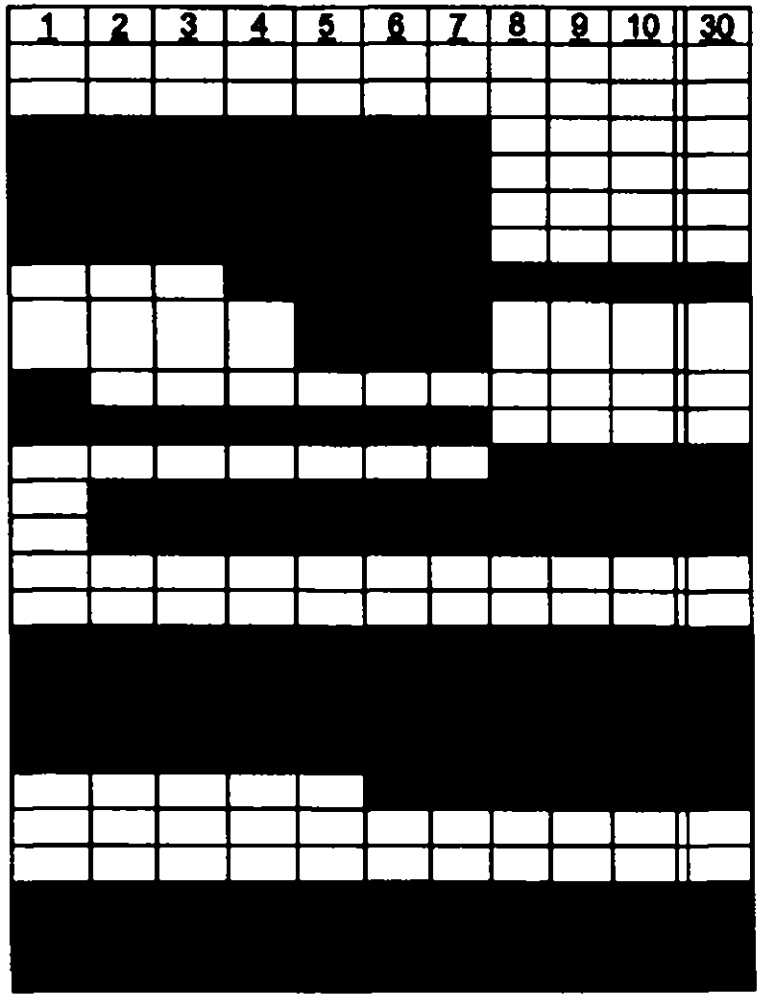
EXHIBIT 1
IMPLEMENTATION SCHEDULE

Proposed measures for Bear River relicensing — **License Year**



BONNEVILLE CUTTHROAT TROUT
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)

MINIMUM FLOWS
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

RAMPING
Implement ramp rate of 1.2 ft/hr in below Soda
3 in/15 min. on descending arm of ramp below Oneida

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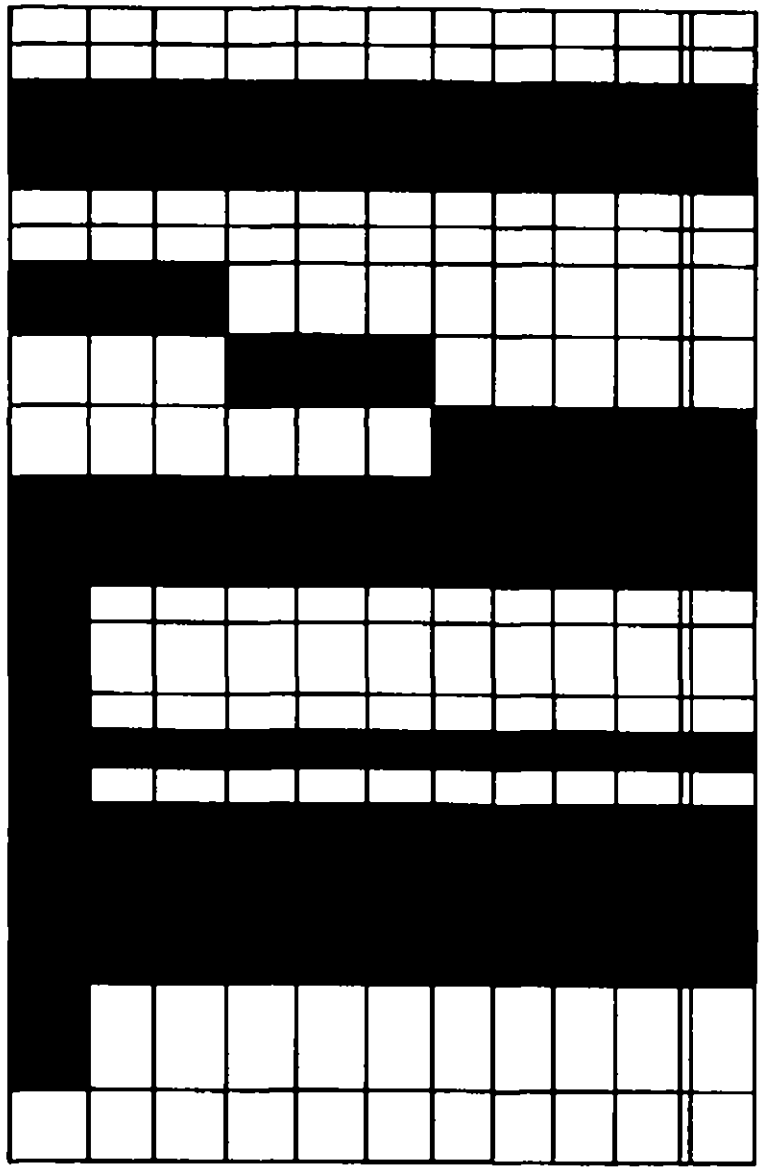
WATER QUALITY

Monitor DO in Soda reach when flow ≤ 150 cfs
3 in/15 min. on descending arm of ramp below Oneida

RECREATION

Provide up to 16 (6-hr) opportunistic boating flows (max. 900 cfs)
Provide up to 16 (6-hr) scheduled boating flows (ave. 1050 cfs)
Provide up to 96 hrs/yr scheduled boating flows (ave. 1050 cfs)
Improve "Flow Phone" for timeliness and accuracy
Assist Caribou County in recreation plans and facilities
Improve put-in and take-out facilities in Black Canyon
Improve put-in and take-out facilities in Oneida Narrows
Recreation Management Plan
Annual support for Oneida campgrounds
Construct turn-around loops and signage at Maple Grove
Prepare and implement traffic safety plan
Funding for law enforcement and communication link
Implement dust abatement measures along Oneida narrows road
Upgrade Maple Grove and Redpoint Campgrounds



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HISTORIC PROPERTIES
Develop Historic Properties Management Plan for Soda
Develop Historic Properties Management Plan for Grace/Cove
Develop Historic Properties Management Plan for Oneida
Implement HPMP's

LAND MANAGEMENT
Develop Land Management Plan for Soda
Develop Land Management Plan for Grace/Cove
Develop Land Management Plan for Oneida
Implement LMP's

COORDINATION AND IMPLEMENTATION
Environmental Coordinator

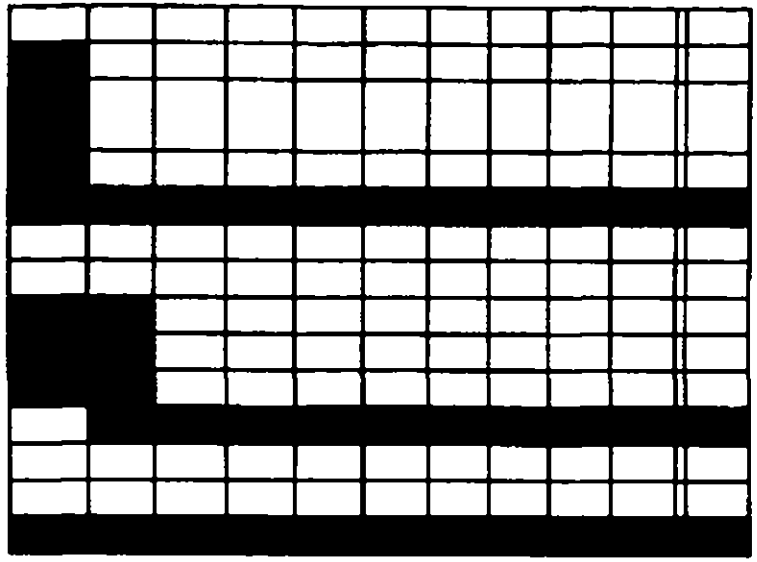

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EXHIBIT 2
COST CALCULATION FOR ADDITIONAL INSTREAM FLOWS

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.

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APPENDIX B

COMMENTS ON THE DRAFT EIS

AND

STAFF RESPONSES

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APPENDIX B

COMMENTS ON THE DEIS

On October 23, 2002, the Commission staff mailed the draft EIS for the relicensing of the Bear River Projects to the Environmental Protection Agency (EPA), resource and land management agencies, and interested organizations and individuals. The draft EIS was noticed in the Federal Register on November 1, 2002, and comments were due by December 31, 2002. Thirteen letters, representing PacifiCorp and 13 other signatories to the settlement agreement, as well as 4 other entities, and 8 individuals, commenting on the draft EIS, were filed with the Commission, as listed below.

On December 12, 2002, the Commission staff also held a public meeting in Soda Springs, Idaho, for the purpose of discussing the draft EIS. Additional comments were made by interested parties, and these comments are included in the meeting transcript, which is part of the public record. Two individuals also provided written comments, which are attached to the meeting transcript.

In this appendix, we summarize the comments received, provide responses to those comments, and indicate where we have modified the text of the draft EIS. We focus our discussion on substantive comments that suggest revisions to the EIS or make other recommendations regarding project licensing. Other comments, such as statements of support for the EIS or settlement agreement, or repetitive comments, may be noted but are not discussed in detail.

Commenting Entity	Date of Letter
Dr. and Mrs. Brad R. Farr	November 23, 2002
Dr. and Mrs. O. Marvin Lewis	November 24, 2002
Dr. and Mrs. Douglas P. Felt	November 24, 2002
American Whitewater	December 2, 2002
U.S. Department of the Interior	December 12, 2002
Richard Hoffmann	December 12, 2002
Jim Kimbal	December 12, 2002

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U.S. Forest Service - Caribou-Targhee National Forest	December 16, 2002
State of Idaho, Office of Attorney General[1]	December 18, 2002
Trout Unlimited/Greater Yellowstone Coalition	December 26, 2002
Stonefly Society of the Wasatch	December 30, 2002
Bear Lake Watch	December 31, 2002
Bear River Canal Company (two letters)	December 31, 2002
PacifiCorp[2]	December 31, 2002
State of Wyoming, Office of the Attorney General	January 23, 2003

Dr. and Mrs. Brad R. Farr

Comment: Dr. and Mrs. Farr commented that Bear Lake, as the "largest single factor" in the regulation of Bear River flows, should receive additional analysis in any examination of river flows in the basin.

Response: We described the function of Bear Lake in section 2.5, *Project Operations*. Since the projects are located downstream of Bear Lake and utilize whatever flows are released from the lake, without having any direct effect on the lake, additional analysis of Bear Lake is not required. The Commission also has no jurisdiction over the operations of Bear Lake.

Dr. and Mrs. O. Marvin Lewis

Comment: Dr. and Mrs. Lewis commented that Bear Lake, as the "largest single factor" in the regulation of Bear River flows, should receive additional analysis in any examination of river flows in the basin.

Response: See our response to Dr. and Mrs. Farr, above.

---

[1] Also represents comments of IDFG, IDPR, and IDEQ.

[2] PacifiCorp's letter also represented the views of the 15 other parties to the settlement agreement, although some of these parties also filed separate letters of comment.

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Dr. and Mrs. Douglas P. Felt

Comment: Dr. and Mrs. Felt commented that Bear Lake, as the largest reservoir in the regulation of Bear River flows, should receive additional analysis in any examination of river flows in the basin.

Response: See our response to Dr. and Mrs. Farr, above.

American Whitewater

Comment: AW states that they fully support the settlement agreement and recommends that the Commission accept the agreement in its entirety.

Response: We are recommending that any licenses issued include the settlement agreement measures, along with additional measures recommended by staff.

U.S. Department of the Interior

Comment: Interior expresses support for the settlement agreement and recommends that the Commission incorporate the settlement terms and conditions into any licenses issued for the Bear River projects. Interior also recommends that the language in the final EIS, regarding the time commitments for the implementation of the settlement measures, be consistent with such language in the settlement agreement. Specifically, Interior states that the settlement language "after the new licenses become final" be used, instead of the Commission's standard language "after issuance of the new licenses."

Response: We are recommending that any licenses issued include the settlement agreement measures, along with additional measures recommended by staff. In regard to the specific timelines for implementation of the settlement measures, the Commission typically uses the issuance date of a new licenses as the date the "clock starts" on the license conditions, because that is a set date established by the license order, and is easily trackable for compliance purposes. In the settlement agreement, "new licenses become final" is defined by the completion of several events. These include: (1) the IDEQ has issued the 401 WQC's; (2) the Commission has issued new licenses for all three projects; (3) PacifiCorp has accepted all the WQC's and the new licenses for the three projects; and (4) all administrative and judicial appeals for the new licenses have been adjudicated or dismissed. In the event that not all the "licenses become final" on the same day, the term "new licenses become final" will be the date that the last of the three licenses "becomes final."

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We understand that the settlement agreement has specific language agreed to by all parties, and that in the case of "new licenses become final," the parties agreed to this language so that specific programs or measures would not begin until PacifiCorp is sure that it has obtained its new licenses. However, this term would depend on the completion of a number of events, the last of which would be beyond the control of PacifiCorp or the Commission (any appeals of the licenses). Thus, the date that "new licenses become final" could be months or years after the new licenses are issued by the Commission. This could result in the delay of many of the measures that we have concluded would be in the public interest, and would make compliance tracking for these measures difficult.

As an alternative to using the term "new licenses become final," we are recommending that the new licenses include a requirement that PacifiCorp prepare an implementation plan for all the measures required by the new licenses. This implementation plan would be prepared in consultation with all the settlement parties and other entities that were consulted during the relicensing process, would be filed with the Commission within 6 months after the issuance date of the new licenses, and would include schedules for all required measures. For those measures where there is agreement among the parties that they could be delayed, pending the outcome of specific events, such delays, with their triggering events, could be built into the implementation plan. This plan would also include annual updates, to inform the Commission of any agreed-upon changes to the schedules for any of the required measures.

Comment: Interior questions the statement in the description of the scoping process that there are no significant socioeconomic issues. Interior states that in the absence of the proposed action (the settlement agreement) there would be significant socioeconomic issues related to the use of the natural resources of the Bear River. They further state that the settlement agreement mitigates for many of these impacts, but that additional discussion of socioeconomic issues should be included to show why the proposed action is the preferred alternative.

Response: We agree that the proposed action (with additional staff-recommended measures) would be the preferred alternative, and that the beneficial effects on the natural resources of the Bear River corridor would in turn result in beneficial effects on the socioeconomics of the area (increased opportunities for fishing, whitewater boating, etc., and related effects on the local economy). The beneficial effects on socioecomics, however, would be difficult to quantify, because baseline information on current socioeconomic factors is not readily available. We believe that sufficient information on the natural resource benefits of the proposed action is already included in the EIS, and that adding additional qualitative discussion of potential socioeconomic benefits is not required.

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Comment: Interior recommends that the description of the Grace and Cove bypassed reaches be modified to indicate that the upper end of the Grace bypassed reach is virtually dewatered, with the stated 40 to 70 cfs spring inflow occurring at the lower end of the reach, and that the Cove bypassed reach has severely reduced flows, under current operations.

Response: These suggested changes have been made to the final EIS.

Comment: Interior states that the analysis of the Cove bypassed reach should be revised to indicate that the diversion of Kackley Springs to the reach is only a possible enhancement measure, with the final decision to be made by the Environmental Coordinating Committee (ECC), if they believe that the diversion would benefit aquatic resources.

Response: These suggested changes have been made to the final EIS.

Comment: Interior recommends that the description of the distribution of Bonneville cutthroat trout (BCT) in the Bear River Basin be revised to include a total of 23 named tributaries to the river.

Response: This suggested change has been made to the final EIS.

Comment: Interior states that the Soda reservoir, Soda reach, Grace bypassed reach, the Cove reach, and Oneida reach probably still have small populations of BCT, and that this should be stated in the EIS.

Response: None of the applicant's studies collected BCT in the project reaches of the Bear River, although it is possible that small numbers of BCT may seasonally occur in these reaches. The final EIS has been modified to indicate this possibility.

Comment: Interior recommends adding specific language in the discussion of the cumulative effects of stocking BCT in the Bear River.

Response: This suggested change has been made to the final EIS.

Comment: Interior recommends, under the section *Comprehensive Development and Recommended Alternative*, that the EIS be modified to indicate that the recommended land use management plans for the three projects be prepared in consultation with the ECC and within 2 years "of the licenses becoming final."

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Response: We agree that the land use management plans should be developed in consultation with the ECC, but the timing of their development could be scheduled as part of the implementation plan described above.

Comment: In the same section, Interior states that the reference to the Bear River Action Area should indicate that it is in the state of Idaho.

Response: Footnote 35 of the draft EIS describes that the Action Area is only in the state of Idaho.

Comment: Interior, in its summary comments, states that the draft EIS descriptions and interpretations of the terms of the settlement agreement do not completely reflect the commitments made by the applicant, and that the final EIS should more precisely reflect the terms of the agreement and the applicant's commitments.

Response: We have recommended that the settlement agreement measures be made requirements of the new licenses. Although the EIS may not precisely reflect every specific aspect of the settlement agreement, this is primarily due to paraphrasing or summarization to keep the EIS to a manageable size. The final license articles for these projects will be more precise regarding the specific measures to be implemented, and will conform to the settlement agreement.

Richard Hoffman

Mr. Hoffmann attended the December 12, 2002, public meeting in Soda Springs, Idaho, and presented for filing, a letter of comment dated April 10, 2002, which he had mailed to the Commission's Secretary at that time, but which apparently was not received. Copies of other correspondence were attached to the letter, including: (1) his October 25, 2001, letter of comment on the draft EIS for the new Wasatch-Cache National Forest Plan; (2) his July 25, 2002, letter to Monte Garrett of PacifiCorp, expressing his concern about the amount of representation of Utah boating interests in the settlement process for the Bear River projects, and on the proposed Environmental Coordination Committee (ECC); (3) a September 30, 2002, letter from the Utah Department of Natural Resources to Monte Garrett, PacifiCorp, recommending that a person representing the Utah boating community be included on the ECC; and (4) Mr. Hoffman's September 10, 2000, letter to the Secretary, FERC, expressing his concern about whether the interests of the Utah boating community were being properly considered in the relicensing process for the Grace-Cove Project. Mr. Hoffmann's specific comments in his April 10, 2002, letter to Commission, and our responses are as follows:

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Comment: Mr. Hoffmann commented that the dewatered Grace bypassed reach may be the closest and best kayaking run for Salt Lake City boaters, and they have been negotiating for 27 days of whitewater boating releases through the boating season. However, he notes the lack of cooperation between the boaters and the "fishing interests," who would like to restore BCT to the Bear River, even though there is a lack of habitat and connectivity in the river, and there is a high likelihood of hybridization with stocked non-native fishes. He further states that high-quality whitewater runs are limited in the arid intermountain west, and that those that do exist are crowded or have long waits for permits to use the runs. He is concerned that boating interests are "losing out to more powerfully funded organizations."

Response: We agree that there are competing demands for the sometimes limited water resources of the intermountain west, and we have analyzed these competing interests for the Bear River, and whether the settlement agreement negotiated by PacifiCorp and the other parties would be an adequate vehicle for balancing those competing interests. The settlement agreement was signed by a wide range of stakeholders, including many that typically represent boating interests (American Whitewater, Idaho Rivers United, Idaho Department of Parks and Recreation, National Park Service). In our view, PacifiCorp has made a significant commitment to provide for whitewater boating releases in the Grace bypassed reach, compared to what has been available under the existing license. We are recommending that these proposed whitewater boating releases be made a requirement of any new license, but whitewater boating interests are also encouraged to continue dialogue with PacifiCorp, outside of the licensing process.

Jim Kimbal

Mr. Kimbal also attended the December 12, 2002, public meeting in Soda Springs, Idaho, and presented a letter of comment for filing with the Commission. Mr. Kimbal's specific comments, and our responses are as follows:

Comment: Mr. Kimbal commented on Commission staff's analysis of Bear Lake operations, as part of the jurisdictional proceeding for the lake. He stated that he questions staff's conclusions that less water leaves Bear Lake than enters it, due to evaporation, and included a river flow chart for the Bear River (prepared by the Bear River Commission) that indicates more water leaves the lake than enters it. He also questions whether more water means that more power is produced, and believes that Bear Lake should be included in the EIS. He further states that he believes that additional water must be released from Bear Lake to meet the proposed 900-cfs flow from the Oneida Project, from Memorial Day to Labor Day, and that the effects of this on Bear Lake should be assessed.

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Response: We are unable to comment specifically on staff's analysis in the Bear Lake jurisdictional proceeding, but we have consistently described that we are not including an analysis of Bear Lake operations in this EIS because the lake is currently not jurisdictional. We describe the function of Bear Lake in section 2.5, *Project Operations*, but since the Bear River hydroelectric projects are located downstream of Bear Lake and utilize whatever flows are released from the lake, there is no direct effect on the lake. Regarding the proposed 900-cfs flow from the Oneida Project, PacifiCorp has indicated that it would release such a flow only if inflow is available, and no additional releases would be made from Bear Lake to meet this requirement.

U.S. Forest Service - Caribou-Targhee National Forest

Comment: The USFS states that information on BCT in the draft EIS appears dated, and that it should be noted that BCT also occurs in Dry, Foster, Sugar, and Maple Creeks, and in the Cub River, in the reach of the Bear River between Soda dam and the Utah border.

Response: This suggested change has been made to the final EIS.

Comment: The USFS comments on a statement made in the draft EIS that PacifiCorp should not bear the full costs of all BCT restoration measures in the Bear River subbasin between Bear Lake and the Utah border. They state that the USFS and other agencies consider such restoration measures off-site mitigation for the effects of the hydroelectric projects on the BCT, and provide references for the importance of tributary populations of BCT to those that occur in the Bear River. The USFS agrees, however, that PacifiCorp should not bear the full cost of restoration efforts, and that they consider PacifiCorp funding to be "seed money" for the cost-sharing that will be required to implement these efforts.

Response: We generally agree with the USFS comment, and also assume that the extent of PacifiCorp funding was a compromise worked out during the settlement negotiations.

State of Idaho, Office of Attorney General

Comment: The state of Idaho expresses support for the settlement agreement and recommends that the Commission incorporate the settlement terms and conditions into any licenses issued for the Bear River projects. Idaho also recommends that specific revisions be made to the final EIS, to either update or correct information in the draft EIS, or to better reflect the terms of the settlement agreement.

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Response: We have recommended that the settlement agreement measures be made requirements of the new licenses. We note that Idaho's specific comments are included in PacifiCorp's comments on the draft EIS (see below), which represent the comments of all the parties to the settlement agreement (including the state of Idaho). We respond to those comments below.

Trout Unlimited/Greater Yellowstone Coalition

Comment: TU/GYC comment that the statement in the draft EIS that no ramping rates are proposed at the Grace-Cove Project, is not correct, in that the settlement agreement provides for the development of "feasible" ramping rates, as part of the whitewater flow regime, in years 4 to 6 of the new license.

Response: We have corrected the information in the final EIS.

Comment: TU/GYC suggest that other potential funding sources be considered for the development of fish passage at the Cove dam, in addition to the mitigation fund provided by the settlement agreement.

Response: We agree that other funding sources could be considered and suggest that TU/GYC, as parties to the settlement agreement, consult with the other parties regarding this suggestion.

Comment: TU/GYC recommend that staff expand the analysis of whitewater boating flows in Black Canyon, related to potential effects on BCT restoration, to reflect the intent of the settlement agreement that BCT restoration be the "driver" for resource decisions in Black Canyon, if the ECC designates Black Canyon as a priority BCT restoration area, and that whitewater boating flows would only be implemented in a manner that would not adversely affect the BCT restoration efforts.

Response: Pages 71 and 72 of the draft EIS adequately describes the process by which whitewater boating releases into Black Canyon would be monitored, with the ECC having "...the authority to adjust the amount, frequency, and timing of whitewater boating flows if monitoring demonstrates adverse effects on ecological attributes." This section also describes that there is the potential for higher whitewater boating releases to adversely affect the trout fishery and existing aquatic habitat. We also discuss in several other places in the draft EIS that BCT restoration is a major objective of the settlement agreement, and we are recommending that the settlement agreement measures be made requirements of the new licenses.

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Stonefly Society of the Wasatch (SSW)

Comment: SSW states that the Bear River has been severely impacted by man, although is still an important economic and environmental resource, and therefore the FERC process should include an overall assessment of the health of the river and the factors responsible for the serious environmental problems.

Response: The Commission's jurisdiction in the Bear River Basin is limited to licensed, non-federal hydroelectric projects that operate within the basin. As such, an overall assessment of the entire basin is beyond the scope of the Commission's jurisdiction, and would be more appropriately the responsibility of a joint federal-state-private task force comprised of all state and federal agencies, industry, irrigators, and individuals who have an interest in, or responsibility for, managing the water resources of the basin. The EIS, however, does discuss many of the environmental "problems" in the project reaches of the Bear River, and how the proposed action would affect or mitigate some of these problems.

Comment: SSW questions our conclusion that PacifiCorp's proposed action (which includes the settlement agreement), along with staff's additional recommended measures, would be best adapted to a comprehensive plan for the proper use, conservation, and development of the Bear River. They state that there is currently no comprehensive plan for the river, and that if one was developed in the future, the existing settlement would likely conflict with any such plan.

Response: The basis for our conclusion is that the proposed action, which is the result of extensive consultations and an agreement among a wide range of stakeholders, along with additional staff recommendations, would balance developmental (power production) and non-developmental (natural) resources in the Bear River Basin.

Comment: SSW claims the draft EIS fails to address the significant environmental effects of the operation of Bear Lake related to the quality of Bear Lake outflows, the elimination of flood/riparian protection flows, and the effects of Bear Lake releases on the Mud Lake wetlands. They further state that because PacifiCorp operates Bear Lake, and has senior water rights for its operation, that discussion of Bear Lake operations should be included in the EIS, particularly since the jurisdictional issue on Bear Lake is under reconsideration.

Response: We have maintained, since the initial scoping of this EIS, that a detailed analysis of the operation of Bear Lake would not be included in this EIS. The fact that PacifiCorp operates the Bear Lake facilities has no bearing on whether the NEPA

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analysis for the downstream projects should include Bear Lake. Although the Commission may have granted rehearing for further consideration of the jurisdictional issue, the current ruling from the Commission is that Bear Lake is not jurisdictional (which has been affirmed by the Commission). Two of the parties to that proceeding (AW and IRU), in fact, have requested that their rehearing requests be held in abeyance pending the issuance of the new licenses, at which time they would withdraw their request for rehearing, if the Commission issues licenses for the Bear River projects that are consistent with the settlement agreement. All of the signatories to the comprehensive settlement agreement filed by PacifiCorp, which include most of the state and federal resource agencies responsible for management of water resources and associated biota, as well as the Shoshone-Bannock Tribes and several private special interest groups, do not recommend that Bear Lake operations be included in the EIS.

Comment: SSW recommends that the EIS include additional discussion of the effects of the Soda reservoir fluctuations on water quality, and should discuss alternatives that would provide a better balance among temperature, oxygenation, and turbidity, such as reducing reservoir fluctuations or altering the withdrawal point in the reservoir.

Response: SSW appears to be raising issues that have already been addressed by the EIS, or that should have been raised during the scoping process more than 2 years ago. The effects of Soda reservoir operations on water temperature and dissolved oxygen were discussed in the draft EIS, and according to IDEQ, water quality monitoring will be required at the Soda Project as part of the WQC for the project.

Comment: SSW states that the EIS should include a discussion of the effects of the Grace reservoir fluctuations of 0.3 foot daily and 8 feet annually on water quality, and should evaluate alternative operations that would protect water quality in the downstream Black Canyon.

Response: The EIS includes considerable discussion of the instream flow needs of the Black Canyon, for the protection of water quality and aquatic biota. The effects on water quality of fluctuation of the relatively small 38-acre Grace forebay was considered by staff to be insignificant, with the water quality instead controlled by the quality of the Bear River inflows to the forebay. Furthermore, we agree with the settlement agreement's provision for several years of monitoring studies in Black Canyon to ensure that aquatic resources in the Canyon are adequately protected by the flow regime in effect, with the ECC given the responsibility to modify the flow regime, if required to further protect the resources. The WQC conditions would also require water quality monitoring to ensure that water quality standards are met.

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Comment: SSW states that the EIS should include a discussion of the effects of the 4-foot Oneida reservoir fluctuations on water quality and riparian vegetation in the reservoir.

Response: As we discussed above, SSW appears to be raising another issue that has already been addressed by the EIS. Several measures are proposed for the river reach downstream of Oneida dam, including minimum flows for aquatic habitat and whitewater boating, ramping rates, and water quality monitoring. PacifiCorp did not propose any restrictions on the operation of Oneida reservoir, in addition to limits that already exist. Our assessment of this proposal, however, is that this would give PacifiCorp the operational flexibility to continue operating the project for irrigation and power generation, while at the same time providing the protection and enhancement measures noted above. Based on staff's field observations, existing operations, which include reservoir drawdowns, have no effect on turbidity. In fact, Oneida reservoir acts as a sediment control basin, in which the inflowing Bear River is highly turbid, while water released from the reservoir has high clarity, because the suspended sediment has settled out in the reservoir. While more stable reservoir levels could result in some enhancement of riparian vegetation around the reservoir shoreline, the tradeoff would be that releases for irrigation or instream flows might not always be attainable.

Comment: SSW recommends that the EIS describe the effects of the diversion of up to 300 cfs from the Bear River at the West Cache irrigation diversion, located about 4 miles downstream of Oneida dam.

Response: Diversion of irrigation flows at West Cache likely has little effect on the Bear River downstream of the point of diversion. The annual average flow of the Bear River below Oneida is 949 cfs, and is typically higher during the irrigation season (averaging about 1,100 cfs), when irrigation flows would be diverted at West Cache. Thus, irrigation withdrawals would constitute, on average, less than about 30 percent of the Bear River flow. The Oneida Project would operate with a minimum flow of 250 cfs, during off-peak hours, but between Memorial Day and Labor Day would provide whitewater boating flows of 900 cfs, when available. This period would include the peak irrigation season, indicating that maximum irrigation withdrawals would constitute only about one-third of the total release. The trout fishery in this reach is maintained by stocking, so even if irrigation withdrawals were to constitute a greater percentage of the total river flow, there would be little effect on trout spawning (which apparently does not occur in the reach), and in turn little effect on the fishery.

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Comment: SSW alleges that PacifiCorp may dewater the Bear River downstream of the Last Chance diversion, for operation of the Last Chance Hydroelectric Project, and that this issue should be addressed.

Response: The Last Chance Hydroelectric Project is a relatively small project with an installed capacity of only 1,500 kW. There is no indication that the river is dewatered at any time below the Last Chance diversion.

Comment: SSW states that the EIS should assess several other alternatives to the proposed action, and until that is done, the settlement provisions and other aspects of the licenses should be held in abeyance. Alternatives that should be assessed include: alternative operations at the Stewart diversion structure, to allow periodic, high "riparian restoration" flows; operation of the Soda and Oneida reservoirs with reduced reservoir fluctuations; operation of the projects in partial or complete run-of-river (ROR) mode; and an overall technical assessment of the entire Bear River Basin, followed by license modifications to reflect the findings of the assessment.

Response: As we discussed above, SSW appears to be raising issues that have already been addressed by the EIS.

Comment: SSW comments that a statement made in the draft EIS that the Bear River is regulated primarily for irrigation and flood control is unsupported, and presents information on historic water supply contracts and recent operating agreements. They again recommend "pulse flows for riparian restoration," and state that such an alternative should be addressed in the EIS.

Response: Because of our legal requirement to make the EIS as concise as possible, not all supporting information is discussed within the text of an EIS. Based on the available record, which includes many of the water contracts and operating agreements that SSW discusses, we are correct in our statement about the regulation of Bear River. The alternatives considered in the EIS were based on the scoping of issues, which included two site visits and three public meetings in Idaho, in the year 2000.

Comment: SSW questions why there is little information in the draft EIS on the Bear River above Soda, below Preston, Idaho, and between Cove and Oneida, when the scope of the EIS was to include the Bear River from Stewart dam downstream to Cutler reservoir.

Response: Our discussion in the EIS is limited by the information available for other reaches of the Bear River, and whether or not there is a need to discuss other reaches of

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the river (i.e., whether there are issues in those reaches associated with proposed project operations).

Comment: SSW states that the proposed 150-cfs minimum flow from the Soda Project should be maintained in the Bear River all the way to the Grace forebay, or the impacts of removing the water discussed.

Response: We assume that SSW is referencing the diversion of irrigation flows at Last Chance, and the potential effects of that diversion on the Bear River. Although the Commission has no jurisdiction over any irrigation diversions at Last Chance, as we responded above, there is no indication that the river is dewatered at any time below the Last Chance diversion.

Comment: In reference to the proposed ramping rates at the Soda Project, SSW requests further explanation of the ramping rates, in relation to irrigation releases.

Response: If a new license is issued for the Soda Project with a ramping rate restriction of 1.2 feet per hour, ascending or descending, PacifiCorp must make all changes in flow releases from the project (under normal operations, when PacifiCorp has "control" of the river [no uncontrolled spillage]), such that the river water surface elevation immediately downstream of the dam changes at a rate no greater than 1.2 feet per hour.

Comment: SSW asks for clarification of the description of the 900-cfs whitewater boating release from the Oneida Project, on page 11 of the draft EIS.

Response: The description on page 11 of the draft EIS contains a typographical error, which has been corrected in the final EIS. PacifiCorp is proposing to release whitewater boating flows of 900 cfs from Memorial Day through Labor Day, if that volume of flow is available in the Bear River, and subject to an operational regime (to be developed) that would minimize the frequency of river fluctuations downstream of the powerhouse.

Comment: SSW recommends that an environmental coordinating committee should be established for the use of Bear Lake waters for environmental purposes, which may become available as a result of other measures associated with the settlement agreement (acquiring water rights for the benefit of BCT and other fish and wildlife resources).

Response: This may be an appropriate recommendation by SSW, but the specific operations of Bear Lake are currently outside of the Commission's jurisdiction.

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Comment: SSW questions how any future FWS Section 18 fishway prescription can be consistent with the settlement agreement, and whether any future prescription would be limited to Cove dam.

Response: FWS fishway prescriptions pursuant to Section 18 of the Federal Power Act are limited to projects licensed by the Commission, so any unlicensed dams on the Bear River would not be subject to FWS's prescription authority, under the Federal Power Act. Pursuant to the settlement agreement, Cove dam is the only dam associated with the three licensed projects, where fish passage has been proposed.

Comment: In reference to the 401 WQC, SSW recommends that application for the WQC should also be made to the Utah Division of Environmental Quality, because the draft EIS includes analysis of effects of project operations into Utah. They also suggest that other groups, such as the Bear River Commission, the Bear River Basin Water Quality Task Force, and the Bear Lake Regional Commission, if still in existence, should comment and review the proposed WQC's.

Response: Pursuant to the Clean Water Act, the WQC must be issued by the state in which the "discharge" occurs, which in this case is Idaho (the three projects are located in Idaho and discharge flows only into Idaho waters). We are unsure of the status of the three groups mentioned by SSW, but these groups, if still in existence, have had the opportunity to comment on the relicensing of these projects, and the WQC process.

Comment: SSW comments that the operations of Stewart dam/Bear Lake have had severe impacts on the riparian corridor downstream of Stewart dam, but it is unclear how FERC has analyzed the effects of irrigation and flood control releases on the Bear River.

Response: As noted in the EIS, the discussion of historical effects is, by necessity, limited to the amount of information available for each resource. We are unaware of any documented, quantifiable information on the effects of Stewart dam operations on the riparian corridor, but as we have said above, the effects of the operation of Bear Lake/Stewart dam are beyond the scope of this EIS. We have assessed how the flow releases from Bear Lake affect the three licensed projects that are the subject of this EIS.

Comment: SSW notes that there is a 3°C differential in the water temperature between the surface and bottom of Soda reservoir and suggests that release of this cooler water could reduce temperatures below the dam to within the state standards for coldwater biota.

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Response: On page 40 of the draft EIS, we explained that because of the relatively short hydraulic residence time of the reservoir (9 days), any "pool" of cooler water in the lower levels of the reservoir would be quickly depleted, if sustained releases of this water were attempted. Thus, any cooling effects on downstream water temperatures would be short-lived.

Comment: SSW recommends that additional water quality monitoring be conducted at the Soda Project to determine the effects of reservoir level fluctuations, and a stable reservoir level, on downstream water quality.

Response: This issue has been thoroughly evaluated in the EIS. We conclude that a minimum flow of 150 cfs would provide adequate protection of water quality in the Soda reach. However, IDEQ has indicated that additional water quality monitoring would be required under the WQC for the project.

Comment: SSW requests that a similar question be answered for Oneida reservoir, whether a more stable reservoir level would result in improved water quality.

Response: This issue has been thoroughly evaluated in the EIS. We conclude that it is difficult to accurately predict the effect that the proposed ramping rate would have on water quality, particularly suspended sediment and turbidity. Therefore we agree that PacifiCorp should develop and implement an Oneida WQMP that evaluates water quality in the Bear River between the Oneida powerhouse and the Idaho/Utah border. Additionally, IDEQ has indicated that the WQC would also require water quality monitoring at Oneida, which would have the objective of identifying the project's contribution to any violations of state water quality criteria.

Comment: SSW requests additional explanation of staff's conclusion that the projects would continue to have some unavoidable adverse effects on water quality and sediment transport, and states that PacifiCorp should have the operational flexibility to "shape the runoff pattern" to restore the Bear River riparian corridor.

Response: This conclusion in the EIS is in reference to the fact that the Bear River will remain a highly-regulated system, with or without relicensing of the PacifiCorp projects, and the projects would continue to further regulate river flows through storage and release of flows, particularly at Soda and Oneida. It is doubtful, though, that PacifiCorp would have the operational flexibility to modify operations at the three licensed projects in a manner that would "restore the riparian corridor."

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Comment: SSW questions the statement that water transparency is relatively good in the upper part of the Soda reach because of the settling of sediment in Soda reservoir, that this may only occur during the winter months, but suggests that if lower turbidity occurs at shallower depths then a multilevel outlet structure may be appropriate at Soda dam.

Response: This statement was based on supporting documentation for the license application, but there is no information to indicate that this would justify the expense of constructing a multilevel outlet structure. In addition, based on the draft WQC conditions included in appendix D to the settlement agreement, this was not a consideration in IDEQ's assessment of water quality issues for the Soda Project.

Comment: SSW comments on our conclusion that reducing the fluctuations at Soda reservoir would not significantly benefit the existing recreational fishery, and again recommends that additional analysis be conducted to determine if an alternative operating regime with more limited or no reservoir fluctuations, would enhance littoral zone vegetation and water quality.

Response: As we previously responded, SSW appears to be raising an issue that has already been addressed by the EIS. Several measures are proposed for the river reach downstream of Soda dam, including minimum flows for aquatic habitat, ramping rates, and water quality monitoring. Allowing current reservoir fluctuations to continue would provide PacifiCorp flexibility in its irrigation and power production operations, while also providing the downstream environmental protection and enhancement measures.

Comment: SSW recommends that the outflow from the Grace powerhouse should be separated from the Black Canyon flows, and that the Black Canyon flows should be diverted into the Cove bypassed reach.

Response: Although SSW's recommendation is not clear, we assume that they are suggesting that the higher quality spring inflows in Black Canyon should remain separate from the poorer quality Bear River waters discharging from the powerhouse, and that these higher quality flows should in turn be passed into the Cove bypassed reach. Although there would be potential benefits from such a scheme, this would require major re-engineering of the Grace-Cove Project, and this potential scheme has not been investigated by PacifiCorp or staff.

Comment: In its concluding comment, SSW states that while the efforts to reach the settlement agreement are "laudable," they believe that the relicensing process to date has violated both NEPA and FERC's own regulations, and that the final EIS should correct the deficiencies noted.

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Response: The settlement agreement signed by PacifiCorp and 15 other parties is an important milestone in the efforts to mitigate many of the past impacts on the Bear River, and implementation of the settlement measures, along with additional staff recommendations, would protect and enhance many of the resources of interest to the SSW. Neither the NEPA or the Commission's regulations have been "violated" by this process. Some revisions, however, have been made to the final EIS, based on the comments of SSW and others.

Bear Lake Watch (BLW)

Comment: BLW believes that Bear Lake should be included in the NEPA analysis for the relicensing of the Bear River projects, and "cautions" that no decisions regarding the licensing of the projects should be made until after the conclusion of the jurisdictional proceedings for Bear Lake.

Response: As we have stated previously, it would not be in the public interest to delay the relicensing proceeding for the Bear River projects, and in turn delay the environmental protection and enhancement measures associated with the comprehensive settlement agreement and any new licenses. Completing the current relicensing proceeding would not preclude a thorough NEPA analysis for Bear Lake, should the Commission reverse its earlier decisions and conclude that Bear Lake is jurisdictional.

Comment: BLW is concerned that the proposed whitewater boating flows and minimum flows at the Bear River projects would be provided by releasing flows from Bear Lake, in addition to those required for irrigation. If that were to occur, BLW states that the effects of additional water withdrawals from Bear Lake should be assessed as part of the NEPA analysis.

Response: Both the settlement agreement and the draft EIS state that whitewater boating flows would be provided only if sufficient inflow to the Grace development and Oneida Project is available. We have revised the text of the final EIS to clarify that flows for whitewater boating would not be selectively withdrawn from Bear Lake. Minimum flows would also only be provided if sufficient inflow is available, and no additional releases would be made from Bear Lake to meet these flow requirements.

Bear River Canal Company (BRCC)(first letter)

Comment: BRCC identifies its first letter as only representing its views. BRCC comments that the energy generation lost as a result of the proposed action should be

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assessed in terms of the amount of fossil fuels that would be burned to replace the lost energy.

Response: In Section 5, *Developmental Analysis*, we have estimated the amount of energy generation foregone under the proposed action and staff-recommended alternative. The amount of fossil fuels that would be required to replace any foregone generation would depend on a number of factors, including energy demand, the availability of generation from other hydroelectric projects in the region, and the specific power plants and types of fuels that would be used. In the final EIS, however, we have included an estimate of the metric tons of carbon that would be generated if the foregone power production was replaced by fossil-fueled generation.

Comment: For proposed recreational measures, BRCC comments that the $3,000 to be made available to Caribou County to maintain recreational sites at the Soda Project should be on a cost-sharing basis, and they question why PacifiCorp should be made to modify operations to encourage recreational use at Oneida, and then require them to pay for facilities needed to accommodate the increased use.

Response: The recreational measures discussed by BRCC were proposed by PacifiCorp as part of the settlement agreement measures, and additional recreational facilities would likely be required at Oneida, regardless of any operational changes, because of the existing heavy usage that already occurs.

Bear River Canal Company (BRCC)(second letter)

Comment: In their second letter, BRCC notes that they also represent the views of the Bear River Water Users Association, which have 157,000 acres of irrigated land. They indicate that they support PacifiCorp irrigation and power producing operations in the Bear River Basin, and are concerned that the settlement agreement measures would adversely affect PacifiCorp operations and its return on investment (ROI).

Response: We have concluded that the settlement agreement measures would be in the public interest, and although these measures would result in a reduction in generation from existing levels, the projects would still provide a net annual benefit of about $6.5 million. The proposed settlement measures would have no effect on PacifiCorp's operation of Bear Lake for irrigation.

Comment: BRCC recommends that the executive summary include the energy generation for the no-action alternative.

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Response: We have included that figure in the final EIS.

Comment: BRCC offers additional information on the Bear River Compact, on irrigation flow releases from Bear Lake, and on irrigation flow withdrawals, and suggests that water quality data for water flowing into Soda reservoir be included.

Response: We appreciate the information provided, and have modified the final EIS to reflect this information. We describe the water quality of Soda reservoir, which is a reflection of the water flowing into the reservoir. We also note in the final EIS that water quality issues are being addressed in a cumulative manner in the TMDLs under development for the Middle Bear River in Idaho, which were scheduled for submittal to EPA early in 2003. The TMDL will clarify water quality parameters throughout the Middle Bear River Basin.

Comment: BRCC recommends that flows associated with water quality should be given so that a clearer picture of any relationship may be developed.

Response: Flow alteration was identified as a concern in the EIS. Detailed information on river flow corresponding to other water quality parameter measurements is available in the project record, in the information submitted by the applicant. Further information on flow and water quality relationships will also likely be available in the soon to be published TMDL.

Comment: BRCC suggests wording changes in parts of the draft EIS, and comments that the use of the words "may" and "possibly" in Section 6.2, *Cumulative Effects Summary*, gives "question to the quality of the scientific analysis."

Response: We have incorporated some changes to the text of the final EIS, if appropriate. Use of the words "may" and "possibly," in this case in the *Cumulative Effects Summary*, indicates that we do not have definitive data to prove that an effect has occurred, either because data have not been collected, or the impact has occurred many years ago and was never documented. The use of these words, however, also indicates that there is at least some information to suggest that an impact has occurred.

Comment: BRCC suggests that the costs for the existing (and proposed) 150-cfs minimum flow from the Soda Project should be shown, so that PacifiCorp is given full credit.

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Response: Although costs are not provided in this section, we typically include ongoing costs in the no-action alternative, which we did here. PacifiCorp is given credit for the release, even if the specific cost is not broken out from other existing costs.

Comment: BRCC makes several comments regarding the costs of the proposed settlement measures, and questions what the cost is for the proposed whitewater boating flows in Black Canyon.

Response: All the costs for the proposed measures, including the whitewater boating flows, are detailed in table 17 of the EIS.

Comment: BRCC comments that the description of proposed whitewater boating flows at the Oneida Project, in Section 2.3.1 of the draft EIS, does not indicate that these flows would only be provided "if available." They also provide USGS flow data that indicates that the proposed boating flow is seldom available.

Response: The term "if available" was inadvertently left out of this section. We are in agreement with the settlement agreement that whitewater boating flows would only be provided if such flows are available.

Comment: BRCC states that they were not invited to participate in the settlement process by PacifiCorp, and recommend that they have a seat on the ECC, to protect their interests.

Response: We are unable to comment as to whether or not BRCC was invited to join in the settlement process. We agree that the interests of the irrigators should be addressed in any subsequent actions that affect their interests and that they should be represented at ECC meetings, in a consultative role.

Comment: BRCC states that there should a cost shown for the annual WQMP report.

Response: We indicated in a footnote to table 17, that our estimated cost for the report would be "negligible." We have, however, added a cost for this item in the final EIS.

Comment: BRCC contends that there are socioeconomic issues related to the project, associated with the "hidden" taxation of ratepayers, as costs are passed on to ratepayers, and the economic benefits of the projects (including tax revenue) to the local communities.

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Response: We agree that the Bear River projects are important to the socioeconomics of the Bear River Valley, but socioeconomics were not analyzed in the draft EIS because there were no substantive socioeconomic issues raised, associated with the relicensing of these projects.

Comment: BRCC states that water rights are not developed by decrees, but instead delineated by decrees.

Response: We have modified the final EIS to reflect this comment.

Comment: BRCC questions the basis for PacifiCorp's proposed 250-cfs minimum flow downstream of Oneida.

Response: We are unable to comment on PacifiCorp's basis for its proposed minimum flow, but our analysis, based on the instream flow study conducted downstream of Oneida, concluded that 250 cfs would provide an adequate level of habitat suitability to support the existing fishery for stocked trout.

Comment: BRCC comments on our discussion of past cumulative effects on BCT in the Bear River Basin, and asks whether we have demonstrated that geology, not dams, is the reason for the lack of spawning gravels downstream of the dams.

Response: Our "qualitative" discussion of past effects on BCT in the Bear River Basin is based on our own observations of the current habitat in the basin, and on comments and observations made by others and included in the record. We do not have detailed information on the substrate characteristics of the Bear River prior to the construction of dams, so we cannot precisely determine whether geology or the construction of dams was the primary factor in the current distribution of river substrates.

Comment: BRCC notes that many of the impacts to BCT were the result of government-sponsored development, and that the cost of restoration measures should be borne primarily by government agencies and not the ratepayers of a public utility.

Response: We have stated in the EIS that "it is not appropriate to place the full costs of implementing" BCT restoration measures on PacifiCorp. Although PacifiCorp is proposing to provide significant funding to begin the restoration of BCT to the Bear River, additional funding by other entities or government agencies will be required. However, government agency funding also is ultimately borne by individual citizens, either through taxes or user fees.

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Comment: BRCC questions whether existing substrate and water temperatures in the Bear River would be conducive to BCT spawning.

Response: The suitability of existing habitat for BCT is a valid question, and is the reason that a phased approach to BCT restoration, including surveys of available habitat, is proposed.

Comment: BRCC comments that the cultural resources assessment in the EIS should place more focus on "present cultural resources," which have more value than "past components."

Response: We agree that present society has obvious importance, which is the reason that a NEPA analysis (an EIS) is conducted. However, we are also required by federal law (The National Historic Preservation Act) to assess the impacts of the proposed project(s) on historic or archeological resources that may be eligible for listing, or are listed, on the National Register of Historic Places.

Comment: BRCC suggests a more detailed analysis of the sources, potential transmission costs, and environmental effects of replacement power for the power production foregone as a result of the environmental enhancement measures associated with relicensing.

Response: In Section 5, *Developmental Analysis*, we have estimated the amount of energy generation foregone under the proposed action and staff-recommended alternative. The sources, potential transmission costs, and environmental effects of replacement power would depend on a number of factors, including energy demand, the availability of generation from other hydroelectric and thermal projects in the region, and the specific power plants and types of fuels that would be used. In the final EIS, however, we have included an estimate of the metric tons of carbon that would be generated if the foregone power production was replaced by fossil-fueled generation.

Comment: BRCC makes several additional comments regarding the costs for proposed environmental measures shown in table 17 of the draft EIS. Specifically, they recommend that costs be shown for the minimum flow and whitewater boating flow at Oneida, for PacifiCorp to participate in the ECC, and for replacement energy and transmission.

Response: Most of the costs in table 17 are based on data from PacifiCorp. They show no costs for the Oneida flow releases, which we assume is because all releases would be made through the powerhouse, and there would be no energy losses. PacifiCorp,

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however, has provided additional or revised costs for some of the proposed measures, and we have updated those costs in the final EIS. A cost is shown in table 17 for PacifiCorp participation in the ECC, and we have explained above why we are unable to estimate replacement energy and transmission costs.

Comment: In commenting on Section 6, *Staff's Conclusions*, BRCC states that staff has not considered the loss of 26.5 million kWh of generation, transmission losses associated with replacement power, other developmental and nondevelopmental values, and present cultural values.

Response: We have identified that there would be a "loss" of 26.5 million kWh of generation, although as explained above, we are unable to estimate replacement energy and transmission costs. As for other developmental and nondevelopmental values, and present cultural values, we consider these items to the extent that information is available.

Comment: In commenting on Section 6.2, *Cumulative Effects Summary*, BRCC asks whether non-native species would also have "status" in environmental protection measures.

Response: We assume that BRCC is commenting on the apparent focus of the discussion on BCT and that PacifiCorp's proposed measures would contribute to the restoration of BCT. Other species, including non-native species, would also benefit from the measures to be provided by PacifiCorp. For example, the current trout fishery in the Grace bypassed reach and species residing in the Cove bypassed reach would benefit from the provision of minimum flows in those reaches.

Comment: BRCC provides several comments on the settlement agreement, regarding water rights, their interest in participating in the ECC, and their belief that they should have been more involved in the settlement negotiations.

Response: We have no response to these comments because they are not specifically directed at the draft EIS.

Comment: BRCC questions the results of the Grace bypassed reach instream flow, including: whether the 40 to 70-cfs spring inflow was considered in the analysis, the specific location of the transects related to the spring inflow, and that their analysis indicates a minimum flow release of 25 to 50 cfs would be more appropriate (than the proposed 80-cfs release) from a habitat perspective, and would maintain cooler water temperatures.

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Response: We agree that a lower minimum flow would maintain relatively high habitat value in the bypassed reach, but our analysis indicates that the proposed flow of 80 cfs would also maintain high habitat value, as well as provide higher amounts of wetted area than lower flows. The additional wetted area would benefit other aquatic resources in the reach, such as aquatic macroinvertebrates, which are a food source for the important sport fishes in the reach. A flow of 80 cfs is also the flow that was agreed upon in the settlement agreement, and represents the flow that PacifiCorp and the 15 other parties to the agreement have concluded, after months of negotiation, to be appropriate for the Grace bypassed reach. These other parties include federal and state fish and wildlife agencies that have conditioning authority under Section 10(j) of the Federal Power Act, and we see insufficient information to justify recommending an alternative minimum flow.

Comment: BRCC similarly questions the results of the Cove bypassed reach and Oneida instream flow studies.

Response: Our response is similar to above, that our analysis indicates the proposed minimum flows would provide adequate habitat value, and we see insufficient information to justify recommending an alternative minimum flow.

PacifiCorp[3]

Comment: PacifiCorp and the other parties to the settlement agreement (PacifiCorp et al.) state that the language in the EIS should be consistent with the language in the settlement agreement, particularly regarding the time commitments for the implementation of the settlement measures. Specifically, PacifiCorp et al. recommend that the settlement language "after the new licenses become final," or "upon issuance and acceptance of the new license," be used, instead of the Commission's standard language "after issuance of the new licenses." PacifiCorp et al. repeat this comment throughout the letter of comment.

Response: As we discussed in our response to a similar comment from Interior, the Commission uses the issuance date of a new licenses as the date the "clock starts" on the license conditions, because that is a set date established by the license order, and is easily trackable for compliance purposes. In the settlement agreement, "new licenses become final" is defined by the completion of several events. These include: (1) the IDEQ has

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[3] PacifiCorp's letter also represented the views of the 15 other parties to the settlement agreement.

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issued the 401 WQC's; (2) the Commission has issued new licenses for all three projects; (3) PacifiCorp has accepted all the WQC's and the new licenses for the three projects; and (4) all administrative and judicial appeals for the new licenses have been adjudicated or dismissed. In the event that not all the "licenses become final" on the same day, the term "new licenses become final" will be the date that the last of the three licenses "becomes final."

We understand that the settlement agreement has specific language agreed to by all parties, and that in the case of "new licenses become final," the parties agreed to this language so that specific programs or measures would not begin until PacifiCorp is sure that it has obtained its new licenses. However, this term would depend on the completion of a number of events, the last of which would be beyond the control of PacifiCorp or the Commission (any appeals of the licenses). Thus, the date that "new licenses become final" could be months or years after the new licenses are issued by the Commission. This could result in the delay of many of the measures that we have concluded would be in the public interest, and would make compliance tracking for these measures difficult.

As an alternative to using the term "new licenses become final," we are recommending that the new licenses include a requirement that PacifiCorp prepare an implementation plan for all the measures required by the new licenses. This implementation plan would be prepared in consultation with all the settlement parties and other entities that were consulted during the relicensing process, would be filed with the Commission within 6 months after the issuance date of the new licenses, and would include schedules for all required measures. For those measures where there is agreement among the parties that they could be delayed, pending the outcome of specific events, such delays, with their triggering events, could be built into the implementation plan. This plan would also include annual updates, to inform the Commission of any agreed-upon changes to the schedules for any of the required measures.

Comment: PacifiCorp et al. state that the list of settlement parties on page 5 of the draft EIS was incorrect, and suggested corrections to the list.

Response: We have corrected the list of settlement parties in the final EIS.

Comment: PacifiCorp et al. suggest revisions to the wording of the project description for the Grace-Cove Project, and the proposed environmental measures for the Oneida Project.

Response: We have made these suggested revisions to the final EIS.

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Comment: PacifiCorp et al. suggest revisions to the wording of the description of settlement measures common to all the projects, and to the description of agency and interested party alternatives.

Response: We have made these suggested revisions to the final EIS.

Comment: PacifiCorp et al. question whether the operations and compliance plan recommended by staff should be prepared in consultation with USGS, since they are not a party to the settlement and have not expressed concern about the operation of the Bear River projects.

Response: We included USGS because they are the federal agency responsible for flow gaging in the Bear River, and could offer their expertise in the development of the plan, which would require flow gaging.

Comment: PacifiCorp et al. suggest wording for the staff recommendation for an annual water quality monitoring report, to be consistent with the language in the settlement agreement.

Response: We have made these suggested revisions to the final EIS.

Comment: PacifiCorp et al. comment on staff's recommendation to expand the project boundary at the Oneida Project, stating their belief that it would not be necessary to ensure continued recreational access. They further recommend that the staff recommendation be clarified to indicate how far downstream the boundary should be expanded.

Response: This has been clarified in the final EIS. Our intent is to recommend expanding the Oneida Project boundary to include all of the PacifiCorp and BLM lands from the existing downstream project boundary, below the powerhouse, to the proposed boater takeout at the cattle guard in Oneida Canyon (about 3 miles downstream of the powerhouse), on the primary access road side of the Bear River, between the road and the river or 200 feet from the river, whichever is greater. As stated elsewhere in the EIS, we are concerned about the potential impacts on environmental resources from over capacity of recreational sites. Expansion of the project boundary is necessary to ensure that the project boundary includes adequate and appropriate lands if future recreational sites are needed.

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Comment: PacifiCorp et al. state that staff's recommended measures to reduce grazing impacts on project lands can only be applied to PacifiCorp lands, because such measures may conflict with BLM management and leases.

Response: We have made these suggested revisions to the final EIS.

Comment: PacifiCorp et al. suggest minor revisions to the text in Section 4.3.1.1.b, *Water Quality*.

Response: We have made these suggested revisions to the final EIS.

Comment: In the same section, under *Erosion and Sedimentation,* PacifiCorp et al. suggest that the EIS state that additional monitoring below Oneida would occur as part of the 401 WQC, and that a correction be made that the Bear River is muddy below Riverdale, prior to the confluence with Five Mile Creek.

Response: We have made these suggested revisions to the final EIS.

Comment: PacifiCorp et al. recommend that a correction be made to indicate that additional water quality monitoring will be conducted downstream of Soda dam, as part of the WQC, to determine project effects on DO.

Response: We have made these suggested revisions to the final EIS.

Comment: For the Grace-Cove Project, PacifiCorp et al. state that the PacifiCorp proposal is to measure the leakage from the Grace and Cove dams once, upon the license becoming final, and to add that leakage flow to the minimum flow requirements for the bypassed reaches.

Response: We have corrected the wording in the final EIS to indicate that leakage would be measured once, but as previously explained, we have not used the term "license becoming final."

Comment: PacifiCorp et al. state that increasing flow releases in the Grace bypassed reach would only increase water temperatures in the lower 20 percent of the reach, and that temperatures in the upper 80 percent of the reach would likely decrease, compared to existing conditions with a flow of only 10-12 cfs.

Response: We believe that increasing flow releases into the Grace bypassed reach would increase water temperatures in about the lower 50% of the reach, based on the location of

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the existing springs. Water temperatures in the reach are determined by many factors including inflowing water temperatures, air temperature, solar radiation, and accretion from cool springs. We acknowledge that increasing the instream flow releases at the dam would not significantly alter any of these factors, and would not result in measurable changes in temperatures immediately downstream of the dam. However, we note that the increased mass of water flowing through the reach would reduce the warming effects of solar radiation and convection at the air-water interface, particularly in the upper portion of the reach, which is now dominated by leakage flow from the dam. This increased water mass would also reduce the cooling effects of inflowing spring water in the lower portion of the reach. Based on PacifiCorp's thermograph records, we anticipate that resulting increases would typically be less than 1.0 C in the middle of the reach. Larger temperature increases would be expected in the lower end of the reach. We have modified the final EIS text to clarify this issue.

Comment: PacifiCorp et al. comment that implementing buffer zones immediately below the Grace dam would be beneficial in reducing bacteria and nutrient levels in the river, because of the heavy use of the area by livestock.

Response: We agree that restricting livestock access to the bypassed reach would be beneficial, but our statement in the draft EIS was that there would be lower dilution of any bacteria in the reach at the proposed minimum flow of 80 cfs, compared to earlier recommended minimum flows of 160 to 320 cfs.

Comment: PacifiCorp et al. recommend that our recommendation for an annual report on water quality monitoring at the Grace-Cove Project be made consistent with the settlement agreement language.

Response: We have made these suggested revisions to the final EIS.

Comment: For the Oneida Project, PacifiCorp et al. state that the PacifiCorp proposal is to measure the leakage from the Oneida dam once upon the license becoming final, and to add that leakage flow to the minimum flow requirements below the powerhouse.

Response: We have corrected the wording in the final EIS to indicate that leakage would be measured once, but as previously explained, we have not used the term "license becoming final."

Comment: Regarding ramping rates below the Oneida Project, PacifiCorp et al. clarify that their proposal is to provide the proposed ramping rate at a location downstream of Riverdale, ID, calibrated to the USGS gage.

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Response: We have made the suggested revisions to the final EIS.

Comment: PacifiCorp et al. suggest that the description of the water quality monitoring program downstream of Oneida, and the reporting requirements, be modified to conform to language in the settlement agreement.

Response: We have made the suggested revisions to the final EIS, along with additional language suggested by the IDEQ.

Comment: PacifiCorp et al. recommend minor changes to tables 3 and 4.

Response: We have made the suggested revisions to the final EIS.

Comment: PacifiCorp et al. suggest that the description of the fishery in the Grace bypassed reach and in the Cove reach be revised to include additional information.

Response: We have made the suggested revisions to the final EIS.

Comment: PacifiCorp et al. suggest minor wording changes to the description of instream flow Delphi process for the Cove development.

Response: We have made the suggested revisions to the final EIS.

Comment: PacifiCorp et al. clarify the description of the BCT restoration measures in the draft EIS.

Response: We have made the suggested revisions to the final EIS.

Comment: For the description of terrestrial resource studies, PacifiCorp et al. note that their studies did not include the river reach from Riverdale, ID downstream to the Utah border, but that they are proposing that the proposed WQMP would include that reach. They also note several typographical errors in the draft EIS in the description of *Rare, Threatened, and Endangered Species*.

Response: These comments are noted, and changes have been made to the final EIS.

Comment: PacifiCorp et al. suggest minor edits to the description of the environmental effects on terrestrial resources.

Response: We have made the suggested revisions to the final EIS.

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Comment: PacifiCorp et al. suggest minor edits to the description of recreational resources at the Soda Project.

Response: We have made the suggested revisions to the final EIS.

Comment: PacifiCorp et al. suggest modification to the description of the USGS gages that would provide river flow information for boaters and other recreationists.

Response: We have made the suggested revisions to the final EIS.

Comment: In the description of proposed whitewater boating flows in the Grace bypassed reach, PacifiCorp et al. recommend additional wording to describe how inflow to the reach would be determined, and that whitewater flows would be provided for 16 releases of 6 hours each, if flows are available.

Response: We have made the suggested revisions to the final EIS.

Comment: PacifiCorp et al. suggest editorial changes to clarify the proposed Recreation Management Plan for the Oneida Project.

Response: We have made the suggested revisions to the final EIS.

Comment: As discussed above, PacifiCorp et al. again comment on staff's recommendation to expand the project boundary at the Oneida Project, stating their belief that it would not be necessary to ensure continued recreational access. They further recommend that the staff recommendation be clarified to indicate how far downstream the boundary should be expanded.

Response: Our intent is to recommend expanding the Oneida Project boundary to include those lands adjacent to the river between the proposed boater takeout at the cattle guard in Oneida Canyon (about 3 miles downstream of the powerhouse) and the downstream end of the existing project boundary. This has been clarified in the final EIS. As stated elsewhere in the EIS, we are concerned about the potential impacts on environmental resources from over capacity of recreational sites. Expansion of the project boundary is necessary to ensure that the project boundary includes adequate and appropriate lands if future recreational sites are needed.

Comment: In response to our discussion about the benefits to livestock of current access to the Cove bypassed reach, and how fencing the reach could reduce these benefits, PacifiCorp et al. state that their proposal to fence portions of the reach would protect

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critical riparian and wetland habitat along the reach, while allowing livestock access to less critical portions of the reach.

Response: This comment is noted and reflected in the final EIS.

Comment: In commenting on the *Developmental Analysis*, PacifiCorp et al. presented alternative costs for several of the proposed measures in table 17, and suggest revision of the analysis in table 17, to indicate that staff recommended measures would increase annual operating costs by $21,320.

Response: We have made the suggested revisions to table 17 of the final EIS.

Comment: In commenting on *Staff's Conclusions*, PacifiCorp et al. recommend that the wording of several of staff's recommendations reflect the wording "the new license becoming final."

Response: As we described above, staff is not using this term because of the ambiguity of the actual date that would be defined. We instead will be recommending an implementation plan for all measures, which would incorporate any extended schedules that are in agreement with the settlement.

Comment: PacifiCorp et al. note that proposed biological monitoring studies in Black Canyon would not begin until the new 80-cfs minimum flow and the whitewater boating flows are implemented. Since these later studies would be compared against existing baseline conditions, IDEQ intends to continue biological studies until the new flows are implemented.

Response: This comment is noted and reflected in the final EIS.

Comment: PacifiCorp et al. comment that for the measures that would continue for the term of the license, they would begin 2 years after the license becoming final.

Response: This comment is noted and reflected in the final EIS, although we refer to the implementation plan for all measures.

Comment: In responding to staff's discussion that improvements to water quality from proposed operations could not be determined at this time, PacifiCorp et al. state that the WQMP to be conducted by IDEQ and PacifiCorp would investigate the relationship between ramping and water quality, and other measures that would improve wetlands and riparian areas would also benefit water quality.

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Response: This comment is noted and reflected in the final EIS.

State of Wyoming, Office of the Attorney General

Comment: Wyoming discusses its earlier concern that no additional water be released from Bear Lake to satisfy conditions of the new licenses for the Bear River projects, and notes that PacifiCorp assured the state that no water, in addition to that already being released for irrigation or flood control, would be discharged from Bear Lake to satisfy license conditions or the terms of the settlement agreement. Wyoming states that as long as the settlement agreement and the license conditions reflect this language, they would withdraw their recommendation to conduct a hearing to determine the need for whitewater boating flows.

Response: This comment is noted. Staff is not recommending any additional releases from Bear Lake to satisfy license conditions.

Comment: Wyoming states that the settlement agreement specifies that whitewater boating flows would only be provided if flows are available to provide such flows, and is concerned that the draft EIS, in its discussion of whitewater boating flows, does not include the caveat "if available" in all sections where whitewater flows are discussed. Wyoming indicates that if the Commission chose to ignore the caveat "if available," they would object and recommend that such language be included in the EIS.

Response: We specifically reference the settlement agreement, and clearly recommend inclusion of the proposed whitewater boating flows as part of the new licenses. Subsequently, and consistent with NEPA, we do not include a verbatim transcript of the settlement language in our environmental effects and recommendations. The final EIS, however, has been revised to better reflect the settlement language.

Comment: Wyoming notes that the terms "instream flow" and "whitewater boating flow" are used "loosely" in the settlement agreement, and that the Commission should be cognizant that they do not indicate water rights.

Response: We are aware of the difference in the meaning of these terms, and section 1.7 of the settlement agreement is clear on this matter.