

105 FERC ¶ 62,207
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PacifiCorp

Project No. 20-019
Project No. 2401-007
Project No. 472-017

ORDER APPROVING SETTLEMENT AGREEMENT AND
ISSUING NEW LICENSE

Issued December 22, 2003

1. PacifiCorp has filed applications for new licenses, pursuant to Sections 4(e) and 15 of the Federal Power Act (FPA),¹ for the continued operation and maintenance of the Soda Project No. 20, Grace/Cove Project No. 2401, and Oneida Project No. 472. The projects are located on the Bear River in Caribou and Franklin Counties, Idaho. The three projects have installed capacities of 14,000 kilowatts (kW), 40,500 kW and 30,000 kW, respectively. Although the projects have been operated under separate licenses, PacifiCorp is seeking a single new license that would encompass all three projects (four developments) and has renamed them the Bear River Hydroelectric Project.² The project currently occupies 510.5 acres of federal lands managed by the U.S. Department of the Interior's Bureau of Land Management.

2. On September 26, 2002, PacifiCorp filed a comprehensive Settlement Agreement (Agreement) signed by sixteen participants to the relicensing process. For the reasons discussed below, this order approves those portions of the Agreement, with modifications, that the signatories requested be made part of a new license and issues a new license for the Bear River Hydroelectric Project.

¹16 U.S.C. §§ 797(e) and 808, respectively.

²The four developments are hydrologically and electrically connected. In the Explanatory Statement filed with the Offer of Settlement on September 26, 2002, the licensee and the other signatory parties formally requested that the projects be consolidated into one project designated as the Bear River Hydroelectric Project No. 20. The existing projects will hereinafter be referred to as separate developments of the Bear River Project No. 20 -- the Soda Development, the Grace Development, the Cove Development, and the Oneida Development.

BACKGROUND

3. On September 27, 1999, PacifiCorp filed applications for new licenses for the continued operation of the Soda Project (No. 20), Grace-Cove Project (No. 2401), and the Oneida Project (No. 472) (referred to as the Bear River projects), on the Bear River in Caribou and Franklin counties, Idaho.

4. Timely motions to intervene in the relicensing proceedings were filed by the State of Idaho³, the U.S. Department of the Interior, Trout Unlimited, *et al.*⁴, and American Whitewater, *et al.*⁵ Motions for late intervention were filed by the U.S. Forest Service, Larry Dunn, Ethan Greene, David Weber and the State of Wyoming.⁶

5. On February 13, 2002, the Commission issued the Ready for Environmental Analysis (REA) notice for the Bear River projects, soliciting comments, recommendations, terms and conditions, and prescriptions. A draft Environmental Impact Statement (EIS) for the projects was prepared and issued for public comment on November 1, 2002. The final EIS was issued on April 11, 2003.

6. On September 26, 2002, PacifiCorp filed a comprehensive settlement agreement signed by sixteen participants to the relicensing process, to resolve all issues regarding relicensing of the Bear River Projects. The Agreement amends the relicense applications and constitutes PacifiCorp's proposed action.

7. The Commission noticed the filing of the Agreement on October 24, 2002. The Draft and Final EISs recommended adoption of the Agreement terms.

PROJECT DESCRIPTION

³Includes Idaho Department of Fish and Game, Idaho Department of Parks and Recreation, Idaho Water Resources Board, and Idaho Department of Environmental Quality.

⁴Includes Trout Unlimited, Idaho Council of Trout Unlimited, and Utah Council of Trout Unlimited.

⁵Includes American Whitewater, Idaho Rivers United, Greater Yellowstone Coalition, Utah State University Kayak Club, Utah Whitewater Club, Utah Rivers Council, and Eagle Rock Boating Club.

⁶Late interventions granted by notices of, April 4, 2002, June 20, 2003, April 23, 2003, April 14, 2003, and October 28, 2002, respectively.

8. The Bear River is a highly regulated system. The major headwater storage facility is Bear Lake,⁷ the discharges from which are primarily for irrigation and flood control. The four developments that comprise the subject Bear River Project are located downstream. The Soda Development is located approximately 45 miles downstream of Bear Lake. The Grace, Cove, and Oneida developments, are located downstream of the Soda development, respectively.

9. The licensee operates the four developments in a coordinated manner to meet irrigation demands and generate power. River flows are generally higher than the natural conditions during the irrigation season (April through October) due the irrigation releases from Bear Lake. The four developments are usually operated in a modified run-of-river (ROR) mode⁸ during this season; however, water stored in Soda and Oneida reservoirs may be used to satisfy short-term irrigation demand or to maintain reservoir levels in Cutler reservoir, a licensed facility located downstream of the Oneida development.⁹

10. During the non-irrigation season, releases from Bear Lake are generally lower than natural conditions, and the river is regulated primarily to maintain downstream reservoir levels and minimum instream flows. Some releases may be made from Bear Lake during this season to meet spring flood control target elevations in Bear Lake reservoir. The four developments continue to generate during the non-irrigation season, using available flows.¹⁰

⁷Bear Lake, a large storage reservoir, is located approximately 45 miles upstream of the Soda Development in Bear Lake County, Idaho, and extends south into northern Utah. The lake is not part of the project and is thus not required to be licensed. *See* 324 F.3d 1071 (2003).

⁸The project generates with whatever water is provided by upstream irrigation releases, although not strictly as inflow equals outflow. Some shaping of project discharges occurs, from Soda and Oneida reservoirs, based on downriver irrigation demand, with Oneida varying releases to optimize power production.

⁹The Cutler Project No. 2420 is licensed to PacifiCorp. It is located 44 miles downstream of the Oneida project, on the Utah/Idaho border.

¹⁰Available flow refers to the inflow to the Bear River Project development on a given day, that may be used for power generation consistent with and subject to obligations of all water contracts and agreements.

Soda Development

11. Soda, the most upstream of the developments, consists of the Alexander Reservoir, a 433-foot-long dam, a powerhouse integral with the dam housing two vertical Francis turbines (total capacity of 14 megawatts (MW), and an adjacent substation. Alexander Reservoir covers 1,100 surface acres and has a total storage capacity of 16,300 acre-feet. The maximum discharge for Soda is 2,624 cubic-feet per second (cfs); the maximum water surface level elevation is at 5,735.80 feet U.S. Geological Survey (USGS) datum.

Grace-Cove Developments

12. Grace/Cove consists of two hydroelectric developments. The Grace Development consists of a 180-foot-long diversion dam, 26,000-foot-long flowline and a powerhouse containing three Francis turbines (total capacity of 33 MW). The Grace forebay has a total storage capacity of 320 acre-feet covers and 38 surface acres. The maximum discharge capacity is 320 cfs and the maximum water surface elevation is at 5,555 feet USGS datum. The Cove development consists of a 141-foot-long diversion dam, 6,125-foot-long flowline and a powerhouse containing a single Francis turbine (total capacity of 7.5 MW). The Cove forebay has a total storage capacity of 60 acre-feet and covers 10 surface acres. The maximum discharge capacity is 1,227 cfs and the maximum water surface elevation is 5,032 feet USGS datum.

Oneida Development

13. Oneida consists of a 387-foot-long dam, 2,240-foot-long flowline and a powerhouse containing three Francis turbines (total capacity of 30 MW). The Oneida Reservoir has a total storage capacity of 10,880 acre-feet and covers 480 surface acres. The maximum discharge capacity is almost 3,300 cfs and the maximum water surface elevation is at 4,882 feet USGS datum.

14. A detailed description of the project facilities is contained in Ordering Paragraph (B) below.

SETTLEMENT AGREEMENT

CONTENTS

15. The Agreement was executed on August 28, 2002, by PacifiCorp, U.S. Fish and Wildlife Service (FWS); U.S. Bureau of Land Management (BLM); the National Park Service (NPS); the Forest Service (FS); 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 individuals. In signing the Agreement, the signatories represent that all of the issues regarding relicensing of the Project, for the purpose of obtaining a Commission order issuing to PacifiCorp a new license, are resolved.

16. In general, the Agreement contains specific measures that will protect and enhance the environmental resources of the portions of the Bear River affected by the project. These measures include proposals designed to enhance fishery and wildlife resources, provide additional recreational opportunities, and provide for improved management of project lands. Finally, the Agreement provides for the continued participation of the signatories in the actions that will occur throughout the license term.

17. The Agreement calls for the establishment of a group, known as the Environmental Coordination Committee (ECC), that is to include representatives from each of the signatories. The makeup as well the responsibilities of the ECC is set forth in Section 4 of the Agreement. As designed, this group is a consulted entity in the development of the various monitoring and adaptive management plans and, as provided for in the agreement, has a pivotal role in the administration of a myriad of post-licensing activities. Most uniquely, these activities include directing long-term changes for environmental protection and enhancement measures.

18. The fishery protection and enhancement measures included in the Agreement (Sections 3.1, 3.2, and 3.3 of the Agreement) are designed to improve habitat conditions, monitor and provide for adaptive management, and specify measures such as minimum flows, ramping rates, and fish stocking. The majority of the measures focus on restoration of Bonneville cutthroat trout (BCT), a species of special concern (Section 3.1 of the Agreement).¹¹ Specific BCT measures include development of a restoration plan,

¹¹The Bonneville cutthroat trout is a fish native to the Bear River basin that has been affected by habitat degradation and fish passage impediments. It is a species of special concern to the State of Idaho.

based in large part on data collected from an array of studies. Studies that include genetic analysis, telemetric studies, broodstock development, and aerial flight habitat survey analysis. Also included are provisions to undertake an assessment of passage impediments (i.e. irrigation diversion dams) that may exist in the Bear River watershed. The assessment would include an examination of the feasibility of installing fish passage at the Cove dam, which would include evaluating modifications to this facility, including project decommissioning. All of these fishery measures will be undertaken within an area designated as "Action Area"¹², within the Bear River Watershed, which encompasses the project boundary but also includes areas outside the boundary. Pursuant to the Agreement, the licensee's responsibility would be to prepare the restoration plan, provide funding up to \$648,000 in one time costs and up to \$567,000 annually, for the studies and implementation of the aquatic resources restoration measures.

19. The instream flow measures included in the Agreement (Section 3.2 of the Agreement) specify the minimum flows required below each development. The minimum flow schedule requires the licensee to maintain: (1) below the Soda dam, the lower of 150 cubic feet per second (cfs) or inflow; (2) for the Grace bypass, leakage plus the lower of 80 cfs or inflow; (3) for the Cove bypass, leakage plus 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; and (4) below the Oneida dam, leakage plus the lower of 250 cfs or inflow. Exceptions to the required minimum flows would only be allowed on a temporary basis for maintenance or emergencies, and after consultation with the ECC. Contained in the same section of the Agreement are provisions to address fish stranding. As mentioned above, the Agreement provides to the ECC the authority to direct changes to the flow regime. Finally, another flow related measure entails modification to a natural spring along the Bear River (namely Kackley Spring) to enhance fishery resources.

20. The ramping rates included in the Agreement (Section 3.3 of the Agreement) specify the maximum ramping rates required below the Soda and Oneida developments including provisions for annual maintenance and increasing the ramping rates. The agreed upon ramping rates are: (1) 1.2 feet per hour in the Soda reach, ascending and descending; and (2) 3.0 inches every 15 minutes on the descending arm of the ramp in the Oneida reach below the powerhouse. According to the agreement, the licensee may also increase ramping rates for emergencies, to comply with legal constraints associated with water rights, for emergency power needs, and to comply with requirements of the licensee's downstream Cutler Project.

¹²The 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.

21. The recreation enhancement measures (Section 3.4 of the Agreement) include a recreation management plan (to include a description of existing and proposed facilities) and flows for whitewater boating. Specific measures of the plan include provisions to improve existing recreation facilities, upgrade existing put-in and take-out facilities at Black Canyon and Oneida Narrows, address safety issues along project roads (in the project boundary), provide funding for BLM managed campgrounds at the Oneida project, and provide funding to Caribou County for managed recreation sites at the Soda reservoir. Pursuant to the Agreement, the licensee's responsibility would be to prepare the plan, provide funding up to \$160,000 in one time costs and up to \$17,000 annually, for the implementation of the recreation measures.

22. Whitewater boating flows in Black Canyon (Grace bypass), if water is available, will be released as follows: (1) during years 1-3 after licensee issuance, when available inflow is at least 500 cfs, the licensee will release additional flow for a total flow in the bypass reach up to 900 cfs; (2) during years 4-6 after license issuance, the licensee will schedule 16 separate releases for 6 hours in length on weekend days between April 1 and July 15 with flows of 700-1500 cfs, if available; and (3) in year 7 and subsequently, the licensee will continue scheduled releases as described in year 4-6, unless monitoring results show significant adverse affects on ecological resources. If adverse affects are demonstrated, the ECC may adjust the flow schedule. By March of each year, the licensee will forecast the availability of inflow for whitewater boating and consult with the ECC on the distribution of whitewater releases into Black Canyon. The licensee will also consult with Idaho Department of Environmental Quality to develop an operational regime at Oneida¹³ to minimize river level fluctuation below the powerhouse and provide target flows great than 900 cfs between Memorial Day and Labor Day, if available. Finally, flow information for the Black Canyon and Oneida reaches would be made available through a website and toll-free phone number.

23. The historic properties and cultural resources measures (Section 3.5 of the Agreement) provides for a programmatic agreement (PA) and the preparation of a Historic Properties Management Plan (HPMP) within one year after licensee issuance, to comply with the National Historic Preservation Act. The licensee will cooperate with the Commission, the State Historic Preservation Office, BLM, and the Tribes in the preparation of the HPMP.

24. The land management plan (Section 3.6 of the Agreement) defines how licensee-owned lands within the project boundary will be managed to minimize effects to natural

¹³In accordance with the 401 Water Quality Certification and Section 5.10 of the Settlement Agreement.

resources and includes provision to: (1) establish a shoreline buffer zone along the Bear River and all wetlands and springs and (2) fence the buffer zone on licensee-owned lands within the Cove bypass to prevent the encroachment of livestock and protect riparian vegetation. Additionally, the licensee will fund 25 percent of the cost of fencing the buffer zone on private lands in the Cove bypass (to landowners agreeing to fence and provide the balance of funding). The licensee will also pay 100 percent of the ongoing costs for normal fence maintenance on those private lands within the Cove bypass, with consent from landowners.

DISCUSSION

25. The Agreement addresses the signatories' various concerns related to fisheries, recreation, land management, and cultural resources while preserving power production at the project. Overall, implementation of all the protection, mitigation, and enhancement measures of the Agreement represents an appropriate balance between continued project generation and protection and enhancement of environmental resources. I commend the parties for their successful effort to reach consensus on the broad range of issues involved in the operation of this project; assist the Commission in bringing this lengthy proceeding to a close; and develop a sound framework for a continuing collaborative approach to the management of the project after issuance of the license. Included in the Agreement are license articles proposed by the signatories to be included in the license. Articles 402 through 426 incorporate, with modification, the substantive provisions of the Settlement that were proposed by the signatory parties to be included in the license (Appendix A of the Settlement). I explain the modifications next.

26. The Agreement provides for possible modifications to project structures and operations during the license term. For example, the proposed articles contain provisions to alter whitewater flow releases in the event that monitoring attributes to these releases deleterious impacts to biological resources. While such adaptive management provisions are not uncommon in licenses issued in recent years, the proposed articles would put project modifications under the direction of ECC. It is however the Commission's role and responsibility to give prior approval, through appropriate license amendments, for all material amendments to the project and license.¹⁴ The Commission is charged with determining what amendments will meet the "comprehensive development/public interest standard of FPA Section 10(a)(1), which continues to govern regulation of a project throughout the term of its license."¹⁵ For this reason, the articles of this license provide for

¹⁴*See, e.g.*, Standard Articles 2 and 3 of the license, Form L-1, published at 54 FPC 1799, 1799-1800 (1975), and incorporated by reference in ordering paragraph (F) below.

¹⁵*See, e.g.*, S.D. Warren Co., 68 FERC & 61,213 at 62,022 (1994).

Commission review and approval of any material changes to the project. There are, however, opportunities for short-term modification to project operation to occur upon mutual agreement of relevant parties. A case in point is the proposed article (Article 11 of the settlement agreement) that provides for the scheduling of specific days that whitewater flows would be released. While this license establishes a limit on the total magnitude of the water to be released for whitewater purposes, it retains the provision that allows the ECC to dictate the specific days of release.

27. The proposed license articles seek to limit the licensee's responsibility to fund various resource mitigation and enhancement measures and studies. I understand the licensee's desire to place fixed parameters on the costs it may incur for such activities, and it is likely that the specified funding identified in the proposed articles will be sufficient for the measures in question. However, it is axiomatic that the Commission cannot abrogate its statutory responsibilities throughout the license term by agreeing to such spending caps.¹⁶ Such a spending cap could interfere with the Commission's authority to require the licensee to implement the resource plans required by the license or to include in those plans appropriate resource measures, including those that may be necessary to address new or unexpected circumstances that may arise.¹⁷ While the relevant articles made part of this license retain the spending limits as set forth by the parties, it is done so only to the extent that it provides possible guidance as to the magnitude of mitigative and enhancement measures and not as a spending limit for the subject measures.

28. Also in the articles is a provision whereby the licensee is to delegate to an "environmental coordinator" the responsibility for administering the funding and implementation of specified article provisions. The licensee may indeed designate an environmental coordinator for the purposes set forth in the Agreement, and may employ others to undertake certain required measures; neither practice is unusual. However, the license articles herein make clear that the licensee bears the ultimate responsibility for the performance of all license requirements.

29. Finally, I note that the parties to the Agreement have committed to certain actions based on the date that the license becomes "final," a date the Agreement (at Appendix A) defines as when the licensee has accepted the water quality certification for the project

¹⁶See *City of Seattle, WA*, 71 FERC ¶ 61,159 at 61,535 (1995), and cases cited therein.

¹⁷See *Thunder Bay Power Company*, 88 FERC ¶61,078, at p. 61,174 (1999). See also the wording of Article 421 in the *Thunder Bay* license order 88 FERC ¶ 62,180 at pp. 64,361-2 (1999).

and all administrative and judicial appeals relating to the license has been finally adjudicated or dismissed. Due to the uncertainty of such date, Staff recommended that the licensee prepare an implementation plan for all measures set forth in the Agreement. Article 401 of the license adopts this recommendation, and requires that within four months of license issuance the licensee shall, after consultation with all signatory parties of the Agreement, file for Commission approval a schedule for implementing the various measures required by the license. This plan will include annual progress reports and account balances for all funding applications. I believe this plan satisfies both the intent of the parties and the requirements of the FPA.

SECTION 18 FISHWAY PRESCRIPTIONS

30. Section 18 of the FPA, 16 U.S.C. ' 811, provides that the Commission shall require a licensee to construct, operate, and maintain such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate. The U.S. Department of the Interior did not prescribe any fishways for the Bear River Project, but by its letter dated April 15, 2002, requested reservation of authority to prescribe the construction, operation, and maintenance of fishways at the Bear River Project. Consistent with Commission practice, Article 414 reserves the Commission's authority to prescribe fishways in the future.

SECTION 4(e)

31. The project occupies 510.59 acres of federal lands managed by Interior's Bureau of Land Management (BLM). BLM filed preliminary Section 4(e) conditions on April 11, 2002, but did not file final conditions. Nothing in the record of this proceeding indicates that these federal lands are "reservations," as defined in FPA Section 3(2), 16 U.S.C. § 794(2). The preliminary conditions are consistent with the terms of the Agreement, and consequently were included in the license pursuant to FPA Section 10(a)(1).

WATER QUALITY CERTIFICATION

32. Under Section 401(a)(1) of the Clean Water Act (CWA), 33 U.S.C. § 1341(a)(1), the Commission may not issue a license for a hydroelectric project unless the state water quality certifying agency has either issued water quality certification for the project or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed one year. Section 401(d) of the CWA, 33 U.S.C. § 1341(d), provides that state certification shall become a condition of any federal license or permit that is issued. Only a reviewing court may revise or delete these conditions.¹⁸

¹⁸Nothing in the conditions of the water quality certification shall be viewed as restricting the Commission's ability or the licensee's obligation, under the FPA, to take

33. On June 23, 2003, IDEQ issued certification for the project, with conditions consistent with the Agreement. The certification and conditions are attached as Appendix A to the license.

THREATENED AND ENDANGERED SPECIES

34. Section 7(a)(2) of the Endangered Species Act of 1973 (ESA), 16 U.S.C. ' 1536(a)(2), 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.

35. By its letter dated April 15, 2002, FWS stated that the threatened bald eagle occurs in the area of the Soda development, with the potential for occurrence of the threatened Canada lynx, threatened Ute's Ladies' tresses, and candidate yellow-billed cuckoo in the lower Bear River Basin. As a signatory to the Agreement, FWS states that it anticipates that the operation of the projects, with the provisions of the Agreement, would either have no effect on, or is not likely to adversely affect, the bald eagle.¹⁹

36. In the Final EIS²⁰ staff concluded that current and proposed project operations would not affect the bald eagle or any other listed or candidate species. Therefore, I conclude that relicensing the Bear River Project would not affect any listed species.

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES

37. Section 10(j)(1) of the FPA²¹ requires the Commission, when issuing a license, to include conditions based on recommendations of federal and state fish and wildlife agencies, submitted pursuant to the Fish and Wildlife Coordination Act,²² to "adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat)" affected by the project.

timely action necessary to protect human life or the environment.

¹⁹See Section 1.1.6 of the Agreement.

²⁰See Section 4.3.3.2 of the Final EIS.

²¹16 U.S.C. ' 803(j)(1).

²²16 U.S.C. ' 661 *et seq.*

38. The state and federal fish and wildlife agencies with authority to recommend terms and conditions under Section 10(j) are signatories to the Agreement. The agencies, in signing the agreement, stated that their final 10(j) recommendations would be consistent with the conditions of the agreement.²³ Thus, although these agencies did not file final recommendations, their signing of the Agreement supersedes their original recommended terms and conditions. Since the measures included in the Agreement are included in the license, this license is consistent with the recommendations of the fish and wildlife agencies.

PROJECT BOUNDARY

39. Project boundaries are used to designate the geographic extent of the lands, waters, works, and facilities that the license identifies as comprising the licensed project. In particular, lands enclosed by the boundary must include those necessary for the operation and maintenance of the project, as well as those lands necessary for other project purposes, such as public recreation. As discussed below, certain portions of the Bear River Project that are used for recreational purposes are outside the proposed project boundary and need to be included in the boundary under the new license.

40. The bypassed reach of the Grace-Cove development, including an existing whitewater boating take-out site just upstream of the Grace powerhouse, is located outside the existing project boundary. Historically, PacifiCorp has allowed anglers and boaters to traverse its private lands to access this lower section of the bypassed reach for recreational purposes. However, because these lands are outside the project boundary, there is no guarantee that this access will be available in the future. Consistent with Commission policy, the project should include lands sufficient to ensure adequate public access for recreational purposes. In order to ensure continued public access to the bypass reach, I am requiring that the project boundary be expanded to include PacifiCorp lands on both sides of the bypassed reach upstream of Cove dam and the Grace powerhouse (approximately 40 acres).

41. In addition, PacifiCorp proposes improvements to recreational resources downstream of the Oneida Project and outside the project boundary, including the boater put-in and take-out sites, Redpoint Campground, and other measures to improve traffic safety on project roads. Most of the lands downstream of the project are owned by PacifiCorp or are federal lands managed by BLM. As noted in the Final EIS,²⁴ recreation

²³See Section 1.1.3 of the Agreement.

²⁴See Section 4.3.4 of the Final EIS.

use capacity on project lands is an issue, and there are limited opportunities to improve or expand recreation resources on these lands. I therefore conclude that the project boundary should be expanded to include PacifiCorp and BLM lands downstream of the project.²⁵ Article 427 specifies the location of property boundary expansions at the Grace-Cove and Oneida developments and requires PacifiCorp to file revised Exhibit G drawings for Commission approval.

WATER RIGHTS

42. Water rights in the Bear River were delineated through two important judicial decrees: the Dietrich Decree in 1920, and the Kimball Decree in 1922. The decrees quantified and prioritized water rights and defined storage, power, irrigation, and domestic water rights. The decrees were ultimately incorporated into the Bear River Compact, approved in 1955 by the three basin states (Wyoming, Idaho, and Utah). Final ratification by Congress, including a 1978 amendment, occurred in 1980. Idaho Department of Water Resources considers the river fully appropriated. The three signatory states rely on the Compact to ensure the equitable apportionment of their water entitlements.

43. The State of Wyoming²⁶ expressed concern that no additional water be released from Bear Lake to satisfy conditions of the new licenses for the Bear River projects. Wyoming does acknowledge, however, that the Agreement specifies that whitewater boating flows would only be provided if flows are available to provide such releases.

44. Section 5.10 of the Agreement defines the “Relationship to Water Contracts and Agreements, Interstate Compact, Water Rights, Judicial Decrees, and Flood Control Responsibility.” As stated in this section, the licensee’s ability to provide flows at the project 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.²⁷ This license does not place on the licensee the obligation to

²⁵The Final EIS states (*id.*) that existing dispersed or overflow recreation use on lands downstream of the project could have an adverse affect on environmental resources. However, that in itself is not a reason to expand the project boundary. The question is, rather, whether the project should encompass additional recreational opportunities, taking into account project economics and the region’s recreational demand. See the Commission’s policy on recreation at licensed projects, 18 C.F.R. ' 2.7 (2003).

²⁶Letter filed January 23, 2003, by State of Wyoming, Office of the Attorney General.

²⁷Relevant Water Contracts, Water Agreements, and Judicial Decrees are listed in

acquire additional water to meet obligations imposed under this license. In fact, each of the articles that impose an operating constraint (Article 408, minimum flows; Article 412, ramping rates; Articles 419 and 420, whitewater flows) is conditioned on the availability of water above and beyond that need to meet existing water right contracts. Therefore, nothing in this license will require any action inconsistent with the aforementioned agreements that would result in the release of water from Bear Lake for Project purposes.

FLUME REPAIR

45. The Cove flume is a 6,125-foot-long concrete and wood structure which conveys water from the Bear River to the Cove powerhouse. On May 7, 2000, and again on September 8, 2000, failures of the Cove flume occurred. Water spilled down a short slope to a flat area along the Bear River, creating several flow channels and scouring the ground. The failures destroyed some vegetation, caused erosion and scouring, and introduced sediment into the Bear River.

46. Temporary repair of the flume was completed in March 2001. This allowed PacifiCorp to recommence operations while it evaluated permanent repair options for the entire flume. On January 7, 2002, PacifiCorp advised the Commission that a proposal to replace the Cove Flume was proceeding, and provided a plan and schedule for the work, which noted a September 19, 2003 completion date. By February 28, 2002 letter, the Commission's Division of Dam Safety and Inspections (D2SI) requested that PacifiCorp provide plans, specifications, and a quality control and inspection program for the flume repair at least 60 days prior to beginning the subject work. By letters dated April 25, 2002, June 5, 2002, and July 30, 2002, PacifiCorp updated the Commission on its evaluation of the Cove Flume repair, and concluded that repairs would be completed by late 2004. On August 15, 2002, D2SI advised PacifiCorp that, based upon available information concerning the present condition of the flume and pursuant to Section 12.4(b)(2) of the Commission's regulations, the remedial work was necessary and should be completed by the originally proposed September 19, 2003 completion date. By letter dated January 3, 2003, PacifiCorp proposed to submit a revised plan and schedule for flume rehabilitation within 120 days of license issuance and to operate the development at a reduced head until rehabilitation was completed.

47. On March 6, 2003, D2SI noted the poor condition of the flume and PacifiCorp's failure to maintain the project structures in a safe and adequate condition in accordance with FPA Section 10(c). D2SI directed PacifiCorp to provide: (1) a report and analysis documenting that the flume could operate with a reasonable probability that it would not fail before repairs were completed (if this could not be accomplished, PacifiCorp was

Appendix C of the Agreement.

directed to dewater the flume until repairs were completed); and (2) a plan and schedule for the flume repair.

48. By March 17, 2003 letter, PacifiCorp advised that it could not comply with the directives included in D2SI's March 6, 2003 letter and therefore would cease operation of the Cove Development by March 20, 2003. It advised that it would re-evaluate the economic viability of the project to either replace the flume or decommission the project after the Bear River Project license was received in the summer of 2003. The licensee was advised that its failure to comply with the directives contained in the March 6, 2003 letter was unacceptable and that a letter confirming that the Cove Development had ceased operation should be submitted. On April 7, 2003, the licensee advised that the Cove Development had been shut down and the flume dewatered, and submitted a time line for repairing the flume.

49. The Cove Development shall remain shut down and the flume de-watered pending rehabilitation of the flume and approval from D2SI. Articles 302 through 306 require the licensee, before starting rehabilitation of the Cove Flume, to file with the Commission: (1) a supporting design report and final contract plans and specifications for approval; (2) a Quality Control and Inspection Program for approval; (3) a copy of the approved contractor-designed cofferdam construction drawings and specifications and letters of approval from the licensee; and (4) a Temporary Emergency Action Plan for approval. Article 306 establishes the schedule for the Cove Flume rehabilitation, with completion not later than 15 months from license issuance.

COMPREHENSIVE PLANS

50. Section 10(a)(2) of the FPA requires the Commission to consider the extent to which a project is consistent with federal and state comprehensive plans for improving, developing, and conserving waterways affected by a project. Federal and state agencies filed 32 comprehensive plans that address various resources in Idaho. Of these, we identified and reviewed 9 plans relevant to the project.²⁸ No conflicts were found.

²⁸(1) U.S. Fish and Wildlife Service. Canadian Wildlife Service. 1986. North American Waterfowl Management Plan. Department of the Interior. May 1986. 19 pp. (2) U.S. Forest Service. 1985. Land management plan for the Targee National Forest. Department of Agriculture, St. Anthony, ID. October 4, 1985. 711 pp. (3) U.S. Forest Service. Undated. Land and resource management plan for the Caribou National Forest. Department of Agriculture, Pocatello, ID. 356 pp. and appendices. (4) Idaho Department of Fish and Game. 1986. Idaho fisheries management plan, 1986-1990. Boise, ID. January 1986. 274 pp. (5) Idaho Department of Fish and Game and Bonneville Power Administration. 1986. Pacific Northwest Rivers Study. Final report: Idaho. Boise, ID. 12 pp. and appendices. (6) Idaho Department of Health and Welfare.

APPLICANT'S PLANS AND CAPABILITIES

51. In accordance with Sections 10 and 15 of the FPA,²⁹ Staff has evaluated PacifiCorp's record as a licensee with respect to the following: (1) conservation efforts; (2) compliance history and ability to comply with the new license; (3) safe management, operation, and maintenance of the project; (4) ability to provide efficient and reliable electric service; (5) need for power; (6) transmission service; (7) cost effectiveness of plans; (8) actions affecting the public; and (9) ancillary services. I concur with each of Staff's findings.

A. Conservation Efforts (Section 10(a)(2)(C))

52. PacifiCorp has devised a demand-side management (DSM) program. The DSM program goal is to achieve a total of 76 MW of cost effective reductions. The principal components of the program are: (a) commercial, industrial, and irrigation retrofitting services; (b) the Energy FinAnswer, a program for providing financing to new commercial customers that contribute to a reduction in the peak loads; (c) increasing the use of fluorescent lamps in the residential sector; and (d) the water savings measures program. Staff concludes that PacifiCorp is making a good faith effort to conserve electricity and promote energy conservation by its customers.

B. Compliance History and Ability to Comply with New Licenses

53. PacifiCorp's overall record of making timely filings and compliance with its license is generally satisfactory. However, PacifiCorp has failed to maintain the Cove flume in a safe condition. Rather than repair the flume, PacifiCorp agreed to dewatered the flume in March 2003 to address the safety issue. PacifiCorp reported that: (1) an economic analysis indicated that the replacement of the Cove flume would be a marginal investment; (2) it had decided to defer this work until receipt of a new Commission license; and (3) upon relicensing, the specific costs associated with implementation of the

Division of Environment. 1985. Idaho water quality standards and wastewater treatment requirements. Boise, ID. January 1985. 72 pp. and appendices. (7) Idaho Department of Parks and Recreation. 1983. Idaho Outdoor Recreation Plan. Boise, ID. December 1983. 140 pp. and appendices. (8) Idaho Department of Parks and Recreation. 1997. Idaho Comprehensive Outdoor Recreation and Tourism Plan. Boise, ID. May 1997. (9) Idaho Water Resource Board. 1986. State Water Plan. Boise, ID. December 1986.

²⁹16 U.S.C. §§ 803 and 808.

new license would be ascertainable and allow for a more informed decision regarding future investments in the Cove development. Article 306 requires the submittal of the Cove Flume Rebuild schedule within 30 days of the issuance of the relicense, and adherence to a short, but achievable construction period, in order to place this development back in safe operation as quickly as possible.

C. Safe Management, Operation, and Maintenance of the Project

54. Staff reviewed the record of management, operation, and maintenance of the Bear River Project pursuant to project safety. Staff concludes that the dams and other project works for the Soda, Grace, and Oneida developments are safe, and believes PacifiCorp's plans will allow for the safe management, operation, and maintenance of these facilities under a new license.

55. As discussed above, the Cove development flume had 2 major failures. PacifiCorp failed to maintain the project in a safe condition and shut down the project, per the March 6, 2003, directive of D2SI. The licensee is required to replace the flume under the direction of D2SI and the requirements of Articles 302-306. Staff, therefore, concludes that PacifiCorp's plans for the Cove development, including rehabilitation of the Cove flume, will allow for the safe management, operation, and maintenance of these facilities under a new license.

D. Ability to Provide Efficient and Reliable Service

56. Staff reviewed PacifiCorp's plans and its ability to operate and maintain the project in a manner most likely to provide efficient and reliable electric service. Based on review of the information, Staff believes that PacifiCorp will operate the project in an efficient manner within the constraints of the license and that the project will continue to provide efficient and reliable electric service in the future.

E. Need for Power

57. The Bear River Project is owned and operated by PacifiCorp, a public utility supplying electricity to residential, wholesale, commercial and industrial users. PacifiCorp's total installed capacity of 8,200 megawatts (MW), 1,078 MW is provided by its 53 hydroelectric facilities.

58. To assess the need for power, Staff looked at the needs in the operating region in which the project is located. PacifiCorp is part of the Northwest Power Pool Area (NWPP) of the Western Systems Coordinating Council (WSCC) region of the North

American Electric Reliability Council. The WSCC 10-year coordinated plan for the 2001 through 2010 period shows that, without new generation additions, the generation capacity reserve margin for the region as whole would fall below the minimum reserve margin of 15 percent as peak demand increases at the projected annual rate of 2.2 percent.

59. In the NWPP area the deficits would begin in 2004. Generation additions of 13,413 MW are planned for the NWPP area over the 10-year planning period. These additions, if constructed on schedule, together with existing generating capacity would meet the projected demands and reserve margin requirements of the NWPP area through 2010.

60. As part of the existing generating capability, power from the Project would continue to be useful in meeting part of the need for power projected for the Northwest Power Pool Area and the WSCC region. The project displaces some fossil-fueled electric power generation, and thereby conserves nonrenewable fossil fuels and reduces the emission of noxious by-products caused by the combustion of fossil fuels.

F. Transmission Services

61. The project's transmission facilities include the generator leads, station transformers, and buses located at each of the powerhouses. PacifiCorp proposes no changes that would affect transmission facilities.

G. Cost Effectiveness of Plans

62. PacifiCorp has no plans for changing project facilities or operations for power development purposes, but is proposing a number of measures for the enhancement of natural resources and recreational opportunities. Staff concludes, based on the license applications, that PacifiCorp's plans for implementing these measures, as well as its continued operation of the project, will be achieved in a cost-effective manner.

H. Actions Affecting the Public

63. The Bear River Project generates electricity used to serve the needs of the public. PacifiCorp also pays taxes annually to local and state governments and the project provides employment opportunities. Environmental enhancement measures and recreational improvements included in the license will generally improve environmental quality, particularly in aquatic and wildlife resources, and will have a beneficial effect on public use of project facilities for recreational purposes.

I. Ancillary Services

64. In analyzing public interest factors, the Commission takes into account that hydroelectric projects offer unique operational benefits to the electric utility system (ancillary benefits). These benefits include their value as almost instantaneous load-following response to dampen voltage and frequency instability on the transmission system, system-power-factor-correction through condensing operations, and a source of power available to help in quickly putting fossil-fuel based generating stations back on line following a major utility system or regional blackout.

COMPREHENSIVE DEVELOPMENT AND PROJECT ECONOMICS

65. Sections 4(e) and 10(a)(1) of the FPA, 16 U.S.C. ' ' 797(e) and 803(a)(1), require the Commission, in acting on applications for license, to give equal consideration to all the power and development purposes and to the purposes of energy conservation; the protection, mitigation of damage to, and enhancement of fish and wildlife; the protection of recreational opportunities; and the preservation of other aspects of environmental quality. Any license issued shall be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing a waterway for all beneficial public uses.

66. In determining whether a proposed project will be best adapted to a comprehensive plan for developing a waterway for beneficial public purposes, the Commission considers a number of public interest factors, including the economic benefit of the project power. Under the Commission's approach to evaluating the economics of hydropower projects, as articulated in Mead Corporation, Publishing Paper Division,³⁰ the Commission employs an analysis that uses current costs to compare the costs of the project and likely alternative power with no forecasts concerning potential future inflation, escalation, or deflation beyond the license issuance date. The basic purpose of the Commission's economic analysis is to provide a general estimate of the potential power benefit and the costs of a project, and reasonable alternatives to the project power. The estimate helps to support an informed decision concerning what is in the public interest with respect to a proposed license. In making its decision, the Commission considers the project power benefits for both the applicant's proposed mitigation and enhancement measures and the Commission's modifications and additions to the applicant's proposal. Ultimately, PacifiCorp must make the business decision whether or not to accept the license.

67. Under the no-action alternative, the Bear River Project generates an average of 298,988,000 kWh of electricity annually, has an annual power value of \$14,176,130 (47.41 mills/kWh), and a total annual cost of \$5,455,060 (18.25 mills/kWh), resulting in a net annual benefit of \$8,721,070 (29.16 mills/kWh).

³⁰See 72 FERC & 61,027 (1995).

68. As proposed by PacifiCorp, the Bear River Project would generate an average of 272,379,000 kWh of electricity annually, have an annual power value of \$12,914,500 (47.41 mills/kWh), and total annual costs of \$6,559,780 (24.08 mills/kWh), resulting in a net annual benefit of \$6,354,720 (23.33 mills/kWh).

69. As proposed by PacifiCorp with staff's additional measures (see Articles 401, 410, 412, 420, and 421), the Bear River Project would generate an average of 272,379,000 kWh of electricity annually, have an annual power value of \$12,914,500 (47.41 mills/kWh), and total annual costs of \$6,585,360 (24.18 mills/kWh), resulting in a net annual benefit of \$6,329,140 (23.23 mills/kWh).

70. Based on my independent review and evaluation, I have selected the proposed action with the additional staff-recommended measures as the preferred alternative.

71. I selected this alternative because: (1) issuance of the license would allow PacifiCorp to continue to operate the four developments as dependable sources of electric energy; (2) continued operation of the project would avoid the need for an equivalent amount of fossil-fuel-fired electric generation and capacity, continuing to help to conserve these nonrenewable energy resources and reduce atmospheric pollution; and (3) the recommended environmental measures would improve water quality, protect and enhance fish and terrestrial resources, improve public use of recreational facilities and resources, and protect and maintain historic and archaeological resources within the area affected by the operation of the project.

72. The preferred alternative includes the following measures:

(1) development of a project implementation plan that would establish a compliance schedule for undertaking the measures identified below as well as require the filing of annual reports designed to track progress in the implementation of these measures. (Article 401);

(2) establishment of the Environmental Coordination Committee to serve as an entity that would represent the agencies and nongovernmental organizations in a consultative role required for the development of studies, mitigative measures and other measure required in the following articles. (Article 402);

(3) development of a Bonneville Cutthroat Trout (BCT) restoration plan (Article 403) as well as a BCT stocking plan (Article 404), that includes broodstock development, habitat analyses and related studies to provided a foundation for the benefit of this species to the Bear River system;

(4) preparation of plan to restore aquatic and riparian habitat for the benefit of the BCT as well as other fish and wildlife resources (Article 405);

(5) development of a plan for acquiring additional lands and waters for the benefit of environmental resources (Article 406);

(6) preparation of a monitoring plan, to include invertebrate sampling and creel surveys (Article 407);

(7) release minimum flows from each of the project developments to enhance resources in the impacted reaches of the Bear River (Article 408);

(8) develop a plan to minimize fish stranding (Article 409);

(9) development of a plan to modify the discharge from Kackley Springs to benefit aquatic resources in the Bear River (Article 410);

(10) develop a plan to quantify leakage flow from the project developments (Article 411);

(11) specify ramping rates to minimize impacts to fish resources associated with flow fluctuations (Article 412);

(12) develop a water quality monitoring plan (Article 413);

(13) reservation of authority to require construction of fish passage facilities pursuant to Section 18 of the Federal Power Act (Article 414);

(14) development of a compliance plan to monitor compliance with the operating constraints (Article 415);

(15) provide the development of new recreational facilities as well as upgrade existing recreation facilities (Article 416);

(16) development of a traffic safety plan to enhance the publics use of the project area (Article 417);

- (17) develop a plan to make adjustments to project structures necessary to facilitate the release of whitewater flows (Article 418);
- (18) release whitewater boating flows into the Grace bypass reach for the enhancement of whitewater boating (Article 419);
- (19) develop an operational regime to release whitewater flow release of up to 900 cfs below the Oneida Project (Article 420);
- (20) establish a program to forecast whitewater boating flows (Article 421);
- (21) develop a website and toll-free phone number to provide information to the public relating to the availability of whitewater releases (Article 422);
- (22) implement the Programmatic Agreement to ensure protection of cultural resources (Article 423)
- (23) implement a land use management plan (Article 424), establish a shoreline buffer zone (Article 425), and develop a fencing plan (Article 426) to improve management of lands within the project area; and
- (24) revise the project boundary to encompass additional lands to ensure public access for recreational purposes (Article 427).

LICENSE TERM

73. Pursuant to Section 15(e) of the FPA, 16 U.S.C. § 808 (e), relicense terms shall not be less than 30 years nor more than 50 years from the date on which the license is issued. The Commission's general policy is to establish 30, 40, or 50-year terms for projects with, respectively, little, moderate, or extensive redevelopment, new construction, new capacity, or additional environmental measures.³¹

74. It is the Commission's policy to coordinate to a reasonable extent the license expiration dates of projects in a river basin, in order that subsequent relicense proceedings can also be coordinated.³² However, the downstream Cutler Project No.

³¹See Wisconsin Power Company, 94 FERC ¶ 61,037, at p.61,164 (2001).

³²In issuing new and original licenses, the Commission will coordinate the expiration dates of licenses to the maximum extent possible, to maximize future consideration of cumulative impacts at the same time in contemporaneous proceedings at relicensing. See 18 C.F.R. § 2.23(2003).

2420 expires on April 1, 2024. In this case, it is not practicable to coordinate the expiration date of this license with the Cutler Project since it expires in 20 years.

75. The amount of proposed new investment in environmental measures for this project is relatively moderate. However, in section 1.6 of the Agreement, the signatories agree to a 30-year license term. Because the term of the license was likely an important element in the negotiations that led to the Agreement, I will issue the license for a term of 30 years.

SUMMARY OF FINDINGS

76. The new license, as conditioned herein, authorizes PacifiCorp to continue to produce much-needed power and will not result in any major, long-term adverse environmental impacts. In addition, the new license includes numerous enhancements to the existing aquatic and terrestrial environments, recreation, and cultural resources. I find therefore that the Bear River Hydroelectric Project, with the conditions attached hereto, will serve the public interest because it is best adapted to the comprehensive development of the Bear River Basin for all beneficial public purposes in accordance with the requirements of FPA.

The Director orders:

(A) This license is issued to PacifiCorp (licensee) for a period of 30 years, effective the first of the month in which the license is issued, to operate and maintain the Bear River Project No. 20. This license is subject to the terms and conditions of the Federal Power Act (FPA), which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(B) The project consists of:

1. Soda Development

- (1) All lands, to the extent of the licensee's interests in those lands, enclosed by the project boundary shown by the following Exhibit G drawing included in the application for new license for Project No. 20, filed on September 27, 1999:

<u>FERC's new Exhibit Label</u> ³³	<u>Licensee's original Exhibit Label</u>	<u>FERC Drawing No.</u> <u>20-</u>	<u>Showing</u>

³³The exhibits are being re-labeled so that the three developments are in sequence.

G-1	G-1	1001	Project Boundary
-----	-----	------	------------------

- (2) Project works consisting of: (1) the 103-foot-high by 433-foot-long concrete gravity Soda dam, with a 210-foot-long non-overflow gravity section, a 109-foot-long integral powerhouse section containing five headgates that supply water to the generating unit penstocks and to a 900-cubic feet per second (cfs)-capacity low-level discharge (Johnson valve), and a 114-foot-long gated overflow spillway section containing three, 30-foot by 14-foot Taintor gates; (2) a 55-foot-long by 19-foot-high earth fill dam; (3) the Soda reservoir (also called Alexander reservoir) with a surface area of 1,100 acres, an active storage capacity of 16,300 acre-feet, and a normal maximum full pool elevation of 5,720 feet U.S. Geological Survey (USGS) datum; (4) the 41-foot by 109-foot powerhouse containing two vertical Francis units, each with an installed capacity of 7 MW and maximum hydraulic capacities of 1,287 and 1,337 cfs, respectively; (5) a tailrace immediately downstream of the powerhouse with a normal tailwater elevation of 5,641 feet USGS datum; and (6) a substation containing step-up transformers and circuit breakers, located immediately adjacent to the powerhouse, which also serves as the point of interconnection to the transmission grid system.
- (3) The project works generally described above are more specifically described in Exhibit A of the Project No. 20 application.
- (4) The following Exhibit F drawings for Project No. 20, filed on September 27, 1999:

<u>FERC's new Exhibit Label</u>	<u>Licensee's original Exhibit Label</u>	<u>FERC Drawing No. 20-</u>	<u>Showing</u>
F-1	F-1	1002	Powerhouse, Gatehouse, Spillway & Dam, Plan Elevations & Sections
F-2	F-2	1003	Powerhouse, Intake house, Spillway &

			Dam, Plan & Downstream Elevation
--	--	--	--

2. Grace Development

- (1) All lands, to the extent of the licensee's interests in those lands, enclosed by the project boundary shown by the following Exhibit G drawings included in the application for new license for Project No. 2401, filed on September 27, 1999.

<u>FERC's new Exhibit Label</u>	<u>Licensee's original Exhibit Label</u>	<u>FERC Drawing No. 20-</u>	<u>Showing</u>
G-2	G-1	1004	Project Boundary

- (2) Project works consisting of: (1) a 51-foot-high by 180-foot-long rock-filled timber crib dam, with a concrete core and a 120-foot-long central spillway section with 8-foot-high wooden flashboards; (2) a 250-foot-long earthen dam on the right abutment; (3) a forebay with 250 acre-feet of usable storage capacity at a surface elevation of 5,555 feet (USGS datum); (4) a 52-foot-wide intake structure contained within a concrete stucco building, adjacent to the earth embankment section of the dam, containing eighteen 5-foot by 10-foot screen sections; (5) a 26,000-foot-long, 11-foot-diameter flowline, consisting of 15,000 feet of steel and 11,000 feet of wood stave pipeline; (6) two surge tanks, one 10 feet in diameter and 38 feet high, located about 2.6 miles downstream of the diversion, and the other 30 feet in diameter and 132 feet high, located directly above the powerhouse; (7) three 90-inch-diameter steel penstocks, equipped with two butterfly valves; (8) a 53-foot by 148.5-foot powerhouse containing three vertical Francis units, each with an installed capacity of 11 MW and a hydraulic capacity of 320 cfs; (9) a tailrace consisting of a short concrete-lined section that transitions to an unlined open channel section; and (10) a substation containing step-up transformers and circuit breakers, located immediately adjacent to the powerhouse, which also serves as the point of interconnection to the transmission grid system.

- (3) The project works generally described above are more specifically described in Exhibit A of the Project No. 2401 application.
- (4) The following Exhibit F drawings for Project No. 2401, filed on September 27, 1999:

<u>FERC's new Exhibit Label</u>	<u>Licensee's original Exhibit Label</u>	<u>FERC Drawing No. 20-</u>	<u>Showing</u>
F-3	F-1	1006	General Plan of Project Works
F-4	F-3	1008	Grace Development Flowline Profile
F-5	F-4	1009	Grace Development Intakes, General Plan & Sections
F-6	F-5	1010	Grace Development Intake Houses No.2 & No. 3, Elevations and Sections
F-7	F-6	1011	Grace Development Diversion Dam, Plan & Elevation
F-8	F-7	1012	Grace Development Powerhouse Plans
F-9	F-8	1013	Grace Development Powerhouse Plans
F-10	F-9	1014	Grace Development Surge Tank Plan, Section & Details

3. Cove Development

- (1) All lands, to the extent of the licensee's interests in those lands, enclosed by the project boundary shown by the following Exhibit G

drawings included in the application for new license for Project No. 2401, filed on September 27, 1999.

<u>FERC's new Exhibit Label</u>	<u>Licensee's original Exhibit Label</u>	<u>FERC Drawing No. 20-</u>	<u>Showing</u>
G-3	G-2	1005	Project Boundary

- (2) Project works consisting of: (1) a 26.5-foot-high by 141-foot-long concrete dam creating a small forebay with a 60-acre-foot capacity at elevation 5,032 feet (USGS datum); (2) an 88-foot-wide intake structure containing five 12-foot-wide openings, fitted with vertical bar screens, a transition section to a rectangular flume, and an isolation Taintor gate just upstream of the flume, measuring 20 feet by 14.5 feet; (3) a 6,125-foot-long conveyance flume consisting of a 425-foot-long concrete flume section and a 5,700-foot-long wooden flume section, both measuring 20 feet wide and 12 to 14 feet deep; (4) a concrete pressure box at the end of the flume with a transition to a 550-foot-long, 12.5-foot-diameter steel penstock; (5) a 28.5-foot by 46-foot powerhouse containing a single 7.5-MW vertical Francis unit with a hydraulic capacity of 1,227 cfs; (6) an unlined open-channel tailrace; (7) a substation containing step-up transformers, located immediately adjacent to the powerhouse; and (8) a 46-kV transmission line to the Grace substation and to the Cove West substation.
- (3) The project works generally described above are more specifically described in Exhibit A of the Project No. 2401 application.
- (4) The following Exhibit F drawings for Project No. 2401, filed on September 27, 1999:

<u>FERC's new Exhibit Label</u>	<u>Licensee's original Exhibit Label</u>	<u>FERC Drawing No. 20-</u>	<u>Showing</u>
F-11	F-2	1007	General Plan of Project Works
F-12	F-10	1015	Cove Development Intake Plan, Sections & Details

F-13	F-11	1016	Cove Development Intake Plan & Section
F-14	F-12	1017	Cove Development, Diversion Dam Plan Elevations and Sections
F-15	F-13	1018	Cove Development, Flowline Plans, Sections & Details
F-16	F-14	1019	Cove Development, Powerhouse Sections & Elevations
F-17	F-15	1020	Cove Development, Powerhouse Plans & Sections

3. Oneida Development

- (1) All lands, to the extent of the licensee's interests in those lands, enclosed by the project boundary shown by the following Exhibit G drawing included in the application for new license for Project No. 472, filed on September 27, 1999:

<u>FERC's new Exhibit Label</u>	<u>Licensee's original Exhibit Label</u>	<u>FERC Drawing No. 20-</u>	<u>Showing</u>
G-4	G-1	1021	Project Boundary

- (2) Project works consisting of: (1) Oneida dam, a 111-foot-high by 387-foot-long concrete gravity structure that includes a 118-foot-long uncontrolled auxiliary spillway, a 66-foot-long non-overflow

gravity section, a 99-foot-long gated spillway containing five Taintor gates, and an 86-foot-long gravity section with ice sluices; (2) a 40-foot-high, 1,100-foot-long embankment dam; (3) Oneida reservoir with an active storage capacity of 10,880 acre-feet and a surface area of 480 acres at an elevation of 4,882.90 feet (USGS datum); (4) a 50-foot-wide by 50-foot-high intake structure, containing six openings fitted with trashracks, with a transition to two, 16-foot-diameter circular outlets; (5) a 16-foot-diameter, 2,240-foot-long steel flowline (pipeline); (6) a 40-foot-diameter, 142-foot-high surge tank; (7) three, 12-foot-diameter, 120-foot-long steel penstocks extending from the surge tank; (8) a 52-foot by 162-foot powerhouse containing three vertical Francis units, each with an installed capacity of 10 MW and hydraulic capacities of 1,161, 1,161, and 968 cfs, respectively; (9) a 64-foot-wide by 118-foot-long rectangular channel tailrace; and (10) a substation containing step-up transformers, located immediately adjacent to the powerhouse, which also serves as the point of interconnection to the transmission grid system.

- (3) The project works generally described above are more specifically described in Exhibit A of the Project No. 472 application.
- (4) The following Exhibit F drawings for Project No. 472, filed on September 27, 1999:

<u>FERC's new Exhibit Label</u>	<u>Licensee's original Exhibit Label</u>	<u>FERC Drawing No. 20-</u>	<u>Showing</u>
F-18	F-1	1022	Gravity Dam, Plan, Elevations & Sections
F-19	F-2	1023	Concrete parapet Wall, Plans, Elevations & Sections
F-20	F-3	1024	Intake, Plans &

			Sections
F-21	F-4	1025	Powerhouse, Plans, Elevations & Sections
F-22	F-5	1026	Powerhouse Section & Surge Tank, Elevation and Section

(C) The Exhibits A and F described above are approved and made part of the license.

(D) The Exhibit G shall be revised, approved, and made part of the license, in accordance with Articles 204 and 427.

(E) This license is subject to the conditions submitted by the Idaho Department of Environmental Quality under Section 401 of the Clean Water Act, as those conditions are set forth in Appendix A to this order.

(F) This license is subject to the articles set forth in Form L-1 (October 1975), entitled "Terms and Conditions of License for Constructed Major Project Affecting Lands of the United States," 54 FPC 1799-1808 (October 1975), and the following additional Articles:

Article 201. The licensee shall pay the United States the following annual charges as determined by the Commission, effective the first day of the month in which this license is issued for purposes of:

- (A) Reimbursing the United States for the cost of administration of Part I of the Federal Power Act. This annual charge will be a reasonable amount as determined in accordance with the Commission's regulations in effect from time to time and shall be effective the first day of the month in which this license is issued. The authorized installed capacity for that purpose is 84.5 megawatts.
- (B) Recompensing the United States for the use, occupancy and enjoyment of 510.59 acres of its lands, other than for the use of transmission lines.

Article 202. Within 45 days of the date of issuance of the license, the licensee shall file the approved exhibit drawings in aperture card and electronic file formats.

a) Four sets of the approved exhibit drawings shall be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-1/4" X 7-3/8") aperture cards. Prior to microfilming, the FERC Drawing Number (e.g., P-1234-1001 through P-1234-###) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (e.g., F-1, G-1, etc.), Drawing Title, and date of this license shall be typed on the upper left corner of each aperture card.

Two of the sets of aperture cards along with form FERC-587 shall be filed with the Secretary of the Commission, ATTN: OEP/DHAC. The third set shall be filed with the Commission's Division of Dam Safety and Inspections Portland Regional Office. The remaining set of aperture cards and a copy of form FERC-587 shall be filed with the Bureau of Land Management office at the following address:

State Director
Bureau of Land Management
Land Services Section (ID-943A)
1387 S Vinnell Way
Boise ID 83709-1657
ATTN: FERC Withdrawal Recordation

b) The licensee shall file two separate sets of exhibit drawings in electronic format with the Secretary of the Commission, ATTN: OEP/DHAC. A third set shall be filed with the Commission's Division of Dam Safety and Inspections Portland Regional Office. Each drawing must be a separate electronic file, and the file name shall include: FERC Drawing Number, FERC Exhibit, Drawing Title, date of this license, and file extension [e.g., P-1234-1001, G-1, Project Boundary, 11-04-2003.TIF]. Electronic drawings shall meet the following format specification:

IMAGERY - black & white raster file
FILE TYPE – Tagged Image File Format, (TIFF) CCITT Group 4
RESOLUTION – 300 dpi
DRAWING SIZE FORMAT – 24" X 36" (min), 28" X 40" (max)
FILE SIZE – less than 1 MB

c) The licensee shall file three separate sets of the project boundary data in a geo-referenced electronic format (such as ArcView shape files, GeoMedia files, MapInfo files, or any similar format) with the Secretary of the Commission, ATTN: OEP/DHAC. The file name shall include: FERC Project Number, data description, date of this license, and file extension [e.g., P-1234, boundary vector data, 11-04-2003.SHP]. The electronic boundary data must be positionally accurate to ± 40 feet in order to comply with National Map Accuracy Standards for maps at a 1:24,000 scale. Each sheet must contain a minimum of three known reference points. The latitude and longitude coordinates, or state plane coordinates, or each reference point must be shown. The data must include a text file describing the map projection used (i.e., UTM, State Plane, Decimal Degrees, etc), the map datum (i.e., North American 27, North American 83, etc.), and the units of measurement (i.e., feet, meters, miles, etc.). The text file name shall include: FERC Project Number, data description, date of this license, and file extension [e.g., P-1234, boundary metadata, 11-04-2003.TXT].

Article 203. Pursuant to Section 10(d) of the Federal Power Act, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. The licensee shall set aside in a project amortization reserve account at the end of each fiscal year one-half of the project surplus earnings, if any, in excess of the specified rate of return per annum on the net investment.

To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year, the licensee shall deduct the amount of that deficiency from the amount of any surplus earnings subsequently accumulated, until absorbed. The licensee shall set aside one-half of the remaining surplus earnings, if any, cumulatively computed, in the project amortization reserve account. The licensee shall maintain the amounts established in the project amortization reserve account until further order of the Commission.

The specified reasonable rate of return used in computing amortization reserves shall be calculated annually based on current capital ratios developed from an average of 13 monthly balances of amounts properly included in the licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rate for such ratios shall be the weighted average cost of long-term debt and preferred stock for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10-year constant maturity series) computed on the monthly average for the year in question plus 4 percentage points (400 basis points).

Article 204. Within 90 days of the date of the issuance of this order, the licensee shall file for Commission approval Exhibit G drawings, prepared in accordance with 18 C.F.R. ' ' 4.39 and 4.51(h), that show the project boundary as established in this order, including the additional lands required by Article 420. The FERC Exhibit Label and the FERC Drawing Title of each aperture card must be labeled to reflect the new numbering (combining all four developments), according to Ordering Paragraph B in this license. The licensee shall file six copies with the Commission, one copy to the Portland Regional Director, and one copy to the Director Division of Hydropower Administration and Compliance, Office of Energy Projects.

Article 301. Within 90 days of completion of construction of the facilities directed by any article of this license (trashracks, fish passage, recreation, flume, etc.), the licensee shall file for Commission approval revised Exhibits A, F, and G, as appropriate, to show those project facilities as built.

Article 302. At least 60 days before starting rehabilitation of the Cove Flume, the licensee shall submit one copy to the Division of Dam Safety and Inspections - Portland Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections) of a supporting design report and final contract plans and specifications. The Commission may require changes to the plans and specifications to assure the work is completed in a safe and environmentally sound manner. Construction may not commence until authorized by the Regional Engineer.

Article 303. At least 60 days before starting rehabilitation of the Cove Flume, the licensee shall submit one copy to the Division of Dam Safety and Inspections - Portland Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections) of the Quality Control and Inspection Program (QCIP) for the Commission's review and approval. The QCIP shall include a sediment and erosion control plan.

Article 304. Before starting rehabilitation of the Cove Flume, the licensee shall review and approve the design of contractor-designed cofferdams and deep excavations. At least 30 days before starting construction of the cofferdams, the licensee shall submit one copy to the Division of Dam Safety and Inspections - Portland Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy to the Director, Division of Dam Safety and Inspections) of the approved cofferdam construction drawings and specifications and the letters of approval.

Article 305. At least 60 days before starting rehabilitation of the Cove Flume, the licensee shall submit one copy to the Division of Dam Safety and Inspections - Portland Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections) of the Temporary Emergency Action Plan (TEAP) for the Commission's review and approval. The TEAP shall describe emergency procedures in case failure of a cofferdam, large sediment control structure, or any other water retaining structure could endanger construction workers or the public. The TEAP shall include a notification list of emergency response agencies, a plan drawing of the proposed cofferdam arrangement, the location of safety devices and escape routes, and a brief description of testing procedures.

Article 306. Within 30 days of the issuance of this order, the licensee shall submit one copy to the Division of Dam Safety and Inspections - Portland Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections) of the Cove Flume Rebuild Project schedule. The schedule shall include a start construction date not later than 7 months from the issuance of this order, and a completion date not later than 15 months from the issuance of this order.

Article 401. The licensee shall prepare a project implementation plan that sets forth a schedule for implementing the measures set forth in this license and shall file annual reports documenting the licensee's progress in implementing the requirements of this license.

The licensee shall develop a schedule for filing the plans and related documents set forth in license Articles 402 through 427 as well as Conditions 1 through 9 of the Water Quality Certification attached as Appendix A. The schedule shall be filed for Commission approval no later than six months from the date of issuance of this license.

The licensee shall also file, for Commission approval, detailed annual progress reports on or before March 1 throughout the term of the license, with the first report due on or before March 1, 2005. These detailed annual progress reports shall include: (1) a description of activities, including final reports of any studies or monitoring, including data, analysis, and conclusions, that the licensee undertook or prepared pursuant to the requirements of this license during the previous year; (2) a description of anticipated activities to be undertaken during the upcoming year pursuant to the requirements of this license; and (3) a report of all funding accounts, including funds spent, balances of accounts, and available remaining funds. The licensee shall prepare these reports in consultation with the ECC (as developed pursuant to Article 402 and Section 4.1 of the Settlement Agreement dated August 28, 2002).

The licensee shall include, with the proposed schedule and each annual report, documentation of consultation with the ECC, copies of comments and recommendations on these documents after it has been prepared, and specific descriptions of how the ECC's comments are accommodated by the proposed schedule and activities proposed in the annual reports. The licensee shall allow a minimum of 30 days for the ECC to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to make changes to the proposed schedule. The Commission also reserves the right to make changes to project structures and operation as well as the measures set forth in this license, after opportunity for notice and hearing, based upon information provided in the reports. Upon Commission approval, the licensee shall implement the schedule, including any changes required by the Commission.

Article 402. The licensee shall, within 6 months from the date of issuance of this license or on an alternative schedule as determined by the Project Implementation Plan required under Article 401, establish an Environmental Coordination Committee (ECC) composed of the signatories to the agreement and that is consistent the intent of Section 4.1 of the Settlement Agreement dated August 28, 2002.

Article 403. The licensee shall prepare a Comprehensive Bonneville Cutthroat Trout (BCT) Restoration Plan, in consultation with the ECC. The Comprehensive BCT Restoration Plan shall be consistent with the Range-wide Conservation Agreement and Strategy for Bonneville Cutthroat Trout (RCAS),³⁴ and with Cutthroat Trout Management: A Position Paper, Genetic Considerations Associated with Cutthroat Trout Management (CTMAPP) or any updated version of such documents.

The Comprehensive BCT Restoration Plan shall be filed with the Commission for approval within one year after the issuance of the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401

³⁴Utah 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).

Unless otherwise indicated, funding that is not completely expended by one element of the plan may be available for use in completion of other element plans, but all funding by the licensee shall be completed by the seventh anniversary of the issuance of the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401. Funds not fully expended in a given year may be carried over for use in completing element plans in the succeeding year. Carried-over funds shall bear interest but shall not 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 issuance of the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401, shall not be available for any other purpose.

The Comprehensive BCT Restoration Plan shall include the following items:

(a) a provision to collect and analyze genetic samples of BCT in the mainstem or tributaries of the Bear River, consistent with the RCAS and CTMAPP. Included in the plan shall be details as to how the data will be collected and identification of reports that would be generated pursuant to this element. The funding of this element is expected to cost no more than \$40,000.

(b) a provision to conduct 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. Included in the plan shall be details as to how the data will be collected and identification of reports that would be generated pursuant to this element. Funding for this element is expected to cost no more than \$125,000.

(c) a provision to prepare 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. Included in the plan shall be details as to how the data will be collected and identification of reports that would be generated pursuant to this element. Funding for this element is expected to cost no more than \$13,000.

(d) a provision to conduct a BCT telemetry study on the Bear River and its tributaries in the State of Idaho. Included in the plan shall be details as to how the data will be collected and identification of reports that would be generated pursuant to this element. Funding for this element is expected to cost no more than \$150,000, with annual expenditures not exceeding \$50,000.

(e) a provision for developing localized broodstocks of BCT, for stocking in the Action Area linked to native BCT protection and restoration efforts. Funding for this element is expected to cost no more than \$100,000 per year for three years. Funds available for use under this element, if not used for broodstock development, may be reallocated for use under Articles 405 and 406, provided that such funds must be used by end of seventh anniversary of the issuance of the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401.

(f) a study plan that evaluates the feasibility of evaluating fish passage at the Cove Project through modifications to the project, addition of fish passage facilities, and decommissioning of the Cove Project. Included in the study plan shall be details regarding methodology and identification of schedule for preparing the study results and filing the results with the Commission. Funds allocated under Articles 405 and 406 may be reallocated for the purposes described here.

The licensee shall include with the plan documentation of consultation with the ECC, copies of comments and recommendations on the completed plan after it has been prepared and specific descriptions of how the ECC's comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the ECC to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The licensee's financial responsibility for implementing the measures in this article shall not be limited by the funds specified herein, and may be modified by the Commission. The Commission reserves the right to make changes to the Comprehensive BCT Restoration Plan. Upon Commission approval, the plan becomes a requirement of the license, and the licensee shall implement the plan, including any changes required by the Commission. Annual updates on the progress of the elements (a) through (f) and all resulting reports, including analysis and conclusions, shall be filed with the Commission, as provided for in Article 401.

Article 404. The licensee, in consultation with the ECC, shall develop a plan, for Commission approval, for stocking of native BCT in the Action Area. Funding for this stocking plan is expected to cost no more than \$100,000 annually. The funding shall be provided starting from the seventh anniversary of the issuance of the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401, through the end of the license term. The stocking plan shall be filed with the Commission for approval within seven years after the issuance of the license, or on an

alternative schedule as determined by the Project Implementation Plan required under Article 401.

To the extent that \$100,000 is not expended in one year, any funds not expended may be carried over to succeeding years during the term of the license for fish stocking in accordance with this article, or shall be made available for habitat restoration actions (Article 405), land and water acquisition (Article 406), or enhancement and restoration of land or water acquired pursuant to Article 406. Funds not fully expended in a given year shall not expire during the license term, but shall be continuously carried over for use in completing BCT Restoration Plan elements in succeeding years, in accordance with this article. 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.

The licensee shall include with the plan documentation of consultation with the ECC, copies of comments and recommendations on the completed plan after it has been prepared and specific descriptions of how the ECC's comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the ECC to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The licensee's financial responsibility for implementing the measures in this article shall not be limited by the funds specified herein, and may be modified by the Commission. The Commission reserves the right to make changes to the stocking program. Upon Commission approval, the stocking program becomes a requirement of the license, and the licensee shall implement the stocking program, including any changes required by the Commission. Annual updates on the progress of the stocking program and all resulting reports, including analysis and conclusions, shall be filed with the Commission, as provided for in Article 401.

Article 405. The licensee shall develop a plan for undertaking actions to benefit and restore aquatic and riparian habitat for BCT and other fish and wildlife resources in the Action Area. Funding for this habitat restoration plan is expected to cost no more than \$167,000 annually. The funding shall be provided starting from the first anniversary of the issuance of the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401, through the end of the license term. The plan shall be filed with the Commission for approval within one year after the issuance of

the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401.

Funding allocated under this article may be used to study the effect of whitewater boating flows on BCT in the Bear River below Grace Dam over the license term. Should the FWS prescribe fish passage during the term of the license, the funds described in this article may be used to pay for such fish passage before other uses.

To the extent that \$167,000 is not expended in one year, any funds not expended may 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 406), enhancement and restoration of land or water acquired pursuant to Article 406, or fish passage as described in section 1.1.1 and 3.1 of the Agreement. Funds not fully expended in a given year shall not expire during the license term, but shall be continuously carried over for use in succeeding years, in accordance with this article. 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.

The licensee shall include with the plan documentation of consultation with the ECC, copies of comments and recommendations on the completed plan after it has been prepared and specific descriptions of how the ECC's comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the ECC to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

Any planned alterations to project operations or facilities shall first be filed with the Commission for approval. The Commission reserves the right to make changes to the planned alterations. Upon Commission approval, the planned alterations become a requirement of the license, and the licensee shall implement the alterations, including any changes required by the Commission.

The licensee's financial responsibility for implementing the measures in this article shall not be limited by the funds specified herein, and may be modified by the Commission. The Commission reserves the right to make changes to the habitat restoration plan. Upon Commission approval, the plan becomes a requirement of the license, and the licensee shall implement the plan, including any changes required by the

Commission. Annual updates on the progress of activities being funded and all resulting reports, including analysis and conclusions, shall be filed with the Commission, as provided for in Article 401.

Article 406. The licensee shall develop, in consultation with the ECC, a plan for acquiring land and water rights, if available, in the Action Area. Funding for this acquisition plan is expected to cost no more than \$300,000 annually. The funding shall be provided starting from the first anniversary of the issuance of the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401, through the end of the license term. The plan shall be filed with the Commission for approval within one year after the issuance of the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401.

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. To the extent that \$300,000 is not expended in one year, any funds not expended may be carried over to succeeding license years during the term 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 sections 1.1.1 and 3.1 of the Agreement. Funds not fully expended in a given year shall not expire during the license term, but shall be continuously carried over for use in succeeding years, in accordance with this article. 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.

The licensee shall include with the plan documentation of consultation with the ECC, copies of comments and recommendations on the completed plan after it has been prepared and specific descriptions of how the ECC's comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the ECC to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The licensee's financial responsibility for implementing the measures in this article shall not be limited by the funds specified herein, and may be modified by the Commission. The Commission reserves the right to make changes to the acquisition plan. Upon Commission approval, the plan becomes a requirement of the license, and the

licensee shall implement the plan, including any changes required by the Commission. Annual updates on the lands and water rights acquired or leased and all resulting reports, including analysis and conclusions, shall be filed with the Commission, as provided for in Article 401.

Article 407. The licensee shall develop a plan to undertake creel surveys, Grace bypass reach telemetry studies, and macroinvertebrate sampling studies (hereinafter referred to as "monitoring"). Funding for this monitoring plan is expected to cost no more than \$35,000 annually. The funding shall be provided starting from the first anniversary of the issuance of the license through the seventh year, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401. The plan shall be filed with the Commission for approval within one year after the issuance of the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401. Included in the monitoring plan shall be details regarding proposed analytical methodologies and schedules for undertaking the analyses and final preparing reports on the monitoring results.

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 issuance of the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401, remaining funds not expended may be carried over for the Conservation Hatchery Program (Article 404). 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. Funds carried over to the Conservation Hatchery Program shall remain available during the license term. Any funds not expended by the end of the license term shall not be available for any other purpose.

The licensee shall include with the plan documentation of consultation with the ECC, copies of comments and recommendations on the completed plan after it has been prepared and specific descriptions of how the ECC's comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the ECC to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The licensee's financial responsibility for implementing the measures in this article shall not be limited by the funds specified herein, and may be modified by the

Commission. The Commission reserves the right to make changes to the monitoring plan. Upon Commission approval, the plan becomes a requirement of the license, and the licensee shall implement the plan, including any changes required by the Commission. Annual updates on the progress of activities being funded and all resulting reports, including analysis and conclusions, shall be filed with the Commission, as provided for in Article 401.

Article 408. The licensee shall maintain continuous minimum flows from the project developments as follows:

(a) below the Soda dam: a year-round minimum flow of 150 cfs, or inflow into Soda reservoir, whichever is less;

(b) Grace bypassed reach: a year-round minimum flow of 80 cfs or inflow, whichever is less, in addition to current leakage from Grace dam;

(c) Cove bypassed reach: a minimum flow of 10 cfs or inflow, whichever is less, from October 1 through March 31, and 35 cfs or inflow, whichever is less, from April 1 through September 30, in addition to current leakage from Cove dam; and

(d) Oneida reach below the powerhouse: a year-round minimum flow of 250 cfs or inflow, whichever is less, in addition to current leakage from Oneida dam.

Maintenance of the above minimum flows shall begin within six months of the issuance of the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401, and shall continue through the license term. 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 beyond the licensee's control. The licensee shall consult with the ECC regarding when to schedule and how to conduct regular maintenance, and shall consult with the ECC, to the extent practicable, in emergency situations. The licensee shall implement regular maintenance routines including drawdown and project shutdown activities so that aquatic resources, including fish spawning and rearing, are protected to the maximum extent practicable. The licensee shall minimize the number of such project maintenance shutdowns, drawdowns, and spillway tests and shall attempt to

schedule such activities at times that will not interfere with trout spawning or harm incubating trout eggs. If project operations or the minimum flows are modified in accordance with this article, the licensee shall notify the Commission as soon as possible, but not later than 10 days after each such incident, and shall provide the reason for the modified operation.

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.

Article 409. The licensee, in consultation with the ECC, shall develop a plan to minimize fish stranding resulting from the operation of the Project developments. The plan shall be filed with the Commission for approval within 6 months after the issuance of the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401.

The licensee shall include with the plan documentation of consultation with the ECC, copies of comments and recommendations on the completed plan after it has been prepared and specific descriptions of how the ECC's comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the ECC to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to make changes to the plan. Upon Commission approval, the plan becomes a requirement of the license, and the licensee shall implement the plan, including any changes required by the Commission.

Article 410. The licensee, in consultation with the ECC, shall develop a plan to modify the flow from Kackley Spring to benefit the aquatic resources in the Bear River. The plan shall be filed with the Commission for approval within 1 year after the issuance of the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401. Funding for this element is expected to cost no more than \$10,000.

The licensee shall include with the plan documentation of consultation with the ECC, copies of comments and recommendations on the completed plan after it has been prepared and specific descriptions of how the ECC's comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the ECC to comment and to

make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The licensee's financial responsibility for implementing the measures in this article shall not be limited by the funds specified herein, and may be modified by the Commission. The Commission reserves the right to make changes to the plan. Upon Commission approval, the plan becomes a requirement of the license, and the licensee shall implement the plan, including any changes required by the Commission. Annual updates on the progress of the Kackley Springs project shall be filed with the Commission, as provided for in Article 401.

Article 411. The licensee, in consultation with the ECC, shall develop a plan to measure the leakage from each dam. The plan shall be filed with the Commission for approval within 6 months after the issuance of the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401.

The licensee shall include with the plan documentation of consultation with the ECC, copies of comments and recommendations on the completed plan after it has been prepared and specific descriptions of how the ECC's comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the ECC to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to make changes to the plan. Upon Commission approval, the plan becomes a requirement of the license, and the licensee shall implement the plan, including any changes required by the Commission.

Article 412. The licensee shall implement the following maximum ramping rates, associated with hydroelectric generation at the Bear River Project developments:

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

Restrictions on ramping rates shall begin within six months of the issuance of the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401. 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 ramping 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;
- (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).

If the ramping rates are modified in accordance with this article, the licensee shall notify the Commission as soon as possible, but not later than 10 days after each such incident, and shall provide the reason for the modified ramping rate. Based upon the frequency and magnitude of deviations, the Commission reserves the right to modify the required ramping rates set forth in this article.

Article 413. The licensee shall file, for Commission approval, the water quality monitoring plans identified in Conditions 1(a) and 5 of the 401 Water Quality Certification (WQC) that is attached a Appendix A of this license. The licensee shall file the final water quality monitoring plan with the Commission, within 30 days after its approval by the Idaho Department of Environmental Quality (IDEQ). The Commission reserves the right to make changes to the plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 414. Authority is reserved by the Commission to require the licensee to construct, operate, and maintain, or to provide for the construction, operation, and maintenance of, such fishways as may be prescribed by the Secretary of the Interior under Section 18 of the Federal Power Act.

Article 415. The licensee shall develop and implement an Operations and Compliance Plan to monitor the minimum flows and ramping rates at the Soda, Grace-

Cove, and Oneida developments, as required by Articles 408 and 412. The Operations and Compliance Plan shall be developed in consultation with the ECC and the US Geological Survey (USGS), and filed with the Commission for approval within 6 months after the issuance of the new license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401.

The Operations and Compliance Plan shall include, but not be limited to the following:

- (a) the proposed methodology and locations for monitoring minimum flows and ramping rates;
- (b) specific measures to ensure that the monitoring system would operate under all conditions, including loss of external electric power to the project;
- (c) the design of the monitoring devices, including any pertinent hydraulic calculations, technical specifications or proposed instrumentation, erosion and sediment control measures, as appropriate, and design drawings of the system;
- (d) a description of the relative extent of manned versus automatic operation of the monitoring equipment;
- (e) a description of the methods and schedule for installing, calibrating, operating and maintaining the monitoring equipment;
- (f) proposed data collection and storage protocols;
- (g) provisions for reporting the recorded data to the Commission and the consulted agencies; and
- (h) a schedule for implementing the plan.

The Operations and Compliance Plan shall include provisions consistent with the notification and consultation requirements for the minimum flows and ramping rates required by this license. In addition, should minimum flows or ramping rates deviate from the license requirements, the plan shall include a provision whereby the licensee files with the Commission a report of the incident within 10 days of the incident.

The report shall, to the extent possible, identify the cause, severity, and duration of the incident, and any observed or reported adverse environmental impacts resulting from the incident. The report also shall include: (1) operational data necessary to determine compliance with the article; (2) a description of any corrective measures implemented at the time of the occurrence and the measures implemented or proposed to ensure that similar incidents do not recur; and (3) comments or correspondence, if any, received from interested parties regarding the incident. Based on the report and the Commission's evaluation of the incident, the Commission reserves the right to require modifications to the project facilities and operations to ensure future compliance.

The licensee shall prepare the Operations and Compliance Plan in consultation with the ECC and USGS. The licensee shall include, with the plan, documentation of agency consultation, copies of comments and recommendations on the completed plan after it had been prepared and provided to the parties, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on site-specific information.

The Commission reserves the right to make changes to the plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 416. The licensee shall prepare a revised recreation plan, in consultation with the ECC. The plan shall be filed for Commission approval, within six months of the date of issuance of this license, or pursuant to an alternative schedule as determined by the Project Implementation Plan required under Article 401. The plan shall address upgrading, construction, operation, and maintenance of existing and proposed recreation facilities at the project.

The plan shall include, at a minimum, the following information: (1) a description of the type and location of all existing recreation facilities and areas at the project; (2) a description of the type and location of all proposed recreation facilities, including but not limited to those included below, and improvements, including its proposed design, construction materials and methods, and schedule for implementation; (3) a description of how the needs of people with disabilities were considered in the design of the proposed facilities; (4) a description of any specific proposed measures for minimizing potential construction impacts associated with the proposed facilities; (5) identification of the entity or entities responsible for constructing, operating, and maintaining the project's existing and proposed recreation facilities and areas; (6) a description of the

operation and maintenance schedule for the project=s existing and proposed recreation facilities and areas; (7) a schedule for implementing the funding measures identified in items (a) and (b) below; and (8) drawings showing the type and location of the project=s existing and proposed recreation facilities.

In addition, the plan shall include provisions to implement the following specific measures:

(a) 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, located at the Oneida development. 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) 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.

(c) make improvements to the put-in and take-out access points in the Grace bypassed reach. 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.

(d) make improvements to the put-in and take-out access points in the Oneida reach below the powerhouse. The put-in 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.

(e). funding not to exceed \$3,000 annually to Caribou County for operation and maintenance of recreation sites at Soda reservoir. 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.

The licensee shall include with the plan documentation of consultation with the above entities, copies of comments and recommendations on the completed plan after it has been prepared and provided to the entities and specific descriptions of how the entities' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the entities to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Annual updates on the activities required in this article shall be file with the Commission as provided for in Article 401. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 417. The licensee shall prepare a traffic safety plan for the Oneida Project Road, in consultation with the ECC, and file the proposed plan for Commission approval within six months of the date of issuance of the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401. The cost to the licensee is not expected to exceed \$100,000 for this purpose. The plan shall include, at a minimum, a detailed description of the Oneida Project road; including its use and present condition, location, proximity to project features, and existing signage or other associated features; appropriate drawings and/or maps of the road; and a schedule and plan to implement the following measures:

(a) maintain traffic signs along the Oneida Project road at a cost to the licensee not to exceed \$1,000 annually. Annual funding for maintenance will not carry over to subsequent license years.

(b) 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 is not expected to exceed \$10,000.

(c) 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 is expected not to exceed \$3,000. 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.

(d) 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. Dust abatement measures shall be implemented as necessary, but no more frequently than twice annually.

The licensee shall include with the plan documentation of consultation with the above entities, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission. Annual updates on the progress of activities identified in this article shall be filed with the Commission as provided for in Article 401. The licensee's financial responsibility for implementing the measures in this article shall not be limited by the funds specified herein.

Article 418. The licensee, in consultation with the ECC, shall develop a plan to release whitewater boating flows from the Grace Dam. The flow release plan shall be filed with the Commission for approval within six months after the issuance of the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401. The plan shall include, at a minimum, a description of the modification to the dam or additional structures that are proposed to facilitate the whitewater release flows. Included in the plan must be the necessary calculations and analyses needed to demonstrate the facilities have sufficient capacity to release the maximum flow provided for in Article 419.

The licensee shall include, with the plan, documentation of agency consultation, copies of comments and recommendations on the completed plan after it had been prepared and provided to the parties, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan

with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on site-specific information.

The Commission reserves the right to make changes to the plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 419. The licensee shall discharge whitewater boating flows in accordance with the schedule identified below. Such releases shall occur between April 1 and July 15 each year, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401. 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 the 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.

(a) During years 1-3 of the issuance of the new license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401, when available inflow results in at least 500 cfs spill into the Grace bypassed reach, the licensee shall release additional flow into the bypassed reach, as approved in Article 415, such that the total flow in the bypassed reach is up to but does not exceed a total of 900 cfs. This release shall be provided on up to 16 separate occasions in any one year, if flows are available (opportunistic releases). No limits on ramping rates shall be imposed during this time period.

(b) During years 4 - 6 after the issuance of the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401, the licensee shall release flows into the Grace bypassed reach of between 700 and 1,500 cfs, if available as inflow (scheduled releases). Such flows will total no more than 96 hours of foregone generation at 1,050 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 development will not operate during such releases unless available inflow is greater than the scheduled whitewater boating flow, and then the development will operate with that portion of the inflow that exceeds the scheduled whitewater boating flows. The licensee will implement the ramping rates for releasing the flows as required in Article 412.

(c) In year 7 and subsequently after the issuance of the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401, the licensee shall release whitewater boating flows between 700 and 1,500 cfs for 96 hours per year between April 1 and July 15 each year, if available as inflow, unless monitoring results (required under Article 407) show significant adverse effects on ecological attributes in Black Canyon. The required ramping rates determined in Article 412 shall also be implemented during this period. For the purposes of this section, "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 final BCT Restoration Plan, the RCAS, and the CTMAPP is impaired. 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 1,050 cfs.

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

Article 420. The licensee, in consultation with the ECC, shall develop an operational regime that minimizes the frequency of river level fluctuations below the Oneida powerhouse. Pursuant to this goal flows below the powerhouse shall be greater than 900 cfs between Memorial Day and Labor Day, if available. This operational regime shall be filed with the Commission for approval within six months of license issuance, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401.

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.

The licensee shall include with the operational regime documentation of consultation with the above entities, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies and specific descriptions of how the agencies' comments are accommodated by the operational regime. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the operational regime with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the operational regime. Upon Commission approval, the licensee shall implement the operational regime, including any changes required by the Commission.

Article 421. The licensee, in consultation with the ECC, shall develop a plan to forecast and announce whitewater boating flows for each year. This forecast and announcement plan shall be filed with the Commission for approval within six months of license issuance, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401.

The plan shall include provisions for: (1) forecasting the availability of inflow for whitewater boating flows on or about March 1 of each year after the issuance of the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401, consistent with the obligations stated in section 5.10 and Appendix C of the August 28, 2002 Settlement Agreement; (2) announcing the initial water year forecast; (3) consulting with American Whitewater on the distribution of whitewater releases; (4) consulting with the ECC in developing a mutually agreeable flow regime and filing a report with the Commission detailing the schedule. 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 recommend the days upon which such flows will be released. In the event the licensee and the ECC cannot mutually agree on a schedule for releasing the whitewater flows stipulated in Article 419 and 420, the licensee shall, no later than March 20, of each year, file recommendations for a flow regime for Commission approval.

The licensee shall include, with the plan, documentation of agency consultation, copies of comments and recommendations on the completed plan after it had been prepared and provided to the parties, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on site-specific information.

The Commission reserves the right to make changes to the plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 422. The licensee shall provide a flow information website and a toll-free Aflow phone@ number, within four months after the issuance of the license, or on an

alternative schedule as determined by the Project Implementation Plan required under Article 401.

The website shall present, in monthly calendar, format the scheduled dates for flow releases into Black Canyon, identified by the ECC and approved by the Commission, 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 Bear Lake Outlet Canal and the Bear River below the Oneida development, 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 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 six days. The website shall present data from the gages graphically and such data shall be updated every 4 hours. The website shall include seven-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 1,500 cfs.

A report documenting the creation of the website and the toll-free number shall be filed with the Commission no later than six months from the date of issuance of the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401.

Article 423. The licensee shall implement the *Programmatic Agreement Among The Federal Energy Regulatory Commission And The Idaho State Historic Preservation Officer For Managing Historic Properties That May Be Affected By A License Issuing To PacifiCorp For The Continued Operation and Maintenance Of The Soda Project (FERC No. 20), Grace-Cove Project (FERC No. 2401) And Oneida Project (FERC No. 472) In Caribou And Franklin Counties, Idaho*, executed on February 25, 2003, and including but not limited to the Historic Properties Management Plan (HPMP) for the projects.

Consistent with the Programmatic Agreement and within one year of license issuance, the licensee shall file with the Commission, for approval, a HPMP. In the event that the Programmatic Agreement is terminated, the licensee shall implement the provisions of its approved HPMP. The Commission reserves the authority to require changes to the HPMP at any time during the term of the license. If the Programmatic Agreement is terminated prior to Commission approval of the HPMP, the licensee shall obtain approval from the Commission and the Idaho State Historic Preservation Officer before engaging in any ground-disturbing activities or taking any other action that may affect any historic properties within the projects' area of potential effects.

Article 424. The licensee, in consultation with the ECC, shall develop a Land Management Plan for the Project. The Land Management Plan 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. The Land Management Plan shall include all new project lands that are in the expanded project boundaries for the Grace-Cove and Oneida developments, required by Article 427. The plan shall be filed with the Commission for approval, within one year from the date of issuance of this license or on an alternative schedule as determined by the Project Implementation Plan required under Article 401. At a minimum, the plan shall include the following provisions:

(a) a description of any existing or proposed measures to be implemented on licensee-owned lands to reduce livestock grazing impacts, including an implementation schedule.

(b) a description of any existing or proposed measures to be implemented to protect and improve habitat and wetlands on project lands and in the Cove bypassed reach, including an implementation schedule.

(c) documentation of the establishment of a shoreline buffer zone on licensee-owned lands, the installation of fencing on the buffer zone, and implementation of the associated provisions, required under Articles 425 and 426. This documentation shall include a detailed description of the buffer zone and fencing, including appropriate maps or drawings showing the location and width of the buffer zone and fencing in relation to the Bear River and reservoirs and around wetlands and springs for each of the developments within the project boundary.

The licensee shall include with the plan documentation of consultation with the above entities, copies of comments and recommendations on the completed plan after it

has been prepared and provided to the agencies and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 425. The licensee shall, in consultation with the ECC, prepare a shoreline buffer zone plan 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. The plan shall be filed with the Commission for approval within six months of license issuance or on an alternative schedule as determined by the Project Implementation Plan required under Article 401. The shoreline buffer zone shall also apply to licensee-owned lands within any new project lands that are in the expanded project boundaries for the Grace-Cove and Oneida developments, as required by Article 427. 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.

The licensee shall include with the plan documentation of consultation with the above entities, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 426. The licensee, in consultation with the ECC, shall prepare a buffer zone plan for licensee-owned land within the Cove development bypassed reach, to prevent the encroachment of livestock and protect riparian vegetation. The plan shall be filed with the Commission for approval within one year of license issuance or on an alternative schedule as determined by the Project Implementation Plan required under Article 401. Fencing shall be constructed to exclude livestock while allowing access by

big game and other wildlife, but at the same time not reduce benefits that private landowners receive from unhindered livestock access to the Cove bypassed reach. In addition, the licensee shall fund 25% of the cost of fencing the buffer zone on non-licensee private land in the Cove bypassed reach 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 bypassed reach with the consent of the landowners. This maintenance on non-licensee land shall not include paying for repairs resulting from intentional destruction or vandalism.

The licensee shall include with the plan documentation of consultation with the above entities, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 427. The licensee shall expand the project boundary at the Grace-Cove and Oneida developments to ensure continued recreational access to the Bear River in the vicinity of these developments. At the Grace-Cove development, the expanded boundary shall include PacifiCorp lands on both sides of the bypassed reach upstream of Cove dam and the Grace powerhouse. At the Oneida development, the expanded boundary shall include all PacifiCorp and BLM lands from the existing downstream project boundary, below the powerhouse, to the proposed boater takeout at the cattle guard in Oneida Canyon, on the primary access road side of the Bear River, between the road and the river or 200 feet from the river, whichever is greater. The licensee shall file revised Exhibit G drawings with the Commission, showing their recommended changes in the project boundary, within eight months year after the issuance of the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401. This filing shall also include survey data on the total area of additional project lands.

Article 428. (a) In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters, and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may

exercise the authority only if the proposed use and occupancy are consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article.

If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any noncomplying structures and facilities.

(b) The type of use and occupancy of project lands and waters for which the licensee may grant permission without prior Commission approval are:

(1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancements.

To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee shall: (1) inspect the site of the proposed construction; (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site; and (3) determine that the proposed construction is needed and would not change the basic contour of the impoundment shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The licensee may convey easements or rights-of-way across, or leases of, project lands for: (1) replacement, expansion, realignment, or maintenance of bridges or roads where all necessary state approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project impoundment. No later than January 31 of each year, the licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The licensee may convey fee title to, easements or rights-of-way across, or leases of, project lands for: (1) construction of new bridges or roads for which all necessary state and approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary and state water quality certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is 5 acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from project waters at normal surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year.

At least 60 days before conveying any interest in project lands under this paragraph (d), the licensee must submit a letter to the Director, Office of Energy Projects, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G map may be used), the nature of the proposed use, the identity of any Federal or state agency official consulted, and any Federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraphs (c) or (d) of this article:

(1) Before conveying the interest, the licensee shall consult with Federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include the following covenants running with the land: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands shall occur in a manner that shall protect the scenic, recreational, and environmental values of the project; and (iii) the grantee shall not unduly restrict public access to project waters.

(4) The Commission reserves the right to require the licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article shall be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G drawings would be filed for approval for other purposes.

(g) The authority granted to the licensee under this article shall not apply to any part of the public lands and reservations of the United States included within the project boundary.

(G) The licensee shall serve copies of any Commission filing required by this order on any entity specified in this order to be consulted on matters related to the filing. Proof of service on these entities must accompany the filing with the Commission.

(H) This order is final unless a request for rehearing is filed within 30 days from the date of its issuance, as provided in Section 313(a) of the Federal Power Act. The filing of a request for rehearing does not operate as a stay of the effective date of this license or of any other date specified in this order, except as specifically ordered by the Commission. The licensee's failure to file a request for rehearing of this order shall constitute acceptance of this license.

J. Mark Robinson
Director
Office of Energy Projects

APPENDIX A

STATE OF IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

PacifiCorp=s Bear River Project=s 401 Water Quality Certification
June 23, 2003

The following conditions are necessary to ensure compliance with Idaho Water Quality Standards:

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 (AGrace WQMP@) to monitor temperature, dissolved oxygen, nutrients, specific conductance, and turbidity. The purpose of the Grace WQMP is to characterize water quality conditions in the Once 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. The Grace WQMP will record at an interval of 60 minutes or less, 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 vicinity of the Cove Project. 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 samples during each 7-day period [frequency to be discussed and determined with DEQ] for nutrients (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 gauging station below 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 PacifiCorp=s Bear River Projects 401 Water Quality Certification Plan 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 measured at a designated site between river miles 26 and 30 (see figure 3 in Dobrowoski and Allred).³⁵ PacifiCorp shall develop a relationship between ramping rate and stage at USGS Gage No. 10086500 and this designated downstream location. Once this relationship is established, PacifiCorp will conduct continuous monitoring of flows (on an interval of 15 minutes or less) 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.

³⁵Dobrowoski, James P. and Michael D. Allred. 1999. Potential for Bank Stability Decline Due to Drastic Flow Level Change in Bear River. Department of Rangeland Resources, Watershed Science Unit, Utah State University, Logan, Utah. December 8.

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 of 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 (AOneida 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. Continuous monitoring consisting of temperature, specific conductance, dissolved oxygen and turbidity will be conducted downstream of Riverdale in mainstem Bear River at the site between river miles 26 and 30 identified in paragraph 3 and recorded at an interval of 60 minutes or less 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 during the annual hydrograph in the Oneida reach. PacifiCorp shall implement the Oneida WQMP upon IDEQ approval pursuant to Paragraph 7 below.

6. If IDEQ determines, based upon data collected by PacifiCorp and any other relevant information, that 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. This includes the authority to amend this certification as a result of submission and approval of Total Maximum Daily Load plans 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 of the Settlement Agreement Resolving the Relicensing of The Bear River Hydroelectric Projects dated August 28, 2002. In addition, IDEQ shall, if requested, consider site specific criteria, variances and designated use changes when IDEQ reviews and makes determinations regarding water quality, regardless of 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 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 39-101 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.