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**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF THE APPLICATION
FOR TRANSFER NO. 85695 IN THE NAME
OF PACIFICORP

**PACIFICORP'S NOTICE CONCERNING
RULE 610 COMMUNICATIONS**

Applicant PacifiCorp, by and through its attorneys of record, hereby provides notice to the Idaho Department of Water Resources ("Department") and to all parties, other stakeholders, and decision makers of PacifiCorp's intent to protect the confidentiality of communications pursuant to Rule 610 of the Department's Rules of Procedure, IDAPA 37.01.01.610.¹

Rule 610 states:

Settlement negotiations in a contested case are confidential, unless all participants to the negotiation agree to the contrary in writing. Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in settlement negotiations in a contested case are not part of the record unless ordered by the presiding officer upon a stipulation by all parties to a contested case. If the parties to a contested case participate in mediation, I.R.E. 507 applies and the mediation privilege is recognized.

¹ PacifiCorp recognizes that Department Rule 610 does not apply to non-parties to the above-captioned proceeding, but nevertheless addresses non-parties here to make clear its intent with respect to the confidentiality of communications and its commitment to transparency in engaging with all interested persons.

IDAPA 37.01.01.610 (revised 3-18-2022).

During the course of this contested case, PacifiCorp anticipates that its legal counsel, staff, and consultants will communicate with the protestants and/or their attorneys and representatives about matters directly and indirectly concerning the Dry Canyon Project and Application for Transfer No. 85695 (aka, *Idaho Transfer Application Package* or “*ITAP*”).² Some of these communications may occur in the context of formal settlement discussions involving legal counsel where the applicability of Rule 610 is expressly stated or otherwise readily apparent. However most of the communications are likely to occur during informal discussions among non-attorney staff, consultants, and other representatives outside the context of formal settlement negotiations without any express assertion of confidentiality. In some instances, those discussions may be aimed directly at fostering an understanding of the Dry Canyon Project and the *ITAP* while exploring and seeking to resolve concerns raised by parties and other stakeholders or decision makers. In other instances, the discussions may be focused on other matters in which the conversation then strays into or touches upon the *ITAP* and the Dry Canyon project. For example, PacifiCorp staff regularly communicates with protestant U.S. Fish & Wildlife Service staff concerning PacifiCorp’s operations that affect the Bear Lake National Wildlife Refuge. During the course of these communications, the parties may raise matters relating to the *ITAP* or Dry Canyon Project directly or indirectly, purposefully or inadvertently. PacifiCorp’s intent and expectation is that such communications will be treated as confidential in accordance with the Rule 610 protections.

² A parallel change application, known as the Utah Change Application Package (“UCAP”) has been filed with the Utah Division of Water Rights (“UDWRi”).

PacifiCorp is committed to facilitating a free, frank, and unfettered exchange of information and ideas with the protestants and others aimed at resolving the protests to the *ITAP/UCAP* and otherwise improving the operation of the Bear River System. To facilitate such communications, PacifiCorp will encourage its staff and representatives to engage in communications with the protestants and others with the understanding and expectation that all concerned share PacifiCorp's desire for free, frank, and unfettered discussion of these important issues. Accordingly, PacifiCorp provides notice to the Department, the protestants, and all those following these proceedings that, pursuant to Rule 610, it will treat any facts disclosed, offers made, or other aspects of potential settlement negotiations related to the subject matter of this contested case to be confidential and not part of the record irrespective of the context, or any lack of formality, in which they occur.

Respectfully submitted this 18th day of July, 2022.

GIVENS PURSLEY LLP

By


Christopher H. Meyer

By


Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of July, 2022, the foregoing was filed, served, and copied as set out below.

This document is filed via email pursuant to IDAPA 37.01.01.053.b. As of this date, an order has not been issued authorizing service by email. Accordingly, service is made by both U.S. mail and by email. Courtesy copies are sent by email only.

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