

Utah Change Application Package



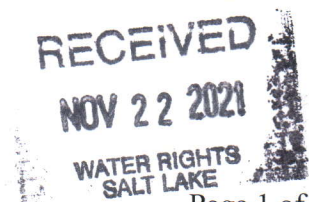
Dry Canyon Pumped Storage Project

Utah Water Right No. 23-3929

(Corresponding to Idaho Water Right Nos.
11-248, 11-249, 11-250, and 11-251)



November 22, 2021



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Note: A copy of the Idaho Transfer Application Package (“ITAP”) is submitted for filing with UDWRi as a separate document.

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Application Doc #1: COVER LETTER FOR UCAP



Pacific Power |
Rocky Mountain Power
1407 West North Temple
Salt Lake City, Utah 84116

November 22, 2021

Teresa Wilhelmsen, P.E.
Utah State Engineer
Utah Division of Water Rights
1594 W. North Temple Suite 220
P.O. Box 146300
Salt Lake City, UT 84114-6300

Re: PacifiCorp's Application for Permanent Change of Water for the Dry
Canyon Pumped Storage Project, based on its Bear Lake Reservoir Decreed
Rights, Water Right No. 23-3929

Dear Ms. Wilhelmsen:

On behalf of PacifiCorp, I am pleased to submit for filing the Utah Change Application Package ("UCAP"). The UCAP includes this cover letter, Application for Permanent Change of Water form, and Attachments A through D, together with cover page and a table of contents.

This application is filed in support of PacifiCorp's proposed pumped storage project ("Dry Canyon Project" or "Project"). The Project will provide instantaneous backup supplies of clean hydroelectric energy. To store energy, the Project will pump water to an upper reservoir using a variety of other energy sources, including renewable energy and excess energy available on the regional power grid. That stored energy will provide grid resiliency while improving the reliability of intermittent solar and wind energy sources throughout the region.

Although the Dry Canyon Project is located entirely in Idaho, it relies on PacifiCorp's Bear Lake Reservoir Decreed Rights, which are decreed in both Utah and Idaho. In deference to the respective States and the Bear River Commission, PacifiCorp is simultaneously filing an Application for Transfer of Water Right (for Idaho Water Right Nos. 11-248, 11-249, 11-250, and 11-251) with the Idaho Department of Water Resources. The Idaho application is included within a compilation of application documents called the Idaho Transfer Application Package ("ITAP"). The Utah and Idaho applications are functionally identical in that they seek the same authorization from the corresponding regulatory agency in each State.

Teresa Wilhelmsen, P.E.
November 22, 2021
Page 2

The UCAP references and incorporates by reference the ITAP, a copy of which is also submitted for filing.

PacifiCorp's Bear Lake Reservoir Decreed Rights authorize it to operate its existing Bear Lake Facilities in Utah and Idaho. If this application is approved, PacifiCorp will use those rights for the Dry Canyon Project, relying entirely on water already diverted and stored under those rights and already under PacifiCorp's control without any additional diversions from the Bear River. The Project's only effect on the water resource (a modest amount of evaporative loss and dead storage in the Upper Reservoir) will be fully mitigated.

The Project will not impair or adversely affect (1) the operation of PacifiCorp's facilities in Bear Lake, Mud Lake, or down river, (2) the availability or reliability of Bear Lake storage water to irrigators in Idaho and Utah, or (3) PacifiCorp's commitments and obligation to the States and various stakeholders.


If desired by the States, PacifiCorp is willing to explore broader opportunities for operational changes to the storage operations at Bear Lake in addition to the Dry Canyon Project. However, the Project has independent utility and can move forward irrespective of any other operational changes.

PacifiCorp welcomes and encourages regulatory entities, elected officials, and stakeholders in both States to participate and engage fully in the processing of both the UCAP and the ITAP.

For your convenience and that of other officials, staff, parties, and stakeholders in both Utah and Idaho, PacifiCorp will distribute electronic and/or bound, double-sided, tabbed courtesy copies of the UCAP and ITAP.

Accompanying this submission is a filing fee in the amount of \$1,000.

Sincerely,



Mark Sturtevant
Vice President, Renewable Resources
PacifiCorp Energy

Submitted with this letter:

- (1) Utah Change Application Package
- (2) A copy of Idaho Transfer Application Package
- (3) Filing fee in the amount of \$1,000

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**Application Doc #2: APPLICATION FOR PERMANENT CHANGE
OF WATER**

APPLICATION FOR PERMANENT CHANGE OF WATER

STATE OF UTAH

Rec. by JEG

Fee Am \$1,000.00

Receipt # 4-06552
check 8628

For the purpose of obtaining permission to make a permanent change of water in the State of Utah, application is hereby made to the State Engineer, based upon the following showing of facts, submitted in accordance with the requirements of Section 73-3-3 Utah Code Annotated, as amended.

CHANGE APPLICATION NUMBER: 248114
(c94068WKNIGHT)

WATER RIGHT NUMBER: 23-3929

This Change Application proposes to change the POINT(S) OF DIVERSION, PLACE OF USE

1. OWNERSHIP INFORMATION.

A. NAME: PacifiCorp
ADDRESS: Attn: Mark Sturtevant, VP Renewable Resources
825 NE Multnomah St, Ste 1800
Portland, OR 97232

B. PRIORITY OF CHANGE: 11/22/21

FILING DATE: 11/22/21

C. EVIDENCED BY: 23-3929 (DEC)

* DESCRIPTION OF CURRENT WATER RIGHT: *

2. SOURCE INFORMATION.

A. QUANTITY OF WATER: 6,000.0 cfs

B. SOURCE: Bear River, Bear Lake, Mud Lake

COUNTY: Rich

C. POINT(S) OF DIVERSION.

POINTS OF DIVERSION -- SURFACE:

- (1) S 0 feet W 0 feet from NE corner, Section 34, T 13S, R 44E, BOBM
DIVERT WORKS: Stewart Dam (Rainbow Canal)
SOURCE: Bear River
- (2) S 0 feet E 0 feet from NW corner, Section 17, T 14S, R 44E, BOBM
DIVERT WORKS: Outlet Canal Headgates
SOURCE: Mud Lake inflows
- (3) S 0 feet E 0 feet from NW corner, Section 17, T 14S, R 45E, BOBM
DIVERT WORKS: Ream-Crocket Canal Intake(fka Dingle Inlet Canal)
SOURCE: Bear River
- (4) S 0 feet E 0 feet from NW corner, Section 15, T 15S, R 44E, BOBM
DIVERT WORKS: Bear Lake Causeway Inlet
SOURCE: Bear Lake inflows (see Expl.)

Permanent Change

RECEIVED

NOV 22 2021

SCANNED SM

- (5) S 0 feet E 0 feet from NW corner, Section 16, T 15S, R 44E, BOBM
DIVERT WORKS: Lifton Pump Station
SOURCE: Bear Lake inflows

3. STORAGE. Water is diverted for storage into:

- (1) Bear Lake Reservoir, from Jan 1 to Dec 31.
CAPACITY: 1,479,676.000 ac-ft. INUNDATING: 84,880.0000 acs.

4. WATER USE INFORMATION.

IRRIGATION: from Apr 1 to Sep 30. Total Acres: 0.0001.

STOCKWATERING: from Apr 1 to Sep 30. Sole Supply: 1.0000 Total Stock: 0.0000

POWER: from Jan 1 to Dec 31. Power Plant Type: Hydro-Electric.
Power Plant Name: Cutler and others.
Rated Capacity: .

* THE FOLLOWING CHANGES ARE PROPOSED: *

5. SOURCE INFORMATION.

A. QUANTITY OF WATER: 6,000.0 cfs
Same as Heretofore. See Explanatory.

B. SOURCE: Same as Heretofore COUNTY: Rich

C. POINT(S) OF DIVERSION. Same as HERETOFORE, but ADDING the following:

POINTS OF DIVERSION -- SURFACE:

- (1) N 0 feet W 0 feet from SE corner, Section 11, T 15S, R 44E, BOBM
DIVERT WORKS: Lower Reservoir North Gate
SOURCE: Bear Lake Reservoir Storage
(2) S 0 feet W 0 feet from NE corner, Section 15, T 15S, R 44E, BOBM
DIVERT WORKS: Lower Reservoir West Gate
SOURCE: Bear Lake Reservoir Storage

POINT OF REDIVERSION:

- (1) S 0 feet E 0 feet from NW corner, Section 13, T 15S, R 44E, BOBM
DIVERT WORKS: Powerhouse Pumping Intake
SOURCE: Bear Lake Reservoir Storage

POINT OF RETURN:

- (1) S 0 feet E 0 feet from NW corner, Section 13, T 15S, R 44E, BOBM
COMMENT: Powerhouse Tailrace

D. COMMON DESCRIPTION: Northern Bear Lake Area, ID

6. STORAGE. Same as HERETOFORE, but ADDING the following:

Water is diverted for storage into:

- (1) Lower Reservoir, from Jan 1 to Dec 31.
CAPACITY: 27,900.000 ac-ft. INUNDATING: 1,390.0000 acs. DAM HEIGHT: 22 ft.
Area inundated includes all or part of the following legal subdivisions:

BASE TOWN RANG SEC	NORTH-WEST¼				NORTH-EAST¼				SOUTH-WEST¼				SOUTH-EAST¼			
	NW	NE	SW	SE	NW	NE	SW	SE	NW	NE	SW	SE	NW	NE	SW	SE
BO 15S 44E 10				X ***			X	X ***		X		X ***	X	X	X	X
11			X	X ***			X	X ***	X	X	X	X ***	X	X	X	X
12		X	X	X ***					X	X	X	X ***				
13	X	X	X	X ***		X			X	X	X	X ***				
14	X	X	X	X ***	X	X	X		X	X	X	X ***	X	X	X	X
15		X		X ***	X	X	X	X ***					X			X
23				***		X		***					***			
24	X			***				***					***			

- (2) Upper Reservoir, from Jan 1 to Dec 31.
CAPACITY: 26,880.000 ac-ft. INUNDATING: 182.0000 acs. DAM HEIGHT: 530 ft.
Area inundated includes all or part of the following legal subdivisions:

BASE TOWN RANG SEC	NORTH-WEST¼				NORTH-EAST¼				SOUTH-WEST¼				SOUTH-EAST¼			
	NW	NE	SW	SE	NW	NE	SW	SE	NW	NE	SW	SE	NW	NE	SW	SE
BO 15S 45E 07	X	X	X	X ***	X	X	X	X ***	X	X	X	X ***	X	X	X	X
18	X	X	X	X ***	X	X	X	X ***	X	X	X	X ***	X	X	X	X

7. WATER USE INFORMATION. Same as HERETOFORE, but ADDING the following:

POWER: from Jan 1 to Dec 31. Power Plant Type: Hydro-Electric.
Power Plant Name: DryCanyon Powerhouse
Rated Capacity: 1800 MW.

8. PLACE OF USE. Same as HERETOFORE, but ADDING the following:

(Which includes all or part of the following legal subdivisions:)

BASE TOWN RANG SEC	NORTH-WEST¼				NORTH-EAST¼				SOUTH-WEST¼				SOUTH-EAST¼			
	NW	NE	SW	SE	NW	NE	SW	SE	NW	NE	SW	SE	NW	NE	SW	SE
BO 15S 44E 13	X	X	X	X ***	X	X	X	X ***	X	X	X	X ***	X	X	X	X

9. EXPLANATORY.

NOTICE: Because Idaho may have exclusive jurisdiction for the Project's change application, all interested persons, including those who may participate in the Utah application proceedings, are encouraged to fully participate in the proceedings for the Idaho Transfer Application filed with the Idaho Department of Water Resources.

This application is filed in support of PacifiCorp's proposed pumped storage project (Dry Canyon Project or Project). The Project will provide instantaneous backup supplies of clean hydroelectric energy. To store energy, the Project will pump water to an upper reservoir using a variety of other energy sources, including renewable energy and excess energy available on the regional power grid. That stored energy will provide grid resiliency while improving the reliability of intermittent solar and wind energy sources throughout the region.

Although the Dry Canyon Project is located entirely in Idaho, it relies on PacifiCorp's Bear Lake Decreed Rights, which are decreed in both Utah and Idaho. In deference to the respective States and the Bear River Commission, PacifiCorp is simultaneously filing an Application for Transfer of Water Right (for Idaho Water Right Nos. 11-248, 11-249, 11-250, and 11-251) with the Idaho Department of Water Resources. The Idaho application is included within a compilation of application documents called the Idaho Transfer Application Package (ITAP). The Utah and Idaho applications are functionally identical in that they seek the same authorization from the corresponding regulatory agency in each State.

PacifiCorp's Bear Lake Reservoir Decreed Rights authorize it to operate its existing Bear Lake Facilities in Utah and Idaho. If this application is approved, PacifiCorp will use those rights for the Dry Canyon Project, relying entirely on water already diverted and stored under those rights and already under PacifiCorp's control without any additional diversions from the Bear River. The Project's only impact on the water resource (a modest amount of evaporative loss and dead storage in the Upper Reservoir) will be fully mitigated.

The Project will not impair or adversely affect (1) the operation of PacifiCorp's facilities in Bear Lake, Mud Lake, or down river, (2) the availability or reliability of Bear Lake storage water to irrigators in Idaho and Utah, or (3) PacifiCorp's commitments and obligation to the States and various stakeholders.

If desired by the States, PacifiCorp is willing to explore broader opportunities for operational changes to the storage operations at Bear Lake in addition to the Dry Canyon Project. However, the Project has independent utility and can move forward irrespective of any other operational changes.

PacifiCorp welcomes and encourages regulatory entities, elected officials, and stakeholders in both States to participate and engage fully in the processing of both the ITAP and the UCAP.

Please refer to the Utah Change Application Explanatory attached to the


CHANGE APPLICATION No.: 948114 for Water Right: 23-3929 (c94068WKNIGHT) Page: 5

application for full explanation and further details.

The Idaho Transfer Application Package or 'ITAP' is filed in support of this Utah change application and is incorporated by reference for review and further detailed explanation and background information.

10. SIGNATURE OF APPLICANT(S).

The undersigned hereby acknowledges that even though he/she/they may have been assisted in the preparation of the above-numbered application through the courtesy of the employees of the Division of Water Rights, all responsibility for the accuracy of the information contained herein including maps and other documents attached, at the time of filing, rests with the applicant(s).



PacifiCorp

Attachment A: UTAH CHANGE APPLICATION – EXPLANATORY

Utah Change Application Explanatory

Introduction

The Utah Change Application Package (“UCAP”) is a collection of application documents consisting of PacifiCorp’s cover letter to UDWRi, the Application for Permanent Change of Water, this Explanatory, key pages from the Kimball Decree, the Project/Hereafter Maps, and the Pinpoint Maps.

This “Explanatory” is set forth to 1) define more clearly the full purpose of the application, and 2) provide further explanation of the specific application paragraphs.

This application is filed in support of PacifiCorp’s proposed pumped storage project (“Dry Canyon Project” or “Project”). The Project will provide instantaneous backup supplies of clean hydroelectric energy. To store power, the Project will employ a variety of energy sources including renewable energy and excess energy available on the regional power grid to pump water to an upper reservoir. That stored power will provide grid resiliency while improving the reliability of intermittent solar and wind energy sources throughout the region.

Although the Dry Canyon Project is located entirely in Idaho, it relies on PacifiCorp’s Bear Lake Reservoir Decreed Rights, which are decreed in both Utah and Idaho. In deference to the respective States and the Bear River Commission, PacifiCorp is simultaneously filing an Application for Transfer of Water Right (for Idaho Water Right Nos. 11-248, 11-249, 11-250, and 11-251) with the Idaho Department of Water Resources. The Idaho application is included within a compilation of application documents called the Idaho Transfer Application Package (“ITAP”). The Utah and Idaho applications are functionally identical in that they seek the same authorization from the corresponding regulatory agency in each State.

PacifiCorp’s Bear Lake Reservoir Decreed Rights authorize it to operate its existing Bear Lake Facilities in Idaho and Utah. PacifiCorp proposes to use those rights for the Project, relying entirely on water already diverted and stored in the Bear Lake Reservoir under those rights and already under PacifiCorp’s control without any additional diversions from the Bear River. The Project’s only impact on the water resource (a modest amount of evaporative loss and dead storage associated with a new reservoir) will be fully mitigated.

The Project will not impair or adversely affect (1) the operation of PacifiCorp’s facilities in Bear Lake, Mud Lake, or down river, (2) the availability or reliability of Bear Lake storage water to irrigators in Idaho and Utah, or (3) PacifiCorp’s commitments and obligation to the States and various stakeholders.

If desired by the States, PacifiCorp is willing to explore broader opportunities for operational changes to the storage operations at Bear Lake in addition to the Dry Canyon Project. However, the Project has independent utility and can move forward irrespective of any other operational changes.

The Project is located in Idaho and the only water right changes sought under the application are in Idaho, including the addition of new places of use (and possibly points of diversion) associated with the new Upper and Lower Reservoirs, and Dry Canyon Powerhouse all in Idaho. No change to the quantity or to any other element of the rights is sought.

For further explanation of the Project and the purpose of this change application, see “Narrative” (Attachment B), section II (Overview and Project description) on page 13 of the ITAP.

This application is premised on the assumption that an application for change in Utah, Idaho or both is required.¹¹⁶ If one is required, Idaho may have exclusive jurisdiction under the Amended Bear River Compact to administer and approve a change application for the Project.¹¹⁷ Utah potentially has jurisdiction to act on the Utah change application.¹¹⁸ But even without jurisdiction, Utah may have some administrative role if Idaho approves the change application. *Id.*

Because Idaho may have exclusive jurisdiction for the Project’s change application, all interested persons, including those who may participate in the UCAP proceedings, are encouraged to fully participate in the proceedings for the ITAP filed with the Idaho Department of Water Resources (IDWR) on or about the same date as the UCAP.

Additional information referenced in this Explanatory is set out in the various Attachments collected in PacifiCorp’s Idaho Transfer Application Package (“ITAP”). The entire ITAP is hereby filed with and incorporated by reference as part of the UCAP for review and further detailed explanation and background information.

See “Short Names and Definitions” (Attachment A) on page 1 of the ITAP for terms used in this application.

¹¹⁶ See, “Narrative” (Attachment B), section XII (Whether any change or appropriation is required) beginning on page 64 of the ITAP and section XIII (Jurisdiction under the Compact) beginning on page 74 of the ITAP.

¹¹⁷ *Id.*, section XIII.A (Presumptive Idaho jurisdiction under the Amended Compact) beginning on page 74.

¹¹⁸ *Id.*, section XIII.B (Potential Utah jurisdiction or other administrative role) beginning on page 74.

The Project/Hereafter Maps and Pinpoint Maps submitted with the UCAP are the same as the Project/Hereafter Maps in Attachment E and the Pinpoint Maps in Attachment F of the ITAP.

Further explanatory notes for the Utah change application

¶ 1.A. Owner Information

PacifiCorp's key contact information is set out below. Please include all four of these people on the service list. PacifiCorp will inform IDWR, UDWRi, and all parties to these proceedings of any changes in this contact information.

PacifiCorp

Mark Sturtevant
Vice President, Renewable Resources
PacifiCorp Energy
825 NE Multnomah St, Ste 1800
Portland, OR 97232
mark.sturtevant@pacificorp.com
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Rocky Mountain Power
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Salt Lake City, UT 84116
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Utah Water Counsel

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Salt Lake City, UT 84111
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Office: 801-359-3663

Idaho Water Counsel

Christopher H. Meyer
Givens Pursley LLP
601 W Bannock St
Boise, ID 83702
chrismeyer@givenspursley.com
Office: 208-388-1236

¶ 1.C. Right Evidenced By

Decrees:

Kimball Decree: Utah Power & Light Co. v. Richmond Irrigation Co., Final Decree, Utah District Court, First Judicial District, dated February 21, 1922. (Attachment B of the UCAP)

Dietrich Decree: Utah Power & Light Co. v. Last Chance Canal Co., Final Decree, Federal District Court, D. Idaho, dated July 14, 1920. (Attachment Q beginning on page 145 of the ITAP)

The Dietrich Main Narrative is the detailed description of the Bear Lake Reservoir Decreed Rights found in the first two paragraphs of § I(2) of the Dietrich Decree, pp. 7-8. The Dietrich Main Narrative is in Attachment Q on pages 153-154 of the ITAP.¹¹⁹ Each of the Decrees contains an identical “Schedule of Rights” for the Bear Lake Reservoir Decreed Rights describing the elements of each right. The relevant portion of the Schedule of Rights for the Dietrich Decree, § II, pp. 14-113, is in Attachment Q beginning on page 160 of the ITAP. The relevant portion of the Schedule of Rights for the Kimball Decree, § II, pp. 10-69, is in Attachment R beginning on page 187.

See discussion in “Narrative” (Attachment B), section VI (Dietrich and Kimball Decrees) on page 32 of the ITAP).

Award No. 1 in the “Schedule of Rights” are PacifiCorp’s Bear Lake Reservoir Decreed Rights:

¹¹⁹ The Kimball Decree also adopted by reference the broader narrative description of the rights set out in the Dietrich Main Narrative, Dietrich Decree § I(2) (first two paragraphs), pp. 7-8 (Attachment Q on pages 153-154) of ITAP: “The quantity of water released from such storage [the Bear Lake Reservoir Decreed Rights] and to which the plaintiff is entitled, flowing in Bear River at the Utah-Idaho State Line at any given time shall be determined as provided in the final decree of the District Court of the United States for the District of Idaho, Eastern Division, in Equity No. 203” Kimball Decree, § I(2), p. 6 (emphasis added).

“[5500 cfs of] water to be diverted from Bear River through what is known as the Rainbow [Stewart Dam] and Dingle Inlet [formerly known as Ream-Crocket Canal Intake] Canals. . . in Bear Lake County, Idaho, and to be carried into and stored in what is known as the Bear Lake Reservoir and withdrawn therefrom from time to time as needed or required by said Utah Power & Light Company, or its successors in interest, for the development of power or generating electric energy in any power plant which it may now have, or hereafter construct or acquire in or along Bear River, in the states of Idaho and Utah, and for irrigation purposes in what is generally known as Bear River Valley in said states.

[500 cfs of Bear Lake and Mud Lake] water to be stored in what is known as Bear Lake Reservoir, and withdrawn therefrom from time to time, as provided in the immediately preceding paragraph.” Kimball Decree, page 10.

¶ 2.A. Quantity of Water (Heretofore)

6,000 cfs is the total flow rate from all sources of the Bear Lake Reservoir Decreed Rights. PacifiCorp seeks no change in this diversion rate. The 6,000 cfs flow rate is broken down among the various sources in the decree as follows:

<u>Source</u>	<u>Quantity</u>	<u>Priority</u>	<u>Diversion Works</u>
Bear River	3000 cfs	Mar. 1, 1911	Stewart Dam and Ream-Crocket
Bear River	2500 cfs	Sept. 11, 1912	(same) Canal Intake
Bear Lake inflows	300 cfs	Sept. 1, 1912	Lifton Pump Station
Mud Lake inflows	<u>200 cfs</u>	Sept. 1, 1912	Outlet Canal Headgates
TOTAL	6000 cfs		

See also Attachment A, Table 2 (Definitions for groups of Bear Lake Reservoir Decreed Rights) on page 11 and Attachment K (Pre-transfer Rights (as displayed in IDWR database and as they could be updated)) on page 115 of the ITAP.

The Dietrich and Kimball Decrees quantify the rights only in terms of flow rate without a volume constraint.¹²⁰ See Kimball Decree, § II(1), p. 10 (Schedule of Rights) (Attachment R on page 187) and Dietrich Decree, § II(1) (Schedule of Rights), p. 14 (Attachment Q on page 160). If a volume is stated, it should be identified as descriptive of the size of the Upper and Lower Reservoirs and not as an element of the water right. Its operational effect should be understood in the context of the Decrees, which anticipate and authorize multiple fills and additional power production. (See further discussion of

¹²⁰ As noted in the DOI Report, p. 7 (Attachment Y of the ITAP), “The decree did not place a limit on the maximum storage which might be created in Bear Lake or differentiate between power and irrigation-storage water interests.”

the volume issue in section XII.B.2 on page 66 of the ITAP and, in particular, footnote 91 on page 67.)

The storage capacity of large irregular water bodies (like the Bear Lake Reservoir) can only be estimated. The volumes in Attachment G, Table 3 (Reservoir dimensions and volumes) on page 105 of the ITAP and as set out below show the current best estimate (subject to revision) of the storage capacity of each reservoir component.

1,421,000 acre-feet is the presently calculated active storage capacity of Bear Lake between its minimum elevation of 5,902.00 feet and its historical maximum elevation of 5,923.65 feet.¹²¹ The presently calculated active storage capacity of Mud Lake is 58,676 AF.¹²² The sum of the two (i.e., the active storage capacity of “Bear Lake Reservoir”) is 1,449,676 acre-feet. PacifiCorp seeks no change in these volumes. As noted, these estimated capacities are not a constraint or an element of the water right.

¶ 2.B. County (Heretofore)

Rich County, Utah and Bear Lake County, Idaho

¶ 2.C. Point(s) of Diversion (Heretofore)

The Kimball and Dietrich Decrees provide legal descriptions for only the two Bear River points of diversion. In the Decrees, no legal descriptions for the Bear Lake and Mud Lake storage impoundment points of diversion for the inflows are given.

POINTS OF DIVERSION (located in Idaho):

The five listed points of diversion on the change application form are in Idaho off the Boise Meridian (BOBM). The points are located near the described section corners. If the specific distances from the corners are needed, they can be estimated from the attached Pinpoint Maps. In addition, as prescribed in Utah Code 73-3-2(2)(d), provided below are points of surveyed descriptions from a monument known as Bench Mark (BM) 28 FMK, referenced as BM 28 FMK.

- (1) N 33,764 Ft. W 5,623 Ft. from BM 28 FMK. Stewart Dam
- (2) N 18,170 Ft. W 19,620 Ft. from BM 28 FMK. Outlet Canal Headgates
- (3) N 17,579 Ft. E 13,186 Ft. from BM 28 FMK. Ream-Crocket Canal Intake
- (4) S 13,641 Ft. W 12,294 Ft. from BM 28 FMK. Lifton Pump Station

¹²¹ See “Narrative” (Attachment B), section VIII.B.4 (Volume of storage for the Dry Canyon Project) on page 47 of the ITAP for further information and documentation regarding volumes. The capacity of the Bear Lake at various elevations throughout its range is displayed in Attachment I, Table 5 (Bear Lake elevations), on page 109 of the ITAP.

¹²² See Attachment G, Table 3 (Reservoir dimensions and volumes) on page 105 of ITAP.

There is a possible alternative or additional point of diversion for Bear Lake inflows. See footnote 41 on page 39 of the ITAP. It is the Bear Lake Causeway Inlet referenced off the Bench Mark as S 14,398 Ft. W 8,010 Ft. from BM 28 FMK.

See Attachment M, Table 9 (PLSS descriptions of PODs for Bear Lake Reservoir Decreed Rights) on page 122 of the ITAP for quarter-quarter PLSS descriptions within which each of the points of diversion are located in Idaho.

See also “Narrative” (Attachment B), section VII.B (Points of diversion) on page 37 of the ITAP.

Description of Diverting Works, for further descriptions, see “Narrative” (Attachment B), section III (Existing Bear Lake Facilities) on page 21 of the ITAP.

¶ 3. Storage (Heretofore)

The Bear Lake Reservoir consists of both Bear Lake and Mud Lake located in Utah and Idaho:

“Said water to be diverted from Bear River through what is known as the Rainbow and Dingle Inlet Canals, the headworks of which are located respectively in [township, section, and range] in Bear Lake County, Idaho, and to be carried into and stored in what is known as the Bear Lake Reservoir” Schedule of Rights Narratives, Dietrich Decree § II(1), p. 14 (Attachment Q on page 160 of the ITAP) and Kimball Decree § II(1), p. 10 (Attachment R on page 187 of the ITAP). See also Dietrich Main Narrative, Dietrich Decree, § I(2) (first paragraph), p. 7 (Attachment Q on page 153 of the ITAP) (“ . . . and to impound and store in the Bear Lake Reservoir, consisting of Bear Lake and Mud or North Lake, in Rich County Utah, and Bear Lake County, Idaho”)

Place of Use: Bear Lake Reservoir lies within T 15S R 43E, T 15S R 44E, T 16S R 43E, T 16S R 44E, Boise Meridian, and T 15N R 5E, T 15N R 6E, T 14N R 5E, T 14N R 6E, T 13N R 5E, T 13N R 6E, Salt Lake Base and Meridian.

¶ 4. Water Use Information (Heretofore)

IRRIGATION: “. . . for irrigation purposes in what is generally known as Bear River Valley in [Utah and Idaho].” Kimball Decree, page 10; Dietrich Decree, page 14 (Attachment Q on page 160 of the ITAP).

“‘Irrigation Rights’ include the right to divert and use water for irrigation and agricultural purposes . . . throughout the irrigation season of each year, which is defined as that portion of each calendar year which commences on the 1st day of April and closes on the 30th day of September.” Kimball Decree, page 7; Dietrich Decree, page 10 (Attachment Q on page 156 of the ITAP).

Period of Use: April 1 to September 30 as described in Decrees. The period of use for irrigation in Utah is now April 1 to October 31 as administered by the Bear River water commissioners and the State Engineer.

Place of Use: Bear River Valley in Utah and Idaho.

STOCKWATER: “‘Irrigation Rights’ include the right to divert and use water for . . . stock watering purposes throughout the irrigation season of each year, which is defined as that portion of each calendar year which commences on the 1st day of April and closes on the 30th day of September.” Kimball Decree, page 7; Dietrich Decree, page 10 (Attachment Q on page 138 of the ITAP).

Period of Use: April 1 to September 30.

Place of Use: Bear River Valley in Utah and Idaho.

POWER: “. . . for the development of power or generating electric energy in any power plant which it may now have, or hereafter construct or acquire in or along Bear River, in the States of Idaho and Utah.” Kimball Decree, page 10; Dietrich Decree, page 14 (Attachment Q on page 160 of the ITAP).

“‘Power Rights’ include the right to divert and use water for the generation of electric power and such rights of diversion and use are continuous throughout the year without limitation to time or season.” Kimball Decree, page 7; Dietrich Decree, page 14 (Attachment Q on page 160 of the ITAP).

Period of Use: January 1 to December 31.

Place of Use: In or along Bear River, in Utah and Idaho.

“Other beneficial purposes” could also be identified based on the language of the Dietrich Decree. See footnote 97 on page 69 of the ITAP. See also section VIII.B.1 (No new purposes of use) on page 41 of the ITAP.

¶ 5.A. Quantity of Water (Hereafter)

Same as Heretofore. No change to the quantity of water is proposed. See discussion under ¶ 2.A. - Quantity of Water (Heretofore).

The active storage capacity of the proposed Upper Reservoir is 23,730 acre-feet, and its dead pool is 3,150 AF. The active storage capacity of the preferred¹²³ Lower Reservoir is also 23,730 acre-feet. But the Lower Reservoir volume is not an addition to system-wide storage capacity. See “Narrative” (Attachment B), section VIII.B.4 (Volume of storage for the Dry Canyon Project) on page 47 of the ITAP. The water stored in the Lower and Upper pumped storage reservoirs is from water already stored

¹²³ PacifiCorp’s preferred location for the Lower Reservoir is in the southeast corner of Mud Lake as depicted on the Overview Map and Project/Hereafter Maps. In anticipation of the alternatives analysis mandated by NEPA (which will be conducted during the course of FERC licensing, as discussed in the “Narrative” (Attachment B), section II.G (FERC application for preliminary permit) on page 21 of the ITAP), PacifiCorp has identified a larger area in red (7,691 acres) covering a larger portion of Mud Lake within which an alternative Lower Reservoir may be located.

under the Bear Lake Reservoir Decreed Rights and under PacifiCorp's control in the Bear Lake Reservoir. "Narrative" (Attachment B), section II.C (Description of Project facilities) on page 17 of the ITAP.

In the event the State Engineer decides to describe and quantify the hereafter water right in detail, it will need to address whether and, if so, how to quantify the volume of storage. The Dietrich and Kimball Decrees quantify the rights only in terms of flow rate without a volume constraint.¹²⁴ See Kimball Decree, § II(1), p. 10 (Schedule of Rights) (Attachment R on page 187) and Dietrich Decree, § II(1) (Schedule of Rights), p. 14 (Attachment Q on page 160). If a volume is stated, it should be identified as descriptive of the size of the reservoirs and not as an element of the water right. Its operational effect should be understood in the context of the Decrees.

The storage capacity of large irregular water bodies (like the Bear Lake Reservoir) can only be estimated. The volumes in Attachment G, Table 3 (Reservoir dimensions and volumes) on page 105 of the ITAP show the current best estimate (subject to revision) of the storage capacity of each reservoir component.

¶ 5.B. Source (Hereafter)

The sources are the same as described in the HERETOFORE, but a portion of the existing Bear Lake Reservoir storage water under PacifiCorp's Bear Lake Reservoir Decreed Rights, stored and held under PacifiCorp's control, will be pumped from the Lower Reservoir within the Bear Lake Reservoir into a new Upper Reservoir, both located in Idaho. See Attachment M, Table 11 (PLSS descriptions for Dry Canyon Project (PODs and other facilities)) on page 124 of the ITAP.

County (Hereafter)

Same as Heretofore: Rich County, Utah and Bear Lake County, Idaho

¶ 5.C. Points of Diversion (Hereafter)

It is uncertain whether IDWR will deem any of the Dry Canyon Project facilities to constitute a point of diversion or a point of redirection under Idaho practice. See, "Narrative" (Attachment B), section VIII.B.2 (Possible new points of diversion or redirection) starting on page 42 of the ITAP. Given that the Dry Canyon Project is located entirely in Idaho and any potential new points of diversion or redirection would be located in Idaho, the State Engineer should defer to IDWR in that determination. The ITAP identifies the location of the potential points of diversion and redirection by 40-

¹²⁴ As noted in the DOI Report, p. 7 (reproduced in Attachment Y of the ITAP), "The decree did not place a limit on the maximum storage which might be created in Bear Lake, or differentiate between power and irrigation-storage water interests."

acre tracts. See, Attachment M (PLSS legal subdivisions) on page 121 of the ITAP, “Narrative” (Attachment B), section II.C (Description of Project facilities) on page 17 of the ITAP, and Attachment L, Table 8 (Post-transfer description of water rights) on page 118 of the ITAP.

If it’s determined the Project entails new points of diversion, the points of diversion include those described in the HERETOFORE, with the addition of new points of diversion, redirection, and return as described in paragraph 5.C. of the change application. See below for further explanation of the Points of Diversion, Point of Rediversion and Point of Return.

Points of Diversion:

For the diversion of stored water in the Mud Lake portion of Bear Lake Reservoir into the proposed **preferred** Lower Reservoir located within Mud Lake:

Lower Reservoir – North Gate: S 9,766 Ft. W 1,795 Ft. from BM 28 FMK.

Lower Reservoir – West Gate: S 13,440 Ft. W 7,726 Ft. from BM 28 FMK.

See “Project/Hereafter Maps” and “Pinpoint Maps.”

Description of Proposed Diverting Works for preferred Lower Reservoir:

The North Gate and the West Gate in the new impoundment levy of the Lower Reservoir will open for stored water from Mud Lake (Bear Lake Reservoir) to initially fill the Lower Reservoir. See “Narrative” (Attachment B), section II.C (Description of Project facilities) on page 17 of the ITAP.

In addition to the **preferred** Lower Reservoir location, PacifiCorp proposes a **potential alternative** location zone for the Lower Reservoir. See, “Narrative” (Attachment B), section II.D (Potential alternative location for Lower Reservoir) on page 19 of the ITAP.

For the diversion of stored water in the Mud Lake portion of Bear Lake Reservoir into the **potential alternative** Lower Reservoir located within Mud Lake:

The specific points of diversion for the proposed alternative Lower Reservoir are unknown at this time until the FERC NEPA process is complete. The points of diversion will be located somewhere within the potential alternative location zone depicted in red on the Project/Hereafter Maps, and within the PLSS description of quarter-quarter sections in Attachment M, Table 11 (PLSS descriptions for Dry Canyon Project (PODs and other facilities)) on page 124 of the ITAP.

Description of Proposed Diverting Works for alternate Lower Reservoir: Gates or other diversion structures in any impoundment levy of the alternative Lower Reservoir to open for stored water from Mud Lake (Bear Lake Reservoir) to initially fill the Lower

Reservoir. *See* “Narrative” (Attachment B), section II.C (Description of Project facilities) on page 17 of the ITAP.

Point of Rediversion:

For the intake pipes in the Lower Reservoir up to the Dry Canyon Powerhouse: S 12,611 Ft. E 1,251 Ft. from BM 28 FMK. This point represents the end of the intake pipe from where water in the Lower Reservoir is diverted. This is the same location as the Powerhouse Tailrace described as the point of return, below.

See “Project/Hereafter Maps” and “Pinpoint Maps.”

Description of Proposed Powerhouse Pumping Intake: Pumps within the Dry Canyon Powerhouse will pump stored water from the Lower Reservoir through intake pipes up to the proposed new Upper Reservoir. *See* “Narrative” (Attachment B), section II.C (Description of Project facilities) on page 17 of the ITAP.

Point of Return:

If authorization is required in Utah for the water returning to the Lower Reservoir after generating power, stored water will be released from the Upper Reservoir for hydropower generation at the Dry Canyon Powerhouse and returned back to the Lower Reservoir through the Powerhouse Tailrace (same pipes as the intake pipes) at the same point as described above as the point of rediversion.

See “Project/Hereafter Maps” and “Pinpoint Maps.”

See also “Narrative” (Attachment B), section II.C (Description of Project facilities) on page 17 of the ITAP.

¶ **6. Storage (Hereafter)**

Same as Heretofore, but in addition, PacifiCorp seeks a new place of storage for the proposed Upper Reservoir. The Lower Reservoir is already located within the authorized place of use for the Bear Lake Reservoir on Mud Lake. The active storage capacity of the Upper Reservoir is 23,730 acre-feet, and its dead pool is 3,150 AF. The active storage capacity of the Lower Reservoir is also 23,730 acre-feet. But the Lower Reservoir volume is not an addition to the system-wide storage capacity of Bear Lake Reservoir. *See* “Narrative” (Attachment B), section VIII.B.4 (Volume of storage for the Dry Canyon Project) on page 47 of the ITAP.

Legal Description of inundated areas by 40-acre tracts:

Upper Reservoir: Somewhere within the designated 40-acre tracts listed in the change application for the Upper Reservoir surface area. *See also* Attachment M, Table

11 (PLSS descriptions for Dry Canyon Project (PODs and other facilities)) on page 124 of the ITAP.

Lower Reservoir: PacifiCorp's **preferred** location for the Lower Reservoir is in the southeast corner of Mud Lake as depicted on the Project/Hereafter Maps and will be located somewhere within the designated 40-acre tracts listed in the change application for the preferred Lower Reservoir location surface area. See also Attachment M, Table 11 (PLSS descriptions for Dry Canyon Project (PODs and other facilities)) on page 124 of the ITAP. In anticipation of the alternatives analysis mandated by NEPA (which will be conducted during the course of FERC licensing, as discussed in the "Narrative" (Attachment B), section IV.G on page 21 of the ITAP), PacifiCorp has identified the Mud Lake Regulation Reservoir as a larger area in red (7,691 acres) covering a larger portion of Mud Lake within which a **potential alternative** Lower Reservoir may be located. Accordingly, the potential alternative Lower Reservoir will be located somewhere within the 40-acre tracts described as the Mud Lake Regulation Reservoir in Attachment M, Table 11 (PLSS descriptions for Dry Canyon Project (PODs and other facilities)) on page 124 of the ITAP.

Description of center-point of Upper Reservoir Dam: S 0 feet W 0 feet from NE corner, Section 18, T 15S, R 44E, BOBM, or, S 14,127 Ft. E 8,433 Ft. from BM 28 FMK.

For further background, *see*:

"Narrative" (Attachment B), section II.C (Description of Project facilities) on page 17 of the ITAP.

"Narrative" (Attachment B), section VIII (Alternative ways of describing the effect of the transfer and the scope of the post-transfer rights) on page 40 of the ITAP.

"Project/Hereafter Maps" and "Pinpoint Maps."

¶ 7. Water Use Information (Hereafter)

Same as Heretofore, but adding the Dry Canyon Powerhouse.

The Bear Lake Reservoir Decreed Rights presently authorize, among other uses, power generation and storage. Accordingly, PacifiCorp seeks no change in purpose of use. The Pumped Storage Project will increase power generated under PacifiCorp's existing rights.

For further background, *see*:

"Narrative" (Attachment B), section II.B (Project overview and function) on page 14 of the ITAP.

“Narrative” (Attachment B), section II.C (Description of Project facilities) on page 16 of the ITAP.

¶ 8. Place of Use (Hereafter)

The place of use in Utah is the same as described in the Heretofore section of the change application, but in addition, PacifiCorp seeks a change in place of use for the new Dry Canyon Powerhouse located in Idaho.

Legal Description by 40-acre tracts: Somewhere within the designated 40-acre tracts listed in the change application for the Dry Canyon Powerhouse. See also Attachment M, Table 11 (PLSS descriptions for Dry Canyon Project (PODs and other facilities)) on page 124 of the ITAP.

For further background, *see*:

“Narrative” (Attachment B), section II.C (Description of Project facilities) on page 17 of the ITAP.

“Project/Hereafter Maps.”

¶ 9. Explanatory

With respect to “any supplemental water rights used for the same purpose”: *See*, Attachment N (Description of other rights used for same purpose) on page 127 of the ITAP.

With respect to “the full purpose of this application”: *See*, this Explanatory and the ITAP. In particular, *see* “Narrative” (Attachment B) section II.B (Project overview and function) on page 14 of the ITAP.

Attachment B: KIMBALL DECREE

Notes:

This Attachment includes the operative provisions (pages 1-10 and 69-71) of the *Kimball Decree (Utah Power & Light Co. v. Richmond Irrigation Co., Final Decree, Utah Dist. Ct., First Judicial Dist. (Feb. 21, 1922) (Kimball, J.) (unreported))*.

Pages 11-68 of the Schedule of Rights are omitted from this Attachment because they describe rights that have no connection with PacifiCorp. A copy of the full decree may be found online at www.bearrivercommission.org (under “documents” / “miscellaneous.”).

**In the District Court of the First Judicial
District of the State of Utah In and
In and For Cache County**

UTAH POWER & LIGHT COMPANY, a Corporation, *Plaintiff,*

vs.

Richmond Irrigation Company, Coveville Irrigation Company, Webster Irrigation Company, Mountain Home Irrigation Company,
Smithfield Irrigation Company, Smithfield North Bench Ditch Company, Smithfield West Bench Irrigation Company, William A. Miles, Samuel Nilson, Johnathan Smith, Claus Anderson, Loretta Nilson, Marriner Roskelly, Richard Roskelly, A. D. Blanchard, Wm. Andrew, Bert Morse, Daniel Corbett, Catherine Roskelly, Robert Read, David Weeks, Peter Hansen, William Pelkington,
William Done, George Done, Joseph O. Smith, Joseph Smith, Jesse Mortensen, William Mather, Delbert Rice, L. E. Danielson, Gustav Peterson, John Gyllenskog, P. P. Bingham,
Riverside Pump and Irrigation Company, Hammer Canal Company, William Coleman, Benjamin Coleman, John Coleman, Prime Coleman, Sylvester Coleman, Hyrum Coleman, Mary C. Coleman, Geo. A. Nelson,
Joseph Forester, James Forester, John Pitcher, Henry Pitcher, John C. Cannell, James Meikle, James J. Meikle, Joseph Meikle,
Geo. P. Toolson, William Winn,
John Carlisle, Andrew Monk, Cyrus Clark, Jos. C. Jorgensen, John Matthews, Gottfred Beutler, Geo. L. Farrell, Freeborn Merrill, I. E. Noble, H. W. Noble, Howard Reese, A. V. Reese, C. A. Reese, W. G. Reese, T. H. Reese, A. J. Reese, R. O. Reese, M. M. Reese, Charles McCann, Joseph J. Richardson, James Roskelly, Mary E. Farrell, E. P. Erickson, Geo. R. Smith, Mary Chambers, Mell Chambers, Leah P. Olson, Lucius McCann, Samuel Hunt, R. L. Nelson, Annie M. Toombs, A. B. Chambers, Carrie E. Olson,
Irving Plowman, T. H. Chambers, Maggie Griffiths, Maria Peterson, D. G. Weeks, Henry McCracken, F. J. Gordon, Elizabeth Smith, Samuel Nelson, Alma Reese,

S. A. Scrowther, Wm. Read, Catherine Woodruff, B. H. Aiken, Nephi Tarbet, V. W. Merrill, Minnie Nilson, Parley Pitcher, Wm. Pitcher, James S. Sheen, T. U. Cragun, Theo. Chambers Sr., Theo. Chambers Jr., J. A. Cragun, Calvin Cragun, Regenia Smith, Peter Nilson, Kerste Nilson, W. F. Winn, F. M. Winn, S. P. Nilson, Grace Chambers, A. W. Chambers, P. C. Chambers, Moses Richardson, Richard Richardson, Violet Peterson, Wm. Thornley, Isaac Read, J. W. Peterson, Ephraim Weeks, J. P. Toolson, O. M. Monk, A. J. Monk, Ether Tarbet, Joseph Baugh, Mrs. Jane Doe Partington, John C. Larson, Cliff Goodwin, John M. Berry, Jos. R. Hebaus, J. Z. Stewart, Henry Griffiths, Euphemia Griffiths, James Read, Wm. Noble,

Thomas Smart, Hyrum J. DeWitt, Joseph Kent, Thomas Irvine, Harry Worley, William Baugh, Oscar Johnson, Ezra Ricks, Hugh J. Dowdle, Joseph E. Cowley Jr., Frank Cowley, Ernest Cowley, F. A. Benson,
Logan Cow Pasture Water Company,

Logan Land and Drainage Company, Ferdinand Zollinger, James J. Facer, Logan Hyde Park and Smithfield Canal Company, Logan and Northern Irrigation Company, Logan Hollow Canal Company, Providence-Logan Irrigation Company, Providence Pioneer Irrigation Company, Logan Northfield Irrigation Company, Logan Northwestfield Irrigation Company, Logan Island Irrigation Company, Seventh Ward Irrigation Company, Benson Irrigation Company, Logan River and Blacksmith Fork Irrigation Company, Hyde Park Irrigation Company, Southwest Field Irrigation Company; Thatcher Milling and Elevator Company, Logan City; Anderson & Sons Company; Central Milling and Elevator Company, Logan Stone and Monument Company; Anthon Anderson, Clara B. Smith, Grace Price, H. E. Hatch, Georgia T. Hatch, R. A. Hatch, Abbie B. Thatcher, Carrie B. Price, L. F. Smith, Lester Worley, George Worley, A. Walton, W. C. England, Ellen M. Peterson, Jesse Mayne, Roy Bullen, Brigham Parry, Anderson & Sons Company, a corporation, Bernard Parry, A. E. Anderson, Brigham Young College, a corporation, John Naf, E. N. Hammond, Alley T. Clayton, L. P. Watkins, M. J. Watkins, W. W. Hall, W. E. Mitton, Thomas Howells, William Athay, Jane A. Thatcher, H. J. Hatch, James H. Allen, Mrs. Asa Bullen, F. A. Hinckley, Abe Tyson, A. J. Hawkes, William Worley, C. H. Wakely, Harriet L. Benson, doing business as the Thatcher Irrigation Company, an unincorporated association, and John Dern, John C. Sharp, Elizabeth C. McCune, F. B. Stephens, Angus T. Wright, Anthony Wayne Ivins, Lorenzo N. Stohl, George T. Odell, J. W. Knight, A. G. Barber and Lois Hayball, as the Board of Trustees of Utah Agricultural College, Isaac P. Stewart, Mary J. Pedersen,

Hyrum Irrigating Company, Providence-Blacksmith Fork Irrigation Company, Millville Irrigation Company, College Irrigation Company, Spring Creek Irrigation Company, Blacksmith Fork Light and Power Company, South Cache Milling Company, Hyrum City, a municipal corporation; Charles L. Ames, Hansine Salverson, Norman H. Salverson, Jacob Janes, Lavina N. Peterson, Clayton Nielsen, Elva Nielsen, Lila Nielsen, Chas. L. Anderson, T. W. Peterson, Ernest Peterson, Ernest Peterson Jr., Algernon Peterson, Joseph Peterson, P. M. Poulsen, Ulrich Zbinden.

Paradise Irrigation & Reservoir Company, Wellsville East Field Irrigation and Canal Company, Wellsville City, a municipal corporation, Wellsville City Irrigation Company, Wellsville North Field Irrigation Company, Mendon South Canal (a corporation), Wellsville Hawbush Field Irrigation Manufacturing and Canal Company, Paradise Land and Livestock Company, Lindsay Land and Livestock Company (an Ogden Corporation), David McMurdie, Ed. J. Norman, A. O. Jackson, A. O. Jackson Jr., F. J. Law, Charles Shaw, Abraham Frederickson, Geo. W. Davis, Geo. Summers, Joseph E. Cowley, James Facer, John W. S. Brown, Wm. Bailey, Robert Maughan, Archibald Maughan, James Maughan, Charles N. Maughan, Heber L. Maughan, David Maughan, Guy Maughan, Wm. H. Maughan, Brigham Maughan, Christina Maughan, Elmer Maughan, Frank Maughan, John Branchley, Daniel H. Maughan, Rachel Maughan, Peter Maughan, Wm. H. Darley, John A. Leishman, Joseph Hardman, Joseph T. Lofthouse; Israelson Land, Livestock and Produce Company; Jesse E. Smith, Ole N. Jensen, Joseph E. Smith, Thos. E. Williamson, Joseph R. Brown, Edward Walters, Ernest A. Forsberg, John T. James, John E. Miles, Joseph S. Howells, James H. Danielson, Charlton A. Goldsberry, O. H. Pulsipher, William Pulsipher, William Pulsipher Jr., Ole Olson, T. K. O Bray, G. S. O Bray, E. M. Bickmore, Hyrum Hall, Edward Gibbons, Hyrum Brown, H. P. Hansen, James L. Jensen, Robert Baxter, Annie K. Lauritzen, John F. Monson, William H. Jensen, Albert Miller, Roar Allen, Paul Johnson, Samson Knowles, Edward Knowles, Alfred Anderson, J. J. Hall, David Kerr, Thomas A. Kerr, Henry Haslam, John Hughes, Rebecca C. Hughes, Sarah A. G. Hughes, Wm. Lea, Willard Parker, Violet D. Parkinson, Henry C. Parker, James Anderson, J. M. Smith,

Mendon City, Mendon Central Irrigation Company, P. A. Sorenson, Mendon North Irrigation Company,

Spring Creek Water Company, Garr Springs Water Company,

Clarkston Irrigation Company, Newton Irrigation Company,

Utah-Idaho Sugar Company, Lewiston-Bear Lake Irrigation Company, Benson-Bear Lake Irrigation Company, The Amalgamated Sugar Company, Hill Irrigation

Company, Intermountain Sugar Company, Wood Irrigation Company, D. C. Van
Dyke, A. J. Hill, Olaf Cronquist, W. R. Ballard, H. W. Ballard Jr., Alma Munk,
Johnathan Smith, W. D. Goodwin, Milton Bullen, Charles G. Wood, Frank Wood,
D. A. Skeen, Lester Wheeler, Lloyd Wheeler, A. M. Simonds, Ed. Lower, Albert
Brough, Brown Wood, A. C. Simmons, J. Q. Adams,
Defendants,

DECREE

BE IT REMEMBERED that on this day this cause comes on for further hearing by the Court, pursuant to adjournment, the parties appearing by their respective counsel. Additional proof is submitted by some of the parties, and thereupon, pursuant to stipulation of parties that judgment may be entered herein on the evidence and stipulations of parties submitted to the Court without the formality of making findings of fact or conclusions of law, such findings and conclusions being expressly waived by all of the parties whose appearance has been entered in the action either by oral consent in open court entered in the minutes or by written consent filed with the clerk, it is ordered, adjudged and decreed by the Court, as follows:

I.

1. That the Bear River is an inter-state stream with a large number of tributaries in the States of Utah, Wyoming and Idaho, said river rising in the Wasatch mountains in northeastern Utah and flowing in a general northerly direction through the States of Utah and Wyoming to a point on the boundary line between the States of Idaho and Wyoming near the town of Border in the State of Wyoming, into the State of Idaho, thence in a general northwesterly direction around the north end of Bear Lake (including North and Mud Lake) located in Bear Lake County, Idaho, and Rich County, Utah, to a point near the town of Alexander in said state of Idaho, thence in a general southerly direction through the States of Idaho and Utah, emptying into Great Salt Lake in said latter state.

That there is hereby drawn within the jurisdiction of this court, for distribution for beneficial uses, under and pursuant to the terms of this decree, all that portion of Bear River, as above described, commencing at a point where said river crosses the Utah-Idaho state line in the Northwest quarter of Section 35, Township 15 North, Range 1 West, S. L. B. & M., thence in a general southerly direction to the Wheel-on Power Plant of Utah Power & Light Company in Section 27, Township 13 North, Range 2 West, together with all intervening tributaries of the Bear River, which are decreed to constitute a single inter-dependent river system, to be administered under the terms of this decree. It is also the purpose of this decree, however, to adjudicate *in personam* the relative rights of the respective parties to this action in respect to the impounding and release of the flood water of said river above the said Utah-Idaho state line, and to the use of such water, either above or below the said state line in so far as such use may conflict with other uses of the water of Bear River or its tributaries, by any of the parties to this action.

2. Subject to the prior rights of the various defendants, as hereinafter decreed in the order of their respective priorities, the said plaintiff, the Utah Power

& Light Company, has the storage right hereinafter defined in paragraph 1 of the schedule of rights.

The quantity of water released from such storage and to which the plaintiff is entitled, flowing in Bear River at the Utah-Idaho State Line at any given time shall be determined as provided in the final decree of the District Court of the United States for the District of Idaho, Eastern Division, in Equity No. 203, wherein Utah Power & Light Company, the plaintiff herein, was plaintiff, and Last Chance Canal Company, Limited, et al, were defendants, a copy of which decree has been introduced in evidence in this cause; that is to say by deducting from the quantity of water being released from the Bear Lake Reservoir, consisting of Bear and Mud or North Lakes, at any given time,

(a) Such quantity of water as is being simultaneously taken from Bear River into such Reservoir,

(b) Compensation for the natural yield of Bear Lake area as defined in said decree, to be determined at measuring devices installed as provided therein as near as practical to the present bridge on the Montpelier-Ovid road, in the southwest quarter of Section 7, Township 13, South Range 44 East, Salt Lake Meridian, as follows:

From April 20th to July 1st of each year 50 cubic feet per second.

From July 1st to July 15th of each year 35 cubic feet per second.

From July 16th to Aug. 1st of each year 25 cubic feet per second.

From Aug. 1st to Sept. 15th of each year 15 cubic feet per second.

(c) Three and one-half per cent. of the quantity of such released stored waters, to allow for all transit losses between Bear Lake Reservoir and Utah-Idaho State line.

(d) Such amount of said released stored water as may be diverted between said reservoir and State line for consuming uses as distinguished from the non-consuming use of said waters by the plaintiff for power purposes.

In determining transit losses or otherwise calculating division of waters as between the natural flow of the river and released stored waters, a time lag of forty-eight hours shall be applied for the flow of released stored water from plaintiff's outlet control works at Bear Lake Reservoir to the Utah-Idaho State Line, and a proportionate time for the flow of water to or from any intervening point of diversion for a consuming use of any part of the water above the Utah-Idaho State Line.

After passing said state line such released stored waters may be conveyed through that part of the natural channel of said river covered by this decree, and shall be protected under the provisions hereof for such distribution as may be designated by the plaintiff or its successors-in-interest, to the same extent as though

kept and conveyed within an artificial channel. It shall be recognized by the officers charged with the administration of this decree that the plaintiff's right in said released stored water shall continue until abandonment by the plaintiff, and all parties to this suit, their heirs, executors, administrators, successors, successors-in-interest and assigns, and the agents, servants and attorneys of said parties, their heirs, executors, administrators, successors, successors in interest and assigns, are hereby perpetually enjoined and restrained from in any manner using or interfering with the use by the plaintiff of the said released stored waters, except with the consent and under the authority of the plaintiff, its successors and assigns.

Between the Utah-Idaho State line and the plaintiff's Wheelon Dam, situated in Section 23, Township 13 South, Range 2 West, S. L. M., an additional transit loss of one per cent shall be deducted from the volume of all such released stored water flowing past said State Line as may be delivered at said dam, allowing a time lag of twenty-four hours for the flow of the water, and proportionate deductions and calculations of time lag shall be made to cover transit losses of water diverted by or under the authority of the plaintiff between said points.

3. In addition to storage rights of plaintiff, herein decreed, the waters of Bear River and its tributaries between the points hereinbefore described, as drawn within the jurisdiction of this court for distribution under this decree, are hereby allotted and decreed for the various beneficial uses herein specified, without waste, to the plaintiff and defendants, respectively, and their successors in title and interest, in the amounts, for the purposes and in accordance with the priorities established and prescribed by the "Schedule of Rights" hereinafter defined.

The rights herein decreed and recognized are designated and classified as "Power Rights," "Irrigation Rights" and "Domestic Rights," respectively, and shall have the following characteristics:

"Power Rights" include the right to divert and use water for the generation of electric power and such rights of diversion and use are continuous throughout the year without limitation to time or season.

"Irrigation Rights" include the right to divert and use water for irrigation and agricultural purposes and as a part thereof for culinary, domestic and stock watering purposes throughout the irrigation season of each year, which is defined as that portion of each calendar year which commences on the 1st day of April and closes on the 30th day of September. The water allotted and decreed to the parties hereto for irrigation purposes shall be used upon the land upon which the same is now applied and used as described in the schedule, subject, however, to the rights of appropriators or shareholders in any appropriating company to change the place of diversion or use or manner of use, as provided by law.

Nothing herein contained shall be construed as limiting the right of the parties hereto by agreement between all parties in interest, to use the water herein decreed to those parties respectively, by rotation among themselves at such time and in such manner as they may determine, provided that in so doing they do not infringe upon the rights of other appropriators as herein described.

The several parties hereto are also hereby adjudged and decreed to have the right to divert and use so much of the water of said streams during the non-irrigation season, i. e., between the 1st day of October and the 31st day of the succeeding March as they may reasonably require for their domestic, culinary and stock watering uses. Nothing herein contained shall affect specific allotments made in the schedule of rights under appropriations for domestic, culinary or other specific beneficial purposes, which rights are to be recognized and administered specifically as decreed.

All rights herein decreed to the plaintiff and the several defendants are decreed for the beneficial uses specified, and none of the parties hereto, or their successors in interest, whether heirs, executors, administrators, successors or assigns, shall have the right to divert any of the waters of said Bear River, or any of its tributaries, except for beneficial use, and whenever any party or parties ceases to use the same for such beneficial purpose, such party or parties shall cease to divert, and shall have no right to divert the said waters, or any part thereof, during such period of non-use and each and every of the parties hereto, their servants, attorneys, employees and successors in interest, as aforesaid, are hereby enjoined and restrained from any and all interference with or diversion or use of said waters, except in the manner, and to the extent, and for the purposes, provided in this decree, whenever such interference, diversion or use would interfere with the diversion or use of the water awarded by this decree to any of the other parties to this action.

The parties hereto and their successors in interest shall install and maintain suitable and efficient headgates, controlling works, and measuring devices at their respective points of diversion, and all water herein allotted and decreed shall be measured at said points of diversion. Said works and devices shall be built and installed in accordance with plans and specifications to be approved by the state official charged with the duty of supervising the distribution of water, (subject to review by this court). All such devices shall be of such design as to accurately register the amount of water diverted, and in the case of ditches diverting fifty or more cubic feet per second, automatic measuring and registering devices shall be installed and maintained. All such headgates, control works and measuring devices and gauges shall at all times be subject to the inspection of either party, and to public officials or water masters having jurisdiction over the distribution and diversion of water, and no dam or other obstruction to the natural flow of the stream shall be

maintained so as to divert water from the channel of the stream, except through ditches, canals or other works provided with such headgates, control works and measuring devices, and each of the parties hereto shall be perpetually enjoined from diverting from the channel of the stream or its tributaries any water through any ditch, conduit or other devices not provided with such headgates, control works and measuring device; *provided*, that in case of diversions through pipes for power purposes, measuring devices may be dispensed with where the quantity of water diverted may be otherwise determined by calculations based on power output or current meter measurements

4. Subject to the power and duty of this Court to supervise and enforce the administration of this decree, from time to time as occasion may require, and to that end to appoint special commissioners, whenever necessary, so to do, for which jurisdiction is hereby expressly reserved, the State Engineer of Utah and his duly appointed deputies and assistants, or such other state officer as may be charged by law with the distribution of the water of said river system or such water commissioners as this court may hereafter appoint, shall administer this decree and distribute the water of said stream and its tributaries among the several appropriators thereof, in accordance with the provisions of this decree and the statutes of Utah and the costs and expenses of such administration shall be defrayed as provided by law or by subsequent order of this Court.

II.

("Schedule of Rights")

c.f.s. is used throughout this schedule to designate a flow of one cubic foot of water per second of time.

ac. ft. is used throughout this schedule to designate a quantity of water sufficient to cover an area of one acre to a depth of one foot, or 43,560 cubic feet of water.

MAIN RIVER DIVERSIONS.

1. *Utah Power & Light Company*—Storage rights.

The plaintiff, Utah Power & Light Company, is entitled to divert from the main channel of Bear River from the natural flow thereof, for storage purposes, the following amounts:

DATE OF PRIORITY	AMOUNT IN SECOND FEET	POINT OF DIVERSION AND PLACE OF USE
1911—March 1	3000 c.f.s.	Said water to be diverted from Bear River through what is known as the Rainbow and Dingle Inlet Canals, the headworks of which are located respectively in the North east quarter of Section 34, Township 13 South, Range 44 East, B.B.M. and the northwest quarter of Section 17, Township 14 South, Range 45 East, B. B. M. in Bear Lake Co., Ida., and to be carried into and stored in what is known as the Bear Lake Reservoir and withdrawn therefrom from time to time as needed or required by said Utah Power & Light Company, or its successors in interest, for the development of power or generating electric energy in any power plant which it may now have, or hereafter construct or acquire in or along Bear River, in the states of Idaho and Utah, and for irrigation purposes in what is generally known as Bear River Valley in said states.
1912—Sept. 11	2500 c.f.s.	
<i>From Bear Lake:</i>		Said water to be stored in what is known as Bear Lake Reservoir, and withdrawn therefrom from time to time, as provided in the immediately preceding paragraph.
1912—Sept. 1	300 c.f.s.	
<i>From Mud Lake:</i>		Said water to be diverted from the natural flow of Bear River (except as provided by contract heretofore entered into between the plaintiff and this defendant) at a point
1912—Sept. 1	200 c.f.s.	
2. <i>Lewiston-Bear Lake Irrigation Company:</i>		
1914—Dec. 11	100 c.f.s.	

Note:

Pages 11-68 of the *Kimball Decree* have been omitted. The copy continues below, beginning on page 69.

DATE OF
PRIORITY

AMOUNT IN
SECOND FEET

POINT OF DIVERSION AND
PLACE OF USE

(b) 1873—May 1 2000 ac. ft.

Township 13 North Range 2 West, S. L. M. Said water to be used by said company 5 days in each period of 20 days during the irrigation season of each year and is to be used by Clarkston Irrigation District 15 days in each such period as provided in the immediately preceding paragraph.

Said water to be diverted from the flood waters of Clarkston Creek, a tributary of Bear River, and impounded in a reservoir situated in the channel of said creek in Sections 35 and 36, Township 14 North, Range 1 West, S. L. M., and released and used as desired by said Newton Irrigation Company for the irrigation of its lands described in paragraph (a) immediately above.

Provided, however, that notwithstanding this schedule of Rights, users of water under this decree shall at no time divert more water than can be beneficially used, and waste of water is hereby prohibited and enjoined.

III.

The following parties to this suit, having been duly served with summons in this action and having either filed disclaimer or no answer, motion or other appearance or pleading herein, and their default having been regularly entered are adjudged and decreed to have no right, title, interest or claim in or to any of the waters of Bear River, or its tributaries, and said parties, their agents, servants, attorneys, successors in interest and assigns, are perpetually enjoined from diverting or using any of the waters of Bear River, or its tributaries except as they may hereafter initiate or acquire rights to the use of said waters:

Joseph Nelson, Samuel Nelson, Samuel Tout, Thomas Miles, Leroy Nelson, Joel Nelson, R. T. Merrill, Abraham Jorgensen, Wm. Affleck, Mariner S. Eccles, L. D. McBride, O. M. Wilson, Geo. H. Nichols, Claude Nichols, J. S. Goldsberry, Jas. McMurdie, Jos. White, Roy Baxter, I. J. Frampton, Nancy L. Goldsberry, C. W. Anderson, Abe Smith, W. H. Ballard, Marcus Rogers, W. H. Thain, W. A. Bowman, J. D. Skeen, Mendon South Pasture Company.

The following parties to this action, to-wit: John H. Peterson, Carl Rasmussen, Lee Nelson, Abraham Smith, Daniel Cash, Wickliff Ewing, Peterson Farm & Live-

stock Company, H. W. Ballard, John G. Ricks, Mrs. Lemuel Rogers, John Quayle, O. C. Blumell, Orson G. Salverson, Wm. B. Batt, Eugene Schaub, A. B. Wilson, Wm. Bartlett, Priscilla Olson, Nels Rasmussen, having regularly appeared herein by cross complaint or other pleading and having failed to submit proof in support of their claims, it is hereby ORDERED, ADJUDGED AND DECREED that said parties take nothing by their said cross complaint, and that they have no right, title, interest or claim in or to any of the waters of Bear River, or its tributaries, and said parties, their agents, servants, attorneys, successors in interest and assigns, are perpetually enjoined from diverting or using any of the waters of said Bear River or its tributaries, except as they may hereafter initiate or acquire rights to the use of said waters.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that A. M. Israelson has no right, title, interest or claim in or to any of the waters of Bear River or its tributaries, except as a stockholder of Israelson Land, Livestock & Produce Company; that Isaac Sorenson, Jeremiah Baker, Phineas Bird, Mormon Bird, De-Las Bird, Andrew Anderson, Jens Jensen, and George Lemons, have no right, title, interest or claim in or to any of the said waters, except as stockholders of Mendon Central Irrigation Company; that Roy H. Briggs and Riley E. Allred have no right, title or interest in or to the waters of Bear River except as stockholders of Wood Irrigation Company; and that said parties and each and every one of them, their agents, servants, attorneys, successors in interest and assigns, are perpetually enjoined from diverting or using any of the waters of Bear River or its tributaries, except as they may hereafter initiate or acquire rights to the use of said waters and except as they may be entitled to the use of water by reason of their interest in said Israelson Land, Livestock & Produce Company, and Mendon Central Irrigation Company, and Wood Irrigation Company.

It is further ordered and adjudged that the plaintiff do have and recover of and from each defendant in this action, having rights in and to the use of the waters of said river and its tributaries, as herein decreed, the sum of \$1.77 being his or her proportionate share of the costs and expenses incurred by the plaintiff for clerk's costs, service of summons and the printing of this decree, hereby taxed in the total sum of \$588.80. Further, that the cost of the reference of certain matters herein to a referee shall be assessed by subsequent order of the Court, among the parties whose rights were in issue in such reference.

The court hereby retains jurisdiction, however, at all times, and from time to time, to make all reasonable rules touching the manner of diverting, measuring and distributing the waters, and the devices to be installed and used for such purposes where it may be impracticable to fully comply with the terms of this decree, and to direct that the parties keep accurate and detailed records of the amounts

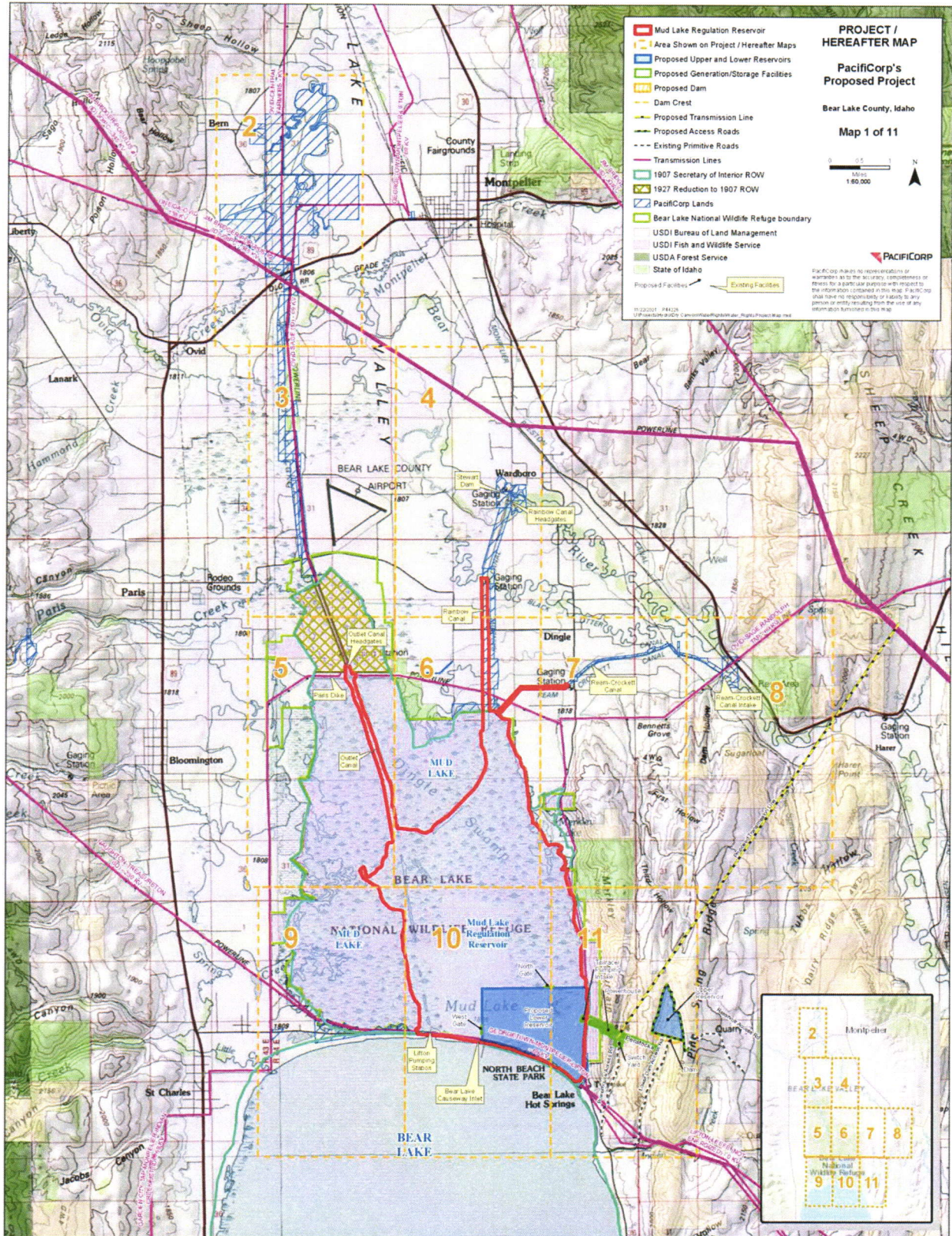
of water diverted, and to require reports to be filed from time to time of the amount so diverted, and generally to make such orders as may be found reasonably necessary to give effect to this decree, and to appoint commissioners or watermasters to make distribution in accordance with its terms, and to punish the parties hereto, their officers, agent and employees, and their grantees and successors in interest, for any violation of the provisions thereof.

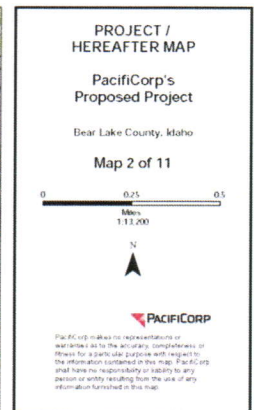
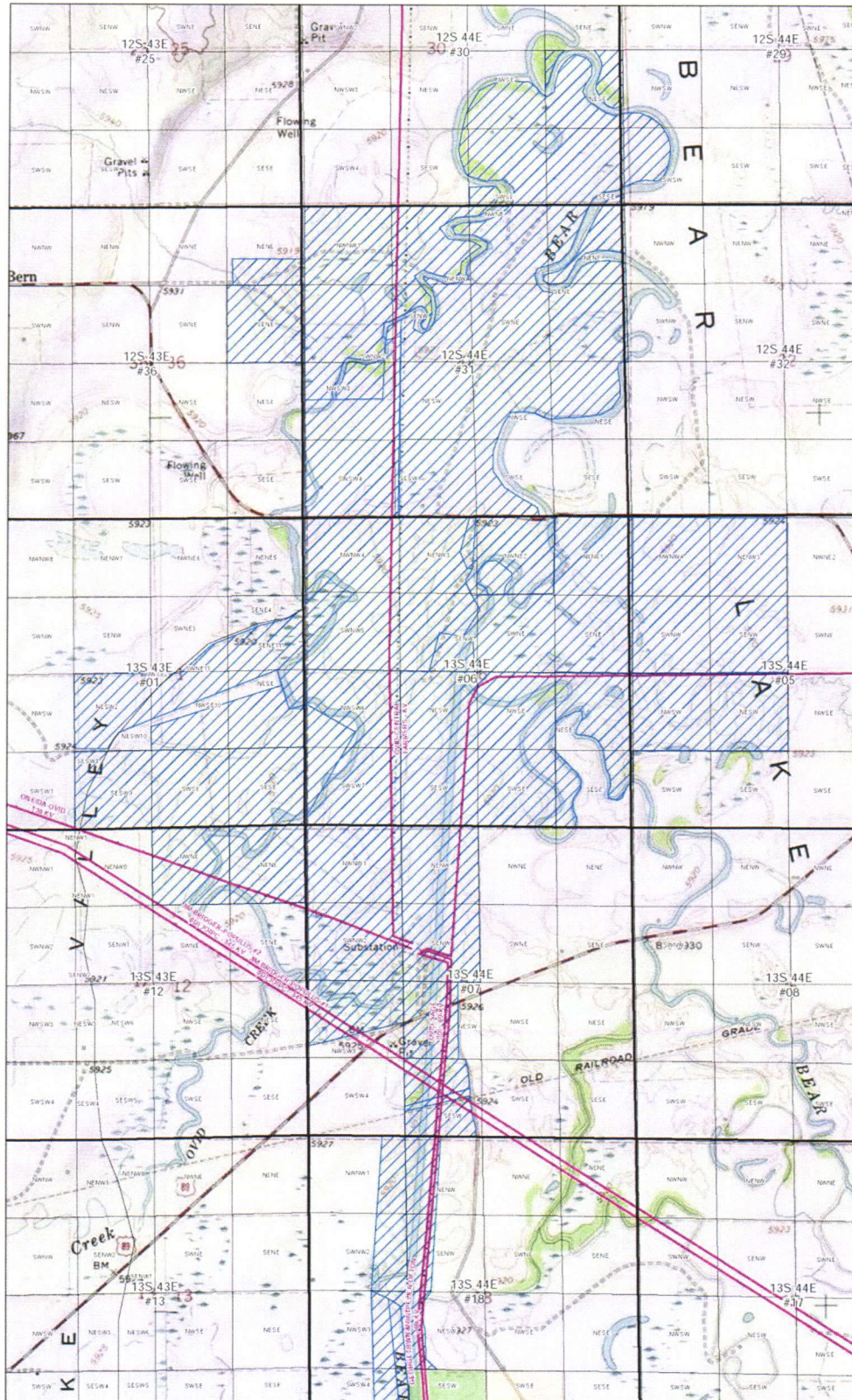
Done in open court this 21st day of February, 1922.

JAMES N. KIMBALL, Judge.

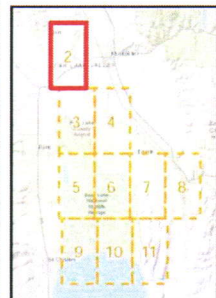
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Attachment C: PROJECT/HEREAFTER MAPS

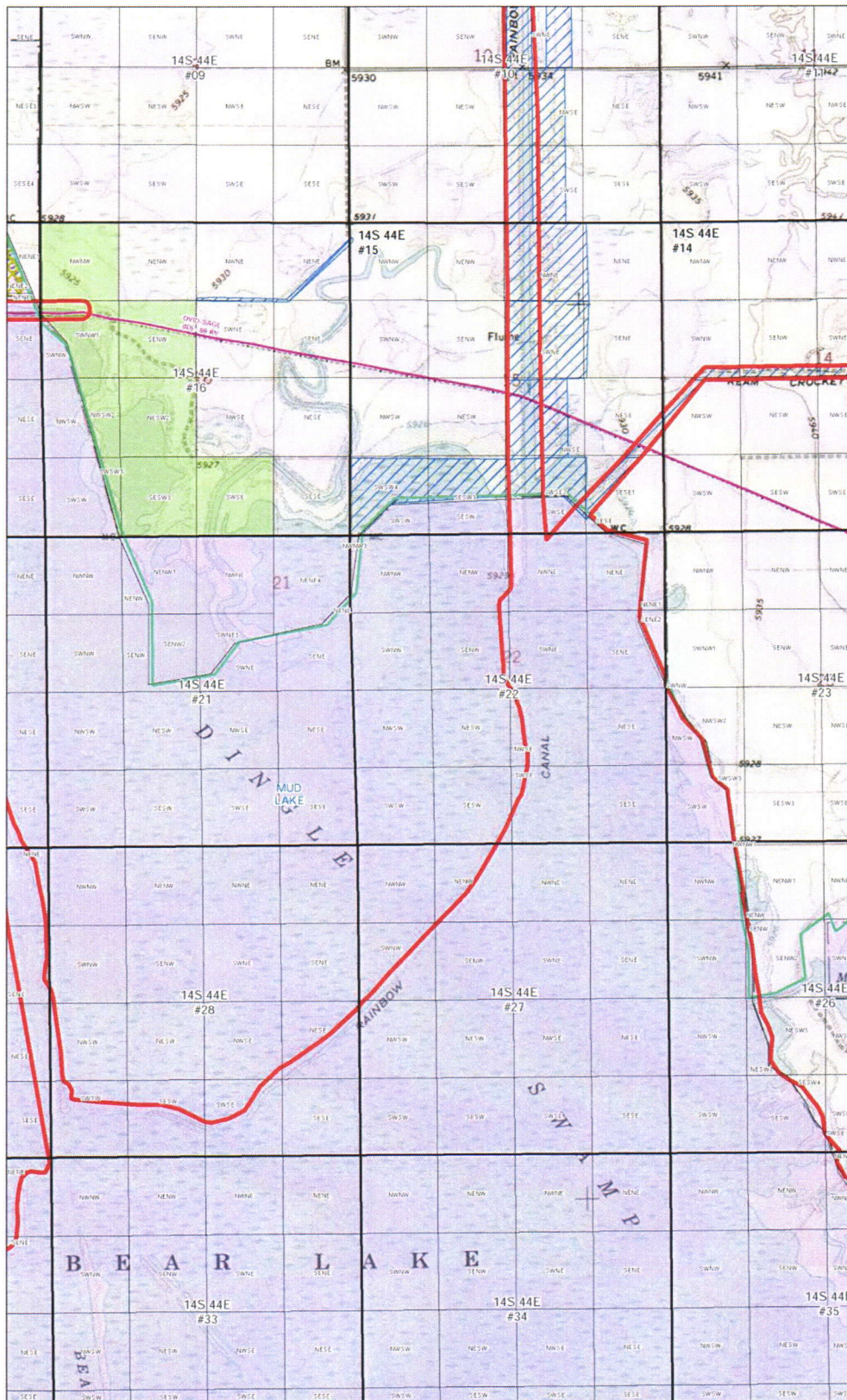




- Mud Lake Regulation Reservoir
- Proposed Upper and Lower Reservoir
- Proposed Generation/Storage Facilities
- Proposed Dam
- Dam Crest
- Proposed Transmission Line
- Proposed Access Roads
- Existing Primitive Roads
- Transmission Lines
- 1907 Secretary of Interior ROW
- 1927 Reduction to 1907 ROW
- PLSS Sections
- Quarter Sections
- PacifiCorp Lands
- USDI Bureau of Land Management
- USDI Fish and Wildlife Service
- USDA Forest Service
- State of Idaho
- Proposed Facilities
- Existing Facilities



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PROJECT / HEREFTER MAP
PacifiCorp's Proposed Project
 Bear Lake County, Idaho
 Map 6 of 11

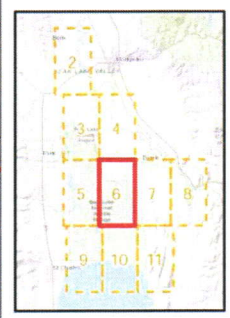
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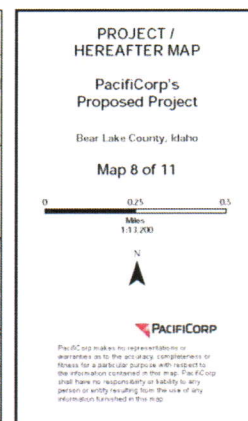
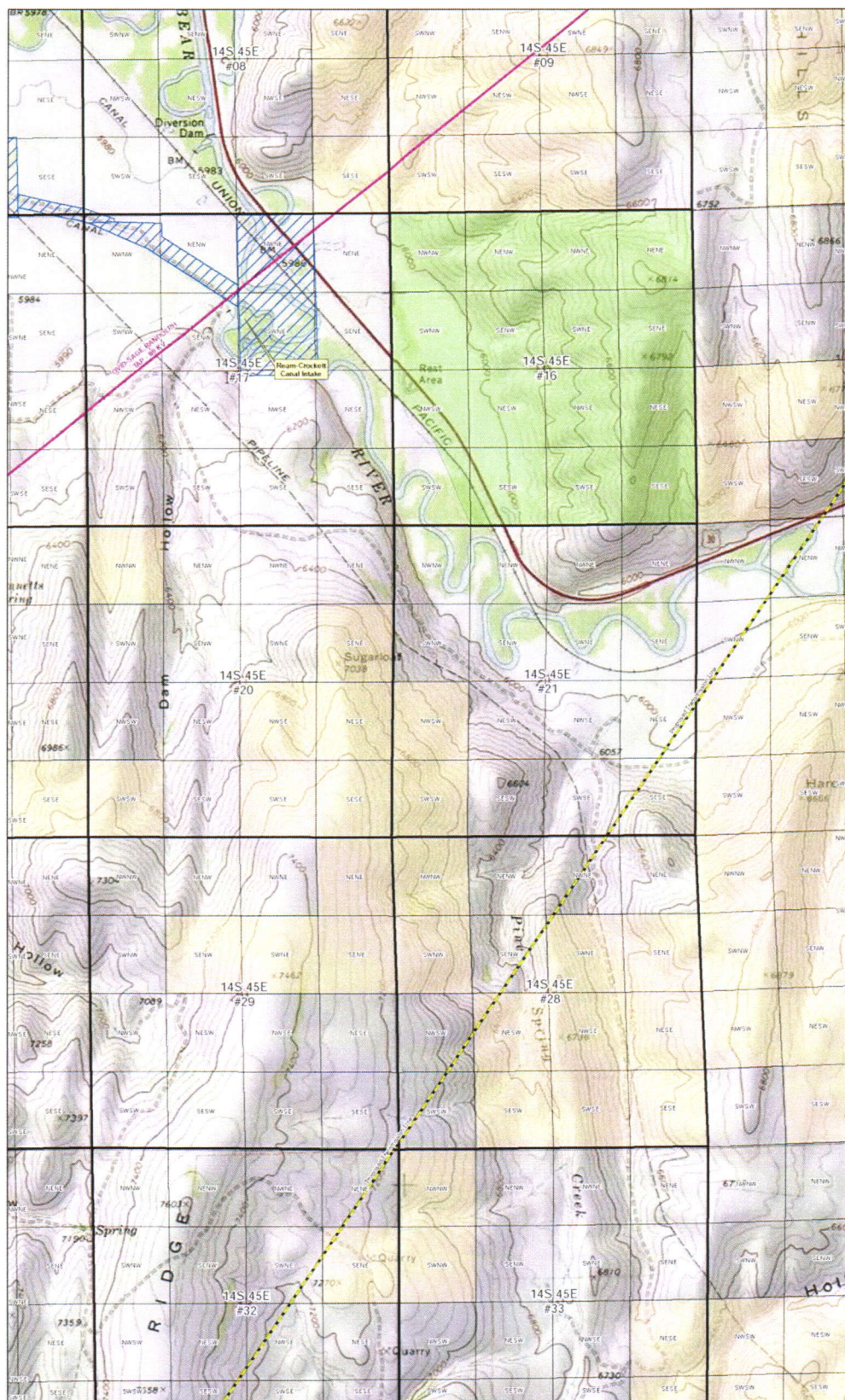
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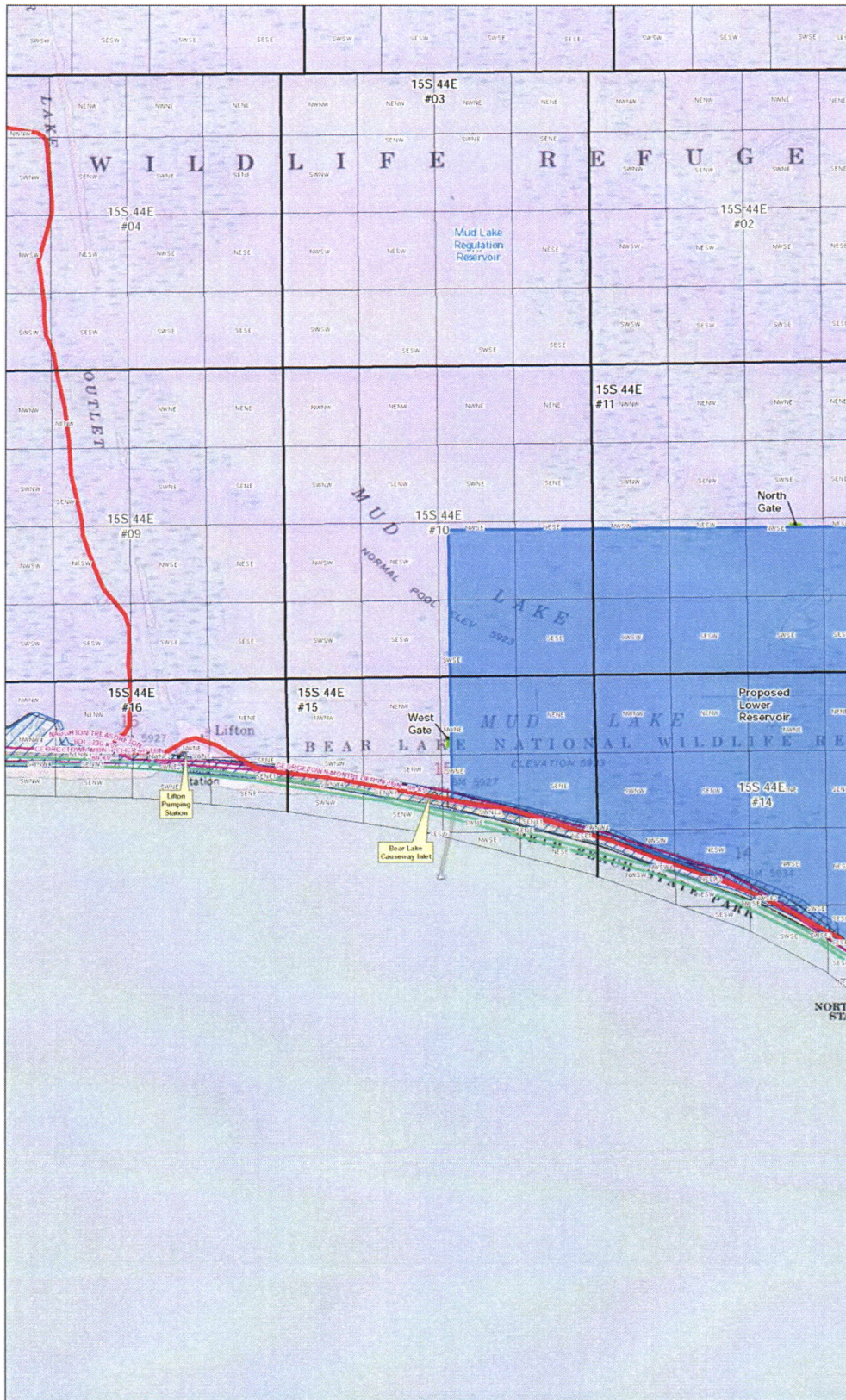
The PacifiCorp makes no representations or warranties as to the accuracy, completeness, or timeliness of the information contained in this map. The PacifiCorp shall have no responsibility or liability to any person or entity resulting from the use of any information furnished in this map.

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- State of Idaho
- Proposed Facilities
- Existing Facilities



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**PROJECT /
HEREAFTER MAP**

**PacifiCorp's
Proposed Project**

Bear Lake County, Idaho

Map 10 of 11

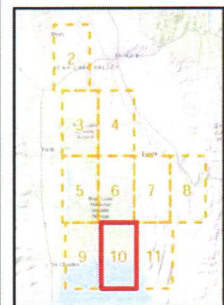
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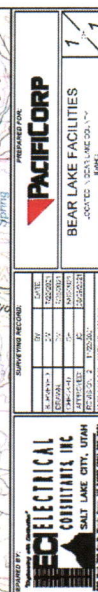
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Attachment D: PINPOINT MAPS









BEAR LAKE CAUSEWAY INLET

Bear Lake Causeway Inlet
S 14398 ft W 8010 ft from 28 FMK
Elevation: 5938 ft

14E, 15, NWNW, 0
15S44E, 15, NENW, 0
15S44E, 15, NWNE, 0
15S44E, 15, SENW, 0
15S44E, 15, SWNE, 0
15S44E, 15, SWNE, 2
15S44E, 15, SWNE, 0
15S44E, 15, NWSE, 0
15S44E, 15, SESW, 0
15S44E, 15, SENW, 0
15S44E, 15, SENW, 3
15S44E, 15, SENW, 4
15S44E, 15, SWNW, 0
15S44E, 15, SWNW, 4
15S44E, 15, SWNW, 0

SCALE 0 250 500 FEET

REV: 0	DATE: 10/13/21	BY: DTM	CHK: AAA	APP: AAA
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ECI ELECTRICAL CONSULTANTS, INC.
SALT LAKE CITY, UTAH
800 West 700 South Woods Cross, UT 84087 (801) 292-9804

BEAR LAKE CAUSEWAY INLET
LOCATED IN SEC 15, T15S, R44E, LOT 3, B.M.
BEAR LAKE COUNTY, IDAHO

SHEET: 4 OF 10
SCALE: 1" = 500'

LIFTON PUMPING STATION



REV: 0	DATE: 10/13/21	BY: DTM	CHK: AAA	APP: AAA
		LIFTON PUMPING STATION LOCATED IN SEC 16, T 15S, R 44E, B.M. BEAR LAKE COUNTY, IDAHO		
SHEET: 5 OF 10		SCALE: 1" = 500'		

RAINBOW CANAL HEADGATES



REV: 0 DATE: 10/13/21 BY: DTM CHK: AAA APP: AAA



RAINBOW CANAL HEADGATES
LOCATED IN SEC 34, T 13S, R 44E, B.M.
BEAR LAKE COUNTY, IDAHO

SHEET: 6 OF 10

SCALE: 1" = 500'

UPPER RESERVOIR DAM CREST



REV: 0 DATE: 10/13/21 BY: DTM CHK: AAA APP: AAA



UPPER RESERVOIR DAM CREST
LOCATED IN SEC 18, T 15S, R 45E, B.M.
BEAR LAKE COUNTY, IDAHO

SHEET: 7 OF 10

SCALE: 1" = 500'

