

Electronically filed December 3, 2019

Kimberley D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

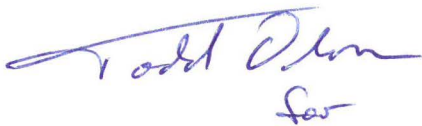
**Subject: Cutler Hydroelectric Project (FERC Project No. 2420-056)  
2019 Drawdown - Additional Information**

Dear Secretary Bose:

By Order to PacifiCorp, dated October 8, 2019, the Federal Energy Regulatory Commission (FERC), approved the 2019 drawdown of the Cutler Hydroelectric Project (FERC No. 2420), located in northern Utah. The drawdown began in late October, 2019, and was complete on November 18, 2019. Enclosed please find the additional information requested by FERC staff during a stakeholder meeting on October 28, 2019, consisting of a temporary interruption agreement between PacifiCorp and the canal company during a portion of the 2019 drawdown period. The agreement was reached by PacifiCorp and the Bear River Canal Company (BRCC), and granted PacifiCorp the right to dry up the canals during BRCC's winter water right period, and temporarily interrupt the delivery of irrigation water to shareholders for stockwatering.

The letter has been filed electronically and has a security classification of 'Public'. If you have any questions concerning these documents, please contact Eve Davies at 801-220-2245.

Sincerely,



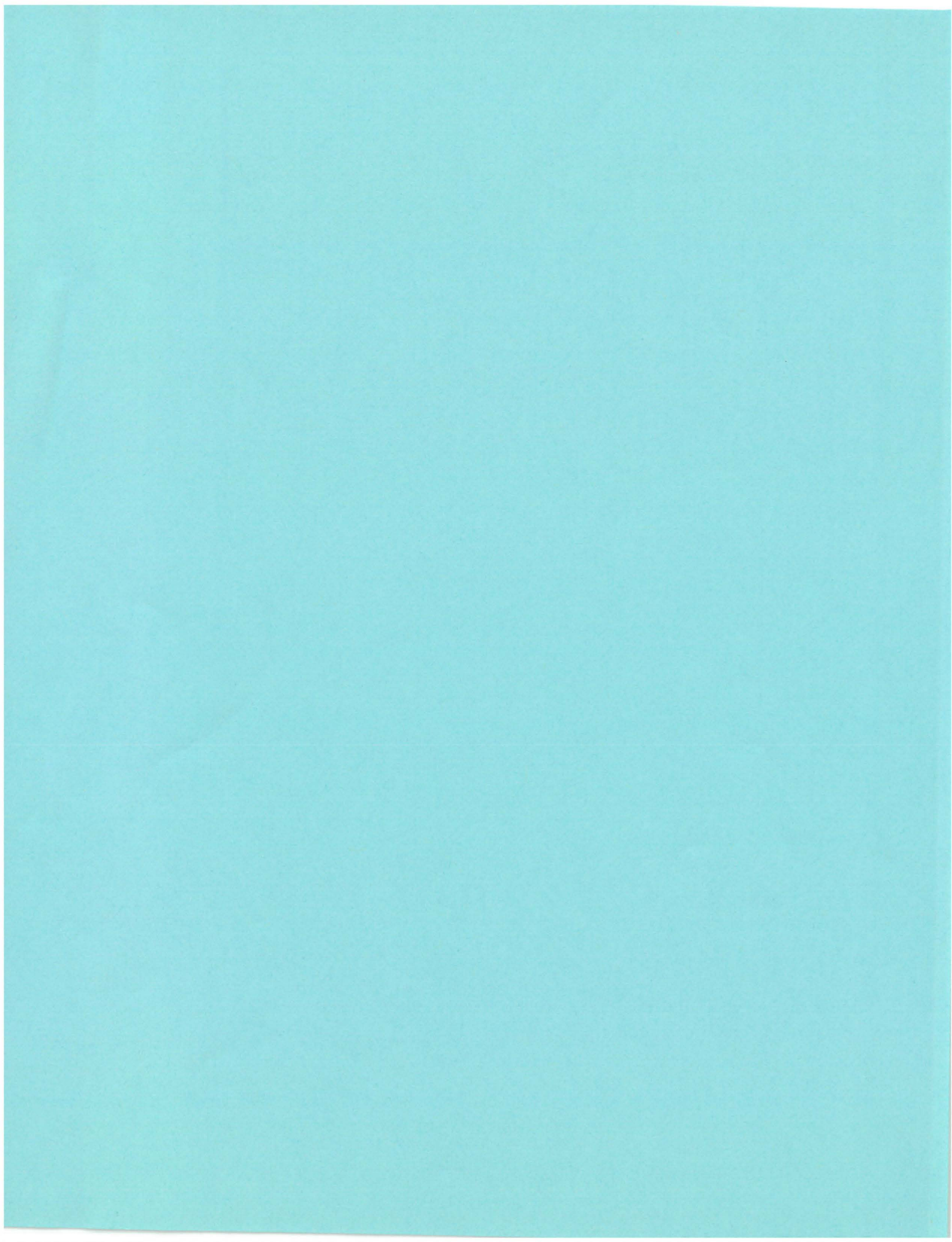
Mark Sturtevant  
Vice President, Renewable Resources

ms:ed:km

Kimberly D. Bose, FERC  
Cutler Hydroelectric Project (FERC Project No. 2420-056)  
Proposed 2019 Drawdown—Additional Information  
December 3, 2019

<b>Encl:</b>	Copy of 2019 Agreement for Temporary Interruption of BRCC winter water rights—Public
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<b>eFile:</b>	Kimberly D. Bose, Secretary Via eLibrary at <a href="http://www.ferc.gov">www.ferc.gov</a>	<b>eMail:</b>	Khatoon Melick <a href="mailto:Khatoon.Melick@ferc.gov">Khatoon.Melick@ferc.gov</a>
<b>eMail:</b>	Kenneth Hogan <a href="mailto:Kenneth.Hogan@ferc.gov">Kenneth.Hogan@ferc.gov</a>		





AGREEMENT FOR THE DELIVERY OF WATER  
BETWEEN  
BEAR RIVER CANAL COMPANY AND PACIFICORP

The Bear River Canal Company, a Utah nonprofit corporation ("**BRCC**"), and **PacifiCorp**, a corporation duly organized and existing under the laws of the State of Oregon desire to enter into the following agreement for the purpose of temporarily modifying the delivery of water from PacifiCorp to BRCC. BRCC and PacifiCorp are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**."

WHEREAS, an agreement entitled *Conveyance and Agreement* ("**1912 Agreement**") was entered into between Utah-Idaho Sugar Company and Utah Power & Light Company on December 30, 1912, for the delivery of irrigation and stock water, among other things.

WHEREAS, The successors to the 1912 Agreement are BRCC for the Utah-Idaho Sugar Company, and PacifiCorp, for Utah Power & Light Company.

WHEREAS, under the 1912 Agreement, PacifiCorp promises to deliver to BRCC if requested, through PacifiCorp's facilities at Cutler Dam, a maximum 900 cfs flow of water between and including May 1<sup>st</sup> and October 31<sup>st</sup> of each year ("**Summer**"), and a maximum 150 cfs flow of water between and including November 1<sup>st</sup> of each year and April 30<sup>th</sup> of the next succeeding year ("**Winter**").

WHEREAS, PacifiCorp desires to lower the Cutler Reservoir as of November 2019, thereby making it operationally infeasible to deliver stock water to BRCC for a period of time.

WHEREAS, BRCC is agreeable to the temporary interruption of stock water under the terms and conditions set forth below.

NOW THEREFORE, in consideration of the terms and conditions set forth herein, and the good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

**AGREEMENT**

1. PacifiCorp shall have the right to interrupt the delivery of 150 cubic feet per second (cfs) of stock water to BRCC at Cutler Dam, as of November 1, 2019.
2. From the time PacifiCorp ceases delivering stock water to BRCC, until the time PacifiCorp resumes stock water deliveries, PacifiCorp shall track and calculate the amount, in acre feet, not delivered to BRCC ("**Deferred Water**"), and supply that amount to BRCC according to the provisions below.
3. Beginning in April 2020, BRCC will have the right to delivery of the Deferred Water. BRCC must take delivery of the Deferred Water by May 1, 2022, or lose the right to receive any remaining undelivered Deferred Water.

4. BRCC, at its option, may request a portion of the Deferred Water during April of any given year of the three-year period specified in Section 3 above, until all the Deferred Water is delivered.
5. BRCC shall notify PacifiCorp of its request for Deferred Water at least five business days before the water is to be delivered.
6. The delivery of the Deferred Water will be in addition to any other water PacifiCorp is delivering to BRCC through contractual obligations. However, the delivery of Deferred Water and Winter water shall not exceed 900 cfs at any time.
7. Should PacifiCorp, using reasonable efforts, be unable to deliver Deferred Water due to weather or canal conditions, or operations constraints, PacifiCorp will confer with BRCC to postpone the delivery of Deferred Water.
8. Deferred Water delivered to BRCC will be an exercise of BRCC's natural flow rights.
9. PacifiCorp shall be responsible for the cost BRCC incurs notifying its members of the temporary drawdown. BRCC may deduct the actual reasonable notification costs from its annual payment to PacifiCorp, of \$4,000.00, under the 1912 Agreement. PacifiCorp shall not be responsible for any notification costs in excess of \$3,000.00.
10. Notice. Except when actual receipt is expressly required by the terms hereof, notice is considered given either: (i) when delivered in person to the recipient named below; (ii) after deposit in the United States mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage prepaid, addressed by name and address to the party or person intended; or (iii) after being transmitted by facsimile to the person and party intended and to the facsimile number indicated below, with verbal confirmation of satisfactory transmittal. If notice is by United State mail, notice is effective on the date of documented receipt. All notices shall be given to the following:

**PACIFICORP**

Attn: Connely Baldwin  
1407 W. North Temple, Suite 220  
Salt Lake City, UT 84116  
Phone: (801) 220-4636

**Bear River Canal Company**

Attn: Trevor Nelson  
Address: 275 North 1600 East, Tremonton, Utah 84337  
Phone: (435) 257-5975

Upon written notification, either party may designate a different individual or address for notices.



11. **Titles and Captions.** Section and paragraph titles and captions to this Agreement are for convenience only and shall not be deemed part of this Agreement and in no way define, limit, augment, extend, or describe the scope, content, or intent of any part or subparts of this Agreement.
12. **Applicable Law.** This Agreement shall be construed in accordance with and governed by the laws of the state of Utah.
13. **Binding Effect Upon Successors.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, legal representatives, and assigns; provided that this provision shall not be construed as permitting assignment, substitution, delegation, or other transfer of rights or obligations except strictly in accordance with the provisions of this Agreement.
14. **Integration.** Except for the 1912 Agreement, this Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto. No covenant, representation, or condition not expressed in this Agreement shall affect or be deemed to interpret, change, or restrict the express provisions hereof.
15. **Waiver.** No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such right or remedy or of any other covenant, agreement term, or condition. Any party may, by notice delivered in the manner provided in this Agreement, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation, or covenant of any other party. No waiver shall affect or alter the remainder of this Agreement but each and every other covenant; agreement, term, and condition hereof shall continue in full force and effect with respect to any other breach.
16. **Jury Trial Waiver.** TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THIS PROVISION SURVIVES ANY TERMINATION OF THIS AGREEMENT.
17. **Rights and Remedies.** The rights and remedies of any of the Parties shall not be mutually exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions. Each of the Parties confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or

other equitable remedy, but nothing herein contained is intended to or shall limit or affect any rights at law or by statute or otherwise of any Party aggrieved as against the other Party for a breach or threatened breach of any provision hereof, it being the intent of this paragraph to make clear the agreement of the Parties that the respective rights and obligations of the Parties hereunder shall be enforceable in equity as well as at law or otherwise.

18. Severability. In the event any condition, covenant, or other provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way effect any other covenant or condition contained herein. If such condition, covenant, or other provisions shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law. The Parties shall in good faith negotiate replacement provisions for any provisions that have been deemed void or invalid and severed from this Agreement.

19. Enforceability and Litigation Expenses. If any action, suit, or proceeding is brought by a Party hereto with respect to a matter or matters covered by this Agreement or if a Party finds it necessary to retain an attorney to enforce its rights under this Agreement, all costs and expenses of the prevailing Party incident to such proceeding or retention, including reasonable attorney's fees, shall be paid by the non-prevailing Party.

20. Authorization. Each individual executing this Agreement represents and warrants that he or she has been duly authorized by appropriate action of the governing body of the Party for which he or she signs to execute and deliver this Agreement in the capacity and for the entity set forth where he or she signs and that as a result of his or her signature, this Agreement shall be binding upon the Party for which he or she signs.

21. IN WITNESS WHEREOF, the Parties have executed this Agreement in counterparts as of the dates below.

22.

BEAR RIVER CANAL COMPANY

Sign: Curtis L Marble

Print: Curtis L Marble

Its: \_\_\_\_\_

Date: Nov 30 2019

PACIFICORP

Sign: \_\_\_\_\_  
Print: Devin Digitally signed  
by Devin Pharis  
Date: \_\_\_\_\_

Print: Pharis  
Its: \_\_\_\_\_  
2019.11.04  
15:19:31 -07'00'

Date: \_\_\_\_\_