

SETTLEMENT AGREEMENT

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

DATED

AUGUST 28, 2002

SETTLEMENT AGREEMENT

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

DATED

AUGUST 28, 2002

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

Bear River Settlement Agreement

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**Parties to the
Agreement**

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PARTIES TO THE AGREEMENT

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

RECITALS

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

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

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

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

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

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

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DEFINITIONS

“401 Certification” is defined in Section 1.1.7 below.

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

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

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

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

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

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

“Bear River Projects” is defined in Recital A.

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

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

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

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

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

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

“Decrees” is defined in Section 5.10.

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

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

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

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

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

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

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

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

“Flood Control Responsibilities” is defined in Section 5.10.

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

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

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

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

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

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

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

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

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

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

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

“Interstate Compact” is defined in Section 5.10.

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

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

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

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

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

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

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

“Notice” is defined in Section 6.8.

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

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

“Permits” is defined in Section 2.2.

“Proceeding” is defined in Section 2.2.

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

“Projects” is defined in Recital A.

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

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

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

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

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

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

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

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

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

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

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

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

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

“Water Agreements” is defined in Section 5.10.

“Water Contracts” is defined in Section 5.10.

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

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SECTION 1: PURPOSE AND EFFECT OF THIS AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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SECTION 2: ACTIONS UPON EXECUTION OF THIS AGREEMENT

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

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

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

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

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

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SECTION 3: PROTECTION, MITIGATION AND ENHANCEMENT MEASURES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.1.6.1. Monitoring Requirements.

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

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

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

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

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

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

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3.2. Instream Flows.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.4. Recreation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4: Coordination and Decision Making

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SECTION 4: COORDINATION AND DECISION MAKING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5: Implementation of Agreement

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SECTION 5: IMPLEMENTATION OF AGREEMENT

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

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

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

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

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

5.3. Resolution of Disputes After Order Issuing New Licenses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHERE:

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

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

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5.5. Reopener, Modification, Review, or Amendment.

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

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

5.6. Dispute Resolution.

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

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

Bear River Settlement Agreement

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

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

5.7. Withdrawal from Agreement.

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

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

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

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

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

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

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

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

**Section 6: General
Provisions**

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SECTION 6: GENERAL PROVISIONS

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

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

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

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

Bear River Settlement Agreement

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

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

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

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

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

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

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

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

**Section 7: Execution
of Agreement**

Bear River Settlement Agreement

SECTION 7: EXECUTION OF AGREEMENT

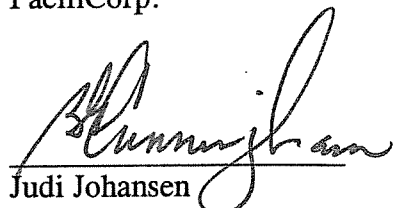
7.1. Signatory Authority. Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and to legally bind the Party he or she represents, and that such Party shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization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

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

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

PacifiCorp:

United States Fish and Wildlife Service:



_____ date
Judi Johansen
Chief Executive Officer


_____ date
Anne Badgley
Regional Director

United States Bureau of Land Management:

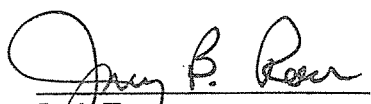
United States National Park Service:


_____ date
Michael A. Ferguson
Acting State Director


_____ date
Arthur Eck
Acting Regional Director

USDA Forest Service:


Shoshone-Bannock Tribes:


_____ date
Jack Troyer
Regional Forester


_____ date
Blaine Edmo
Chairman, Fort Hall Business Council

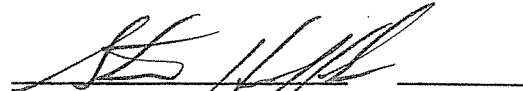
Bear River Settlement Agreement

State of Idaho:




DIRK KEMPTHORNE date
Governor

Idaho Department of Fish and Game:



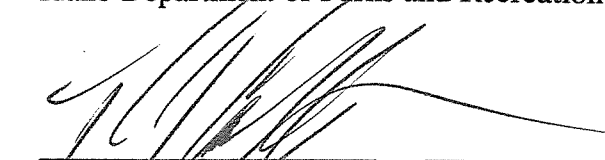
Steven M. Huffaker date
Director

Idaho Department of Environmental Quality:



C. Stephen Allred date
Director

Idaho Department of Parks and Recreation:




Rick Collignon date
Director

Idaho Rivers United:

 8/29/07


William Sedivy date
Executive Director

Idaho Council of Trout Unlimited:

 for

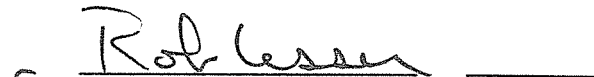
Ken Retallic date
President

Greater Yellowstone Coalition:



Marv Hoyt date
Idaho Representative

American Whitewater:

 for

John Gangemi date
Conservation Director

date

date

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Charles L. Vincent

Charles L. Vincent 9/6/02
date

date

Lawrence B. Doro

Lawrence B. Doro 9.10.02
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Bear River Settlement Agreement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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.

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 ECC after the Licensee announces the annual irrigation allocation to the Bear River irrigators, and including any updates since March 1. The recorded message shall indicate that releases into the Black Canyon occur, based on available flow, when inflow into Soda Reservoir less irrigation withdrawals between Soda Dam and Grace Dam plus leakage from the Grace flowline is equal to or greater than 700 cfs, and that releases into Black Canyon will not exceed 1500 cfs. The Bear River website and flow phone shall be implemented upon the license becoming final, and shall continue through the license term.

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

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

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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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APPENDIX B
REPRESENTATIVES OF THE PARTIES

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Bear River Settlement Agreement

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Bear River Settlement Agreement

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(continued next page)

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Bear River Settlement Agreement

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Bear River Settlement Agreement

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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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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.

EXHIBIT 1
IMPLEMENTATION SCHEDULE

Proposed measures for Bear River relicensing

	1	2	3	4	5	6	7	8	9	10	30
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											

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.