

No Color
Documents
In File

 Oneida County *
 Cub River *
 50 second feet *
 Electric Light & power *
 Priority 12-23-1905 *

S T A T E _ _ O F _ _ I D A H O

Water License No. 1750

WHEREAS, On the 23rd day of December, A.D. 1905, ALFRED BUDGE and C.R.SLUSSE, of Paris, County of Bear Lake, State of Idaho, duly made application (No. 2414) to me for a permit to use fifty (50) cubic feet per second of the waters of Cub River, County of Oneida, State of Idaho, for electric light and power purposes; and

WHEREAS, On the 30th day of December, A.D. 1905, Permit No. 1750, was issued to said applicants for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the 30th day of December, A.D. 1909, and for the application to beneficial use of said water on or before the 30th, day of December, A.D. 1913, and

WHEREAS, On the 2nd day of February A.D. 1906, the holders of said Permit transferred all their right, title and interest in and to said permit, to the High Creek Electric Light & Power Company, a corporation,

WHEREAS, On the 30th day of December A.D. 1909, THE HIGH CREEK ELECTRIC LIGHT & POWER COMPANY the holder of said permit duly made proof of the completion of adequate works for the diversion of fifty (50) cubic feet per second of said waters, as evidenced by my Certificate No. 1750, dated March 18, 1910, confirming the completion of the works of sufficient capacity for diverting and conveying to the place of intended use fifty (50) cubic feet per second of water with date of priority of December 23, 1905, and

WHEREAS, On the 30th day of December, A.D. 1909, THE HIGH CREEK ELECTRIC LIGHT & POWER COMPANY the holder of said permit duly made proof of the application to beneficial use of fifty (50) cubic feet per second of said water:

NOW, THEREFORE, By virtue of authority vested in me by the laws of the State of Idaho, I hereby grant and confirm to THE HIGH CREEK ELECTRIC LIGHT & POWER COMPANY, of Richmond, County of Cache, State of Utah, the holder and owner of said Permit No. 1750, a perpetual right, dating from December 23, 1905, to the use of fifty (50) cubic feet per second of the waters of Cub River, in the County of Oneida, and State of Idaho, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be diverted at a point 450 feet East and 190 feet North of southwest corner of Northwest quarter of Section 25, Township 15 South, Range 40 East of Boise Meridian, and conducted to the power house situated in the Southwest quarter of the Northwest (SW4 NW4) Section 35, Township 15 South, Range 40 East of Boise Meridian, for the purpose of Electric Light and power, subject, however, to the laws of the State of Idaho applicable to a license for the use of the waters of the State, and subject, also, to the local or community customs, rules and regulations which have been or may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken when such rules and regulations have for their object the economical use of such water.

WITNESS, My hand and the seal of my office at Boise, Idaho, this 18th day of March, A.D.

Nineteen Hundred and ten.

(SEAL)

Recorded March 18, 1910

Jas. Stephenson, Jr.

State Engineer

13 2013

No. 2414.

APPLICATION FOR PERMIT

To appropriate the Public Waters of the State of Idaho.

1. Name of applicant - ALFRED BUDGE and C. R. SLUSSER
Postoffice address: P. O. - Paris.
County - Bear Lake.
2. The quantity of water claimed is fifty (50) cubic feet per second.
3. Source of water supply - Cub River
County of Oneida.
4. Location of point of diversion - 180 ft. South and 570 ft. east of N. W. Cor. of the SW $\frac{1}{4}$ of Section 24, Township 15 South, Range 40 East B. M.
5. To be used for:
II. Mining, power, manufacturing or transportation purposes:
 - (a) To be used for Electric Light & Power.
 - (b) Amount of power to be generated 1000 horse power.
 - (c) At what point at point where water is returned to stream as below.
 - (d) Is water to be returned to any stream? Yes.
 - (e) If so, name stream and locate point of return - Cub River, 450 ft. East, 190 ft. N. of SW Cor. of NW $\frac{1}{4}$ of sec. 35, T. 15 S., R. 40 E. B. M.
6. Estimated cost of works - For ditch and pipe lines about \$12,000.00
7. Description of Works for Diversion:
 - I. Kinds of works - About 2 $\frac{1}{2}$ miles of ditch and 700 feet pipe line.
 - II. Dimensions of Works:
 - (d) Ditch (flume or pipe) width at bottom ten feet, width at water line fifteen feet, depth of water.....feet. Average grade per mile is ten feet. Length of ditch is 2 $\frac{1}{2}$ miles, and it crosses the following quarter sections - SE $\frac{1}{4}$ and SW $\frac{1}{4}$ Sec. 24, NW $\frac{1}{4}$ Sec. 25, NE $\frac{1}{4}$ & SW $\frac{1}{4}$ Sec. 26, NW $\frac{1}{4}$ Sec. 35, all in T. 15 S., R. 40 E., to SW $\frac{1}{4}$ of NW $\frac{1}{4}$ Sec. 35, T. 15 S. R. 40 E., which is the point of intended use.
8. Time required for the completion of the construction of such work is four years.
9. Time required for the complete application of the water to the proposed use is four additional years.

Approval of State Engineer.

The number of this permit is 1750.

Date of first receipt of application 9 a. m. Dec. 23, 1905.

Returned to applicant for correction December 23, 1905.

Corrected application received December 29, 1905.

Recorded in Book 6, page 1750. Approved December 30, 1905.

This is to certify that I have examined the within application for a permit to appropriate the public waters of the State of Idaho and hereby grant the same, subject to the following limitations and conditions:

Good and sufficient bond to be filed in the sum of \$1000.00 on or before February 28, 1906.

One-fifth of the work above specified to be completed on or before December 30, 1907.

The whole of said work to be completed on or before December 30, 1909.

The time for the proof of beneficial use of water appropriated in accordance herewith, to extend to December 30, 1913.

Witness my hand this 30 day of December, 1905.

Jas. Stephenson, Jr.

State Engineer.

D E E D

Alfred Budge, et.al.

To.

High Creek Electric Light & Power Company

This indenture made this 2nd day of February, in the year of our Lord one thousand Nine hundred and six between, Alfred Budge, and C.R.Slusser of Paris, Bear Lake County, Idaho, parties of the first part, and the High Creek Electric Light & Power Company, a Corporation, party of the second part:

WITNESSETH: That the said parties of the first part for and in consideration of the sum of One Dollar, and other valuable considerations to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged do by these presents demise, release, transfer, and convey all of their right, title and interest in and to Fifty cubic feet per second of the waters of Cub River, situated in Oneida County, Idaho, as evidenced by their application and Permit now on file in the office of the State Engineer of the State of Idaho, and made a part of this conveyance.

Together with the bond of the said parties of the first part, and all of the rights, title and benefit thereunder, the said party of the second part to assume all of the Liabilities under said Bond, and to hold the said parties of the first part harmless.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Alfred Budge. (Seal)

C.R.Slusser (Seal)

STATE OF IDAHO

:ss

County of Bear Lake

On this 2nd day of February, 1906, before me Walter Hoge, a Notary Public personally appeared Alfred Budge and C.R.Slusser of Paris, Bear Lake County, Idaho, known to me to be the persons whose names are subscribed to the within instrument and each acknowledged to me that he executed the same for the purpose therein mentioned.

Walter Hoge.

Notary Public

(SEAL)

Recorded at request of J.S.Sheperd, July 9, 1906, at 3 o'clock, P.M.

Wm.H.Richards.

Clerk.

STATE OF IDAHO

)
)ss

County of Oneida

I, John J.Evans, Auditor & Recorder of Oneida, County, Idaho, do hereby certify that the above is a true and correct copy of the Deed given by Alfred Budge, et.al., to High Creek Electric Light & Power Co., as found in Book W. on page 288, of the records of Oneida County, Idaho.

In Witness Whereof, I have hereunto set my hand and seal this the 25th day of January 1910, at Malad City, Idaho.

(SEAL)

John J.Evans.

Auditor & Recorder

1750

Received and filed for record in the office of the State Engineer at Boise, Idaho,
at 9.00 A.M. Jan. 29, 1910.

Jas. Stephenson, Jr.

State Engineer

Blank notice for proof of completion and beneficial use mailed applicant September 1, 1909.
 Notice for both proofs received fixing December 30, 1909, as date and Preston, Idaho,
 as place of proof.

Publication notice mailed the Cache Valley News, at Preston, Idaho, November 18, 1909

J.O. Webster notified of examination of works November 18, 1909

His report received December 15, 1909

Depositions and affidavit of publication received January 18, 1910

Fees received January 31, 1910

Depositions of holder in proof of completion and beneficial use returned to applicant
 to be substituted by depositions from other party.

Corrected depositions received March 17, 1910

Certificate and License issued March 18, 1910

 Permit No. 1750

CERTIFICATE OF COMPLETION OF WORKS.

To All Whom it May Concern:

This is to certify that HIGH CREEK ELECTRIC LIGHT & POWER CO., of Richmond, County of Cache, and State of Utah, the holder of Permit No. 1750, issued upon Application No. 2414, bearing date of priority of December 23, 1905, authorizing the diversion of 50 second feet of the waters of Cub River, County of Oneida, State of Idaho, for Electric light and power purposes, has fully complied with the provisions of the laws of the State of Idaho relating to the proof of completion of the works of diversion set out and described in said Permit; that said works are adequate for diverting and conveying to the place of intended use 50 second feet of the waters of Cub River, that the point of Diversion of said waters is at a point 450 feet East and 190 feet North of southwest corner of Northwest quarter of Section 25, Township 15 South, Range 40 East of Boise Meridian, and that said water is to be used at the power house situated in the Southwest quarter of Northwest quarter (SW4 NW4) Section 35, township 15 South, Range 40 East of Boise Meridian.

Witness my hand this 18th day of March, A.D. 1910.

Jas. Stephenson, Jr.

State Engineer of the State of Idaho.

License issued for 50 second feet

P. 593

OPERATIONS AGREEMENT
FOR PACIFICORP'S BEAR RIVER SYSTEM

This Agreement is made this 18th day of April, 2000 by and among PacificCorp, an Oregon Corporation, the Idaho Department of Water Resources, the Utah Division of Water Resources, and the Wyoming State Engineer's Office. Collectively, Idaho, Utah and Wyoming are referred to as the "States." PacificCorp, Idaho, Utah, and Wyoming are collectively referred to as the "Parties."

WHEREAS, the States executed the Bear River Compact in 1957, and the Amended Bear River Compact in 1978, to "remove the causes of present and future controversy over the distribution and use of the waters of Bear River; to provide for efficient use of water for multiple purposes; to permit additional development of the water resources of Bear River; to promote interstate comity; and to accomplish an equitable apportionment of the waters of Bear River among the compacting States;" and

WHEREAS, PacificCorp owns water rights to divert and store water in Bear Lake and water rights in the Bear River as decreed in the matter of *Utah Power & Light Company v. The Last Chance Canal Company, Limited, et al.* in Equity No. 203, July 14, 1920 (the "Dietrich Decree"), and *Utah Power & Light Company v. Richmond Irrigation Company, et al.*, February 21, 1922 (the "Kimball Decree"), as well as other water rights in the Bear River. PacificCorp's water rights include the exclusive right to divert and store water in and release water from Bear Lake between elevations 5923.65 ft and 5902.00 ft MSL (UP&L Datum) ("Bear Lake Storage Water"). The Idaho Water Resource Board holds a license issued by the State of Idaho establishing a minimum Bear Lake elevation of 5902.00 ft; and

WHEREAS, PacificCorp has entered into various contracts for the use and allocation of its Bear Lake Storage Water under certain terms and conditions; and

WHEREAS, PacificCorp owns and operates six hydroelectric plants with a total capacity of 116 MW on the Bear River downstream from Bear Lake. Five of the plants are licensed by the Federal Energy Regulatory Commission ("FERC"); and

WHEREAS, FERC determined on February 12, 1998 that Bear Lake "is operated primarily to supply irrigation water to downstream users in accordance to the Bear River Compact, [and] does not provide energy generation benefits to licensed projects downstream;" and

WHEREAS, by "AGREEMENT Regarding the Bear River System" between the States, PacificCorp, and ScottishPower dated October 5, 1999 (the "October 5, 1999 Agreement") relating to PacificCorp's operation of Bear Lake and its hydroelectric plants downstream from Bear Lake, the Parties agreed "PacificCorp's water rights are constrained by the historic practice of not making a delivery call for hydropower

generation;" and "Bear Lake is operated, consistent with long-standing historic practice and applicable laws, primarily as a storage reservoir to satisfy contracts for existing irrigation uses and flood control needs in the three States, with the use of water for hydropower generation being incidental to the other purposes for which the water is being released;" and

WHEREAS, the October 5, 1999 Agreement anticipated the Parties would enter into a subsequent agreement further describing PacifiCorp's operations, and the Parties have negotiated this Agreement in satisfaction of the October 5, 1999 Agreement.

NOW THEREFORE, for the mutual promises of the Parties, and for other good and valuable consideration, the Parties agree as follows:

1. Purpose of this Agreement.

A. The purpose of this Agreement is to satisfy the requirements of Paragraph 2 of the October 5, 1999 Agreement committing the parties to negotiate an enforceable Bear River System Operations Agreement that shall confirm and continue PacifiCorp's historic practice of utilizing its water rights primarily for existing irrigation uses and contractual obligations.

B. The Parties agree that Paragraph 1.a. of the October 5, 1999 Agreement describes PacifiCorp's use of its water rights in Bear River for hydropower generation. Further agreement on PacifiCorp's use of its water rights for hydropower generation is not described herein, and the scope of this Bear River Systems Operations Agreement is limited to PacifiCorp's operations at Bear Lake.

C. The Parties recognize that PacifiCorp's operations at Bear Lake and at its downstream hydroelectric power plants on Bear River are separate operations and are not related, other than water released from Bear Lake is used for hydropower generation incidental to the other purposes for which water is released.

D. The Parties do not intend by this Agreement to confirm or agree that any specific water management practice of PacifiCorp described, referred to, or implied in this Agreement, other than the limitations set forth in the October 5, 1999 Agreement, shall constitute a constraint or limitation on PacifiCorp's use of its water rights. PacifiCorp will consult with the States if it sees the need to deviate from the operation and practices outlined in this Agreement.

E. The Parties do not intend by this Agreement to set forth a detailed plan for day-to-day operations of Bear Lake, but rather to establish the framework within which PacifiCorp will develop and implement such a plan. Such plan will conform to the terms of this Agreement and the October 5, 1999 Agreement.

F. The Parties recognize that persons not party to this agreement have varying interests in the manner in which Bear Lake is managed and operated. This Agreement is not intended as a formal recognition or confirmation of the interests of persons not party to this Agreement.

G. The Parties agree that if any of the terms of this Agreement are found to be inconsistent with the terms of the October 5, 1999 Agreement, the October 5, 1999 Agreement is controlling.

PacifiCorp's Regulation of Bear Lake.

A. PacifiCorp agrees to continue to operate Bear Lake primarily for Bear Lake Storage Water delivery under its contracts, or for flood control, depending on the level of Bear Lake, the forecasted runoff, general water supply conditions, constraints of its contracts, its assessment of the hydrology and other conditions in the Bear River basin. Hydropower generation at its downstream hydroelectric plants shall continue to be an incidental use of Bear Lake Storage Water released primarily for contract deliveries or flood control.

B. PacifiCorp will not execute new Bear Lake Storage Water contracts which would result in delivery of a greater amount of Bear Lake Storage Water than the amount historically used. The extent of historical use is currently documented by interstate accounting models used by Idaho and Utah. Nothing herein will prevent the States, by agreement, from updating said models or adopting a different technical basis for determining historical use.

C. PacifiCorp's Bear Lake Target Elevation (the "PTE"). PacifiCorp has determined the PTE represents the elevation of Bear Lake to be achieved, if possible, on March 31st of each year. The PTE may range from as low as elevation 5916 ft during projected high runoff conditions to elevation 5920 ft during projected low runoff conditions. Under normal conditions, PacifiCorp sets the PTE at 5918 ft. PacifiCorp has established the PTE to best balance long term contract requirements for Bear Lake Storage Water during sustained drought periods with flood control operation during high runoff periods. Although this increase above the Bear River Compact Irrigation Reserve results in additional lost generation at the downstream hydroelectric plants during high runoff periods, it provides on average an additional 225,000 acre feet of Bear Lake Storage Water for contract deliveries in excess of the Bear River Compact Irrigation Reserve, enhanced recreational and aesthetic opportunities at Bear Lake, and maintenance of wildlife values, while still maintaining flood control capabilities.

i. Generally, PacifiCorp sets the PTE at the end of the irrigation season and updates the PTE each month during the period from the end of the irrigation season to March 31st of the following year. During extreme high runoff years, PacifiCorp may set the PTE as early as August 1st and may continue to update it into the following runoff season. Adjustments to the PTE are made to accommodate changing conditions, including weather forecasts, downstream constraints, uncertain irrigation demands, variations in runoff from month to month, and other operational constraints.

ii. Generally, if Bear Lake elevation is 5918 ft or higher at the end of the irrigation season, releases are scheduled to lower Bear Lake to elevation 5918 ft by March 31st of the following year. Conversely, if Bear Lake is below elevation 5918 ft at the end of the irrigation season, releases are curtailed until such time as the lake is predicted to reach elevation 5918 ft or until such time as high snowpack and runoff forecasts during the following winter months require PacifiCorp to make releases for flood control. At times during the period from the end of the irrigation season to March 31st of the following year, if snowpack and runoff forecasts indicate below average runoff, releases may be curtailed for the entire winter, even if the Bear Lake elevation is higher than 5918 ft. Except in emergencies, PacifiCorp will not release water from Bear Lake when the elevation is below the PTE unless consistent with flood control operation.

iii. Setting and adjusting the PTE is consistent with PacifiCorp's operation of Bear Lake since the early 1970s. In addition, the practice is consistent with PacifiCorp's FERC applications to relicense its Bear River hydroelectric facilities submitted to FERC on September 23, 1999. The FERC applications commit to continuation of historical operation. Refer to PacifiCorp's FERC applications for Soda (FERC #20) at FERC Application Exhibit B1-11 (September 1999), Grace/Cove (FERC #2401) at FERC Application Exhibit B1-14 (September 1999) and Oneida (FERC #472) at FERC Application Exhibit B1-13 (September 1999). The FERC applications do not provide for the release of Bear Lake storage water for hydro generation. From time to time, the elevation of Bear Lake may range from elevation 5902.00 ft to elevation 5923.65 ft. Nothing herein shall restrict PacifiCorp's right to store water in Bear Lake to elevation 5923.65 ft.

3. PacifiCorp's Hydroelectric Operations on Bear River

A. PacifiCorp owns and operates 6 hydroelectric plants on the Bear River downstream from Bear Lake which are listed in the table below.

<u>Hydroelectric Project</u>	<u>FERC No.</u>	<u>Current Licensed Capacity</u>
Soda	20	14.0 MW
Last Chance	4580	1.4 MW*
Grace	2401	33.0 MW
Cove	2401	7.5 MW
Oneida	472	30.0 MW
Cutler	2420	30.0 MW

(*FERC License Exemption)

PacifiCorp operates each hydroelectric plant with water rights granted by the state in which the hydroelectric plant is located. The Cutler hydroelectric plant operates with water rights recognized by both Utah and Idaho.

B. PacifiCorp agrees to continue its historic practice of regulating operation at its hydroelectric plants to meet existing downstream demands, some of which have water rights which are earlier in priority than PacifiCorp's hydro power water rights. Such historic operation is consistent with PacifiCorp's FERC licenses.

C. Nothing in this Agreement or the October 5, 1999 Agreement shall be interpreted as limiting PacifiCorp's right or ability to protest water right applications or filings in the Bear River Basin or from otherwise exercising and defending its water rights.

4. PacifiCorp regulates Bear Lake and operates its Bear River hydroelectric plants subject to various institutional, legal, and operational guidelines. The Parties recognize that said institutional guidelines may change due to conditions beyond the control of one or more of the Parties, and that such change may require adjustments in PacifiCorp's operations. If this occurs, PacifiCorp will advise the States and consult with them prior to changing its operations.

5. This Agreement is made in recognition of the existing rights and practices of the Parties.

6. This Agreement is intended to be a final and binding agreement in satisfaction of the commitment to negotiate a Bear River System Operations Agreement pursuant to Paragraph 2 of the October 5, 1999 Agreement between the States and PacifiCorp and inures to the benefit of, and is binding upon, the representatives, successors in interest, and assigns of each entity. No promise or inducement has been offered or made except as herein set forth, and this Agreement is executed without reliance upon any statement or representation by any other Party or its agent.

7. Nothing in this Agreement shall be interpreted to modify, limit or enhance any rights or obligations of the States under the laws of the States and the Amended Bear River Compact.

8. Consideration. The Parties acknowledge receiving sufficient consideration for the commitments contained in this Agreement and waive any argument that they might have in any judicial proceeding that no consideration exists to support this Agreement or that the consideration received is not sufficient.

9. Binding Effect of Agreement. This Agreement is intended to be a final and binding agreement between the States and PacifiCorp and inures to the benefit of, and is binding upon, the representatives, successors in interest, and assigns of each entity.

10. Sovereign Immunity. Each of the States and their various agencies do not waive their sovereign immunity by entering into this Agreement and fully retain all immunities and defenses provided by law with respect to any action based on or occurring as a result of this Agreement.

11. Capacity to Execute Agreement. The Parties warrant and represent that the person executing this Agreement is empowered to do so on behalf of such Party and thereby binds each entity by signing this Agreement.

12. Waivers. The failure to object to any breach of any term or condition in this Agreement shall not constitute a waiver and no failure to object shall be deemed a waiver of any prior or subsequent breach.

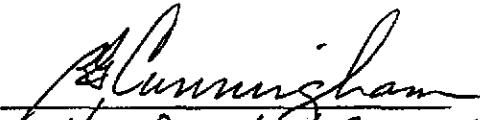
13. Modification. This Agreement may be amended or modified only by a written agreement signed by each of the Parties to this Agreement.

14. Execution of Multiple Originals. The Parties agree that this Agreement may be executed in four counterparts, each of which shall be an original.

15. Signatures. In witness whereof, the Parties to this Agreement through their duly authorized representatives have executed this Agreement and certify that they have read, understood, and agreed to the terms and conditions of this Agreement as set forth herein.

IN WITNESS WHEREOF, this Agreement is executed on the date first above written.

PACIFICORP

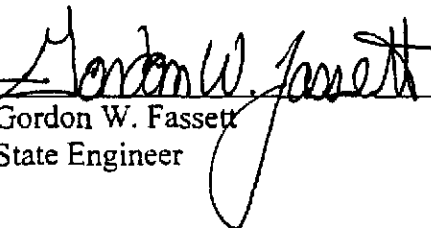
By: 
Vice President Generation

STATE OF IDAHO

By: 
Karl J. Decher, Director
Department of Water Resources

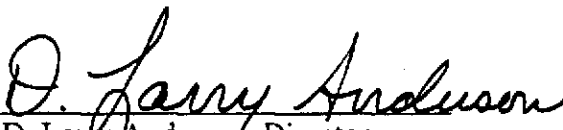
STATE OF WYOMING

APPROVED AS TO FORM

By: 
Gordon W. Fassett
State Engineer

By: 
For Wyoming

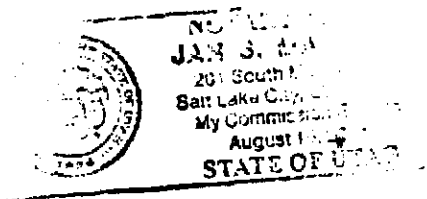
STATE OF UTAH

By: 
D. Larry Anderson, Director
Division of Water Resources

ACKNOWLEDGEMENTS

STATE OF Utah)
COUNTY OF Salt Lake) ss.

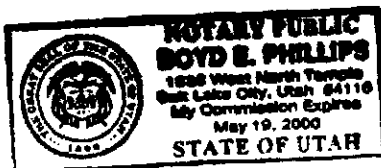
On the 5th day of April, 2000, before me, Jan S. Mahoney
a notary public, personally appeared Barry G. Cunningham, a Vice President General
of PacifiCorp, known or identified to me to be the person who executed the foregoing
instrument on behalf of PacifiCorp, and he acknowledged to me that he executed the
same.



Jan S. Mahoney
NOTARY PUBLIC
residing at:

STATE OF Utah)
COUNTY OF Salt Lake) ss.

On the 18th day of April, 2000, before me, Boyd E. Phillips,
a notary public, personally appeared Karl J. Dreher, Director, Idaho Department of Water
Resources, known or identified to me to be the person who executed the foregoing
instrument on behalf of the State of Idaho, and he acknowledged to me that he executed
the same.

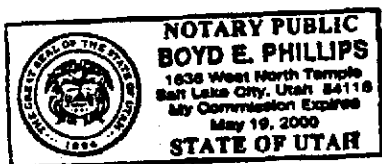


Boyd E. Phillips
NOTARY PUBLIC
residing at:

Bozartiful, Utah

STATE OF Utah)
COUNTY OF Salt Lake) ss.

On the 18th day of April, 2000, before me, Boyd E. Phillips,
a notary public, personally appeared Gordon W. Fassett, Wyoming State Engineer,
known or identified to me to be the person who executed the foregoing instrument on
behalf of the State of Wyoming, and he acknowledged to me that he executed the same.

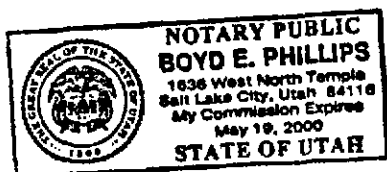


Boyd E. Phillips
NOTARY PUBLIC

residing at:

STATE OF Utah)
COUNTY OF Salt Lake) ss.

On the 18th day of April, 2000, before me, Boyd E. Phillips,
a notary public, personally appeared D. Larry Anderson, Director of the Utah Division of
Water Resources, known or identified to me to be the person who executed the foregoing
instrument on behalf of the State of Utah, and he acknowledged to me that he executed
the same.



Boyd E. Phillips
NOTARY PUBLIC

residing at:

AGREEMENT Regarding the Bear River System

This Agreement is entered into this 5th day of October, 1999, by and among PACIFICORP, an Oregon corporation ("PacifiCorp"); SCOTTISH POWER plc, a public limited company registered in Scotland ("ScottishPower"); the STATE OF IDAHO, by and through the Director of the Department of Water Resources ("Idaho"); the STATE OF UTAH, by and through the Director of the Division of Water Resources, ("Utah"); and the STATE OF WYOMING, by and through the State Engineer ("Wyoming"). PacifiCorp, ScottishPower, Idaho, Utah, and Wyoming are individually referred to as a "Party" and collectively as the "Parties."

RECITALS

A. PacifiCorp operates hydroelectric plants on the Bear River and holds water rights in the Bear River and Bear Lake (such hydroelectric plants and water rights referred to herein as "Bear River System"). PacifiCorp's water rights in the Bear River System are subject to the Amended Bear River Compact among the States of Idaho, Utah and Wyoming, as well as the laws of the three States, and other obligations.

B. PacifiCorp and ScottishPower are parties to a merger transaction that is currently the subject of approval proceedings before the public utility commissions in the States of Idaho, Utah and Wyoming.

C. The Parties recognize the need to assure the public utility commissions of the States of Idaho, Utah, and Wyoming, and the other public officials and water users of the three States that PacifiCorp's merger with ScottishPower will not affect the operation of the Bear River System or PacifiCorp's ownership or exercise of its Bear River water rights.

D. By this Agreement, PacifiCorp and ScottishPower intend to assure the States of Idaho, Utah and Wyoming that PacifiCorp or ScottishPower will not make any separate agreement with any State individually regarding PacifiCorp's or ScottishPower's water rights in the Bear River System.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:

1. Both ScottishPower and PacifiCorp agree that:
 - a. PacifiCorp's water rights are constrained by the historic practice of not making a delivery call for hydropower generation; and
 - b. Bear Lake is operated, consistent with long-standing historic practice and applicable laws, primarily as a storage reservoir to satisfy

contracts for existing irrigation uses and flood control needs in the three States, with the use of water for hydropower generation being incidental to the other purposes for which the water is being released.

2. The Parties agree to jointly negotiate an enforceable Bear River System Operations Agreement consistent with the provisions set forth in paragraph 1. With respect to the Bear River, the Operations Agreement shall confirm and continue PacifiCorp's historic practice of utilizing its water rights primarily for existing irrigation uses and contractual obligations. The Operations Agreement shall be made available for public review and comment in each of the three States.

3. This Agreement, the Operations Agreement, or any other agreement that may be entered into with PacifiCorp and/or ScottishPower concerning utilization of PacifiCorp's water rights in the Bear River System may be recorded in the County Recorders' Offices of the appropriate counties and shall be provided to the public utility commissions of the respective States within 10 days of execution of the document.

4. Approval and execution of the Operations Agreement by each of the States of Idaho, Utah, and Wyoming shall be required for the Operations Agreement to be effective.

5. The Parties commit to use their best efforts to complete negotiation, review, and execution of the Bear River System Operation Agreement within sixty (60) days of the execution of this Agreement.

6. No agreements between PacifiCorp and/or ScottishPower and one or more of the States concerning utilization of PacifiCorp's water rights in the Bear River System shall be effective unless jointly approved by all three States.

7. Nothing in this Agreement, nor in any Operations Agreement, shall be interpreted to modify, limit or enhance any rights or obligations of the three States under the laws of the States and the Amended Bear River Compact.

8. Consideration. ScottishPower and PacifiCorp acknowledge receiving sufficient consideration for the commitments contained in this Agreement and waive any argument that they might have in any judicial proceeding that no consideration exists to support this Agreement or that the consideration received is not sufficient.

9. Binding Effect of Agreement. This Agreement is intended to be a final and binding settlement agreement between the three States and ScottishPower and PacifiCorp, jointly and severally, and inures to the benefit of, and is binding upon, the representatives, successors in interest, and assigns of each entity.

10. Sovereign Immunity. Each of the three States and their various agencies do not waive their sovereign immunity by entering into this Agreement and fully retain all immunities and defenses provided by law with respect to any action based on or occurring as a result of this Agreement.

11. Capacity to Execute Agreement. ScottishPower and PacificCorp each warrant and represent that the person executing this Agreement is empowered to do so on behalf of such company and thereby binds each entity by signing this Agreement.

12. Waivers. The failure to object to any breach of any term or condition in this Agreement shall not constitute a waiver and no failure to object shall be deemed a waiver of any prior or subsequent breach.

13. Entirety of Agreement. This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations and oral agreements. No promise or inducement has been offered or made except as herein set forth and this Agreement is executed without reliance upon any statement or representation by any other Party or their agent.

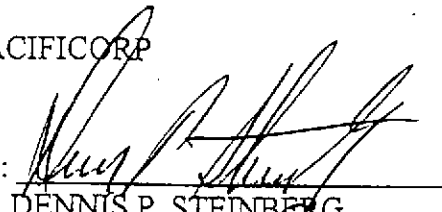
14. Modification. This Agreement may be amended or modified only by a written agreement signed by each of the Parties to this Agreement.

15. Execution of Agreement in Parts. Due to time constraints, the Parties acknowledge that it is not possible to have all Parties sign the same copy of this Agreement. Therefore, the Parties agree that this Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. Signatures. In witness whereof, the Parties to this Agreement through their duly authorized representatives have executed this Agreement and certify that they have read, understood, and agreed to the terms and conditions of this Agreement as set forth herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and the year first above written.

PACIFICORP

By: 

DENNIS P. STEINBERG

Senior Vice President of PacificCorp

SCOTTISH POWER plc

By: 

MATTHEW R. WRIGHT

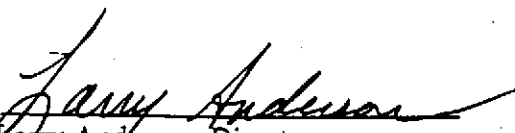
Manager of Scottish Power plc

PAGE 3 OF 5
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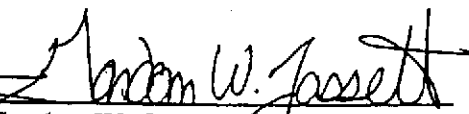
STATE OF IDAHO

By: 
Karl J. Dreher, Director
Department of Water Resources

STATE OF UTAH

By: 
Larry Anderson, Director
Division of Water Resources

STATE OF WYOMING

By: 
Gordon W. Fassett
State Engineer

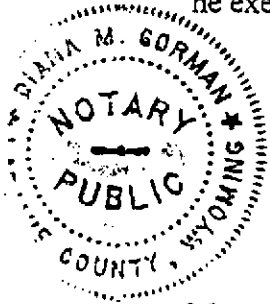
APPROVAL AS TO FORM:

By: 
for Wyoming

ACKNOWLEDGMENTS

STATE OF Wyoming)
) ss.
COUNTY OF Laramie)

On this 5th day of October, 1999, before me, Diana M. Gorman, a notary public of the State of Wyoming, personally appeared DENNIS P. STEINBERG, a Senior Vice President of PacifiCorp, known or identified to me to be the person who executed the foregoing instrument on behalf of PacifiCorp, and he acknowledged to me that he executed the same.

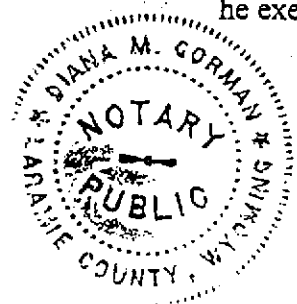


Diana M. Gorman
NOTARY PUBLIC FOR WYOMING
residing at:
739 Cypress Lane
Cheyenne, WY 82009

My commission expires: 2/21/02

STATE OF Wyoming)
) ss.
COUNTY OF Laramie)

On this 5th day of October, 1999, before me, Diana M. Gorman, a notary public of the State of Wyoming, personally appeared MATTHEW R. WRIGHT, a Manager of Scottish Power plc, known or identified to me to be the person who executed the foregoing instrument on behalf of Scottish Power plc, and he acknowledged to me that he executed the same.



Diana M. Gorman
NOTARY PUBLIC FOR WYOMING
residing at:
739 Cypress Lane
Cheyenne, WY 82009

My commission expires: 2/21/02



Office of the Attorney General

Governor
Jim Geringer

Attorney General
Gay Woodhouse

Water & Natural Resources Division
123 Capitol Building
Cheyenne, Wyoming 82002
307-777-6946 Telephone
307-777-3542 Fax

Deputy Attorney General
Thomas J. Davidson

October 22, 1999

Mr. Norman K. Johnson
Utah Attorney General's Office
Natural Resources Division
Post Office Box 140855
Salt Lake City, Utah 84114-0855

Mr. Phillip J. Rassier
State of Idaho
Office of the Attorney General
Natural Resources Division
Water Resources Unit
1301 North Orchard Street
Boise, ID 83706-2237

Mr. Brent R. Kunz
Hathaway, Speight & Kunz, LLC
Post Office Box 1208
Cheyenne, WY 82003-1208

Mr. Paul J. Hickey
Hickey, Mackey & Evans
Post Office Box 467
Cheyenne, WY 82003-0467

Dear Norm, Phil, Brent, and Paul:

Enclosed please find one of five originals of the *Agreement Regarding the Bear River System*, dated October 5, 1999, with original signatures of each of the five signatories. On behalf of the Wyoming Attorney General's Office and the State Engineer's Office, we wish to express our sincere appreciation to each person involved in negotiating this agreement for their diligent efforts. We enjoyed working with you and look forward to doing so in the future.

Truly yours,

Thomas J. Davidson
Deputy Attorney General

Brian C. Shuck
Assistant Attorney General

Enclosure

cc: Jim Fell, Jody Williams, Jeff Fassett, Sue Lowry

RECEIVED

OCT 27 1999

Department of Water Resources

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FEB 16 2000

DRAFT January 28, 2000

PACIFICORP'S BEAR RIVER BASIN WATER RIGHTS IDAHO

Bear Lake Storage water rights are underlined

<i><u>RIGHT NO.</u></i>	<i><u>AMOUNT</u></i>	<i><u>PRIORITY DATE</u></i>	<i><u>STATUS</u></i>	<i><u>TYPE OF USE</u></i>	<i><u>PLACE OF USE</u></i>
<u>11-00248</u>	<u>3000 cfs</u>	<u>03/01/1911</u>	<u>Decree</u>	<u>Irrigation / Power Storage / Other</u>	<u>Bear Lake</u>
<u>11-00249</u>	<u>2500 cfs</u>	<u>09/11/1912</u>	<u>Decree</u>	<u>Irrigation / Power Storage / Other</u>	<u>Bear Lake</u>
<u>11-00250</u>	<u>300 cfs</u>	<u>09/01/1912</u>	<u>Decree</u>	<u>Irrigation / Power Storage / Other</u>	<u>Bear Lake</u>
<u>11-00251</u>	<u>200 cfs</u>	<u>09/01/1912</u>	<u>Decree</u>	<u>Irrigation / Power Storage / Other</u>	<u>Bear Lake</u>
<u>11-04004</u>	<u>0.5 cfs / 97.5 cfs</u>	<u>03/01/1894</u>	<u>Decree</u>	<u>Irrigation</u>	<u>Bear Lake</u>
<u>11-04355</u>	<u>0.12 cfs</u>	<u>09/03/1918</u>	<u>Claim</u>	<u>Domestic/ Irrigation</u>	<u>Lifton Pump</u>
<u>11-00228</u>	<u>0.94 cfs</u>	<u>05/01/1890</u>	<u>Decree</u>	<u>Irrigation</u>	
<u>11-00242</u>	<u>0.5 cfs</u>	<u>05/01/1902</u>	<u>Decree</u>	<u>Irrigation</u>	
<u>11-04356</u>	<u>1.4 cfs</u>	<u>07/08/1933</u>	<u>Claim</u>	<u>Irrigation</u>	<u>Soda Springs Golf Course</u>
<u>11-01096</u>	<u>7.5 cfs</u>	<u>03/14/1889</u>	<u>Decree</u>	<u>Irrigation</u>	<u>Ovid Creek</u>

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11-01114	7.5 cfs	06/01/1955	Decree	Irrigation	Ovid Creek
11-01116	1.660 cfs	06/01/1955	Decree	Irrigation	Ovid Creek
HYDRO PROJECTS • Bear River hydro water rights appear in bold print					
RIGHT NO.	AMOUNT	PRIORITY DATE	STATUS	TYPE OF USE	PLACE OF USE
11-00086	70 cfs	02/03/1910	Decree	Power	Paris Hydro
11-02081	1500 cfs	06/12/1922	License	Power	Soda Hydro
11-02084	1 cfs	06/09/1923	License	Domestic / Irrigation	Soda Hydro
11-04354	0.02 cfs	01/01/1922	Claim	Irrigation	Soda Hydro
11-04357	400 cfs	01/01/1922	Claim	Power	Soda Hydro
11-04358	0.08 cfs	01/01/1922	Claim	Domestic	Soda Hydro
13-04128	600 cfs	01/01/1922	Claim	Power / Storage	Soda Hydro
13-00957	500 cfs	12/28/1905	Decree	Power	Grace Hydro
13-00958	500 cfs	07/06/1908	Decree	Power	Grace Hydro

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13-04333	0.04 cfs	06/01/1905	Claim	Domestic	Grace Hydro
13-04334	0.01 cfs	06/01/1905	Claim	Irrigation	Grace Hydro
RIGHT NO.	AMOUNT	PRIORITY DATE	STATUS	TYPE OF USE	PLACE OF USE
13-04335	0.06 cfs	05/01/1905	Claim	Irrigation	Grace Hydro
13-04336	0.25 cfs	05/01/1905	Claim	Domestic / Irrigation	Grace Hydro
13-00893	0.07 cfs	06/01/1913	Decree	Domestic	Oneida Hydro
13-00967	1000 cfs	06/17/1910	Decree	Power	Oneida Hydro
13-00968	1500 cfs	01/18/1911	Decree	Power	Oneida Hydro
13-04129	700 cfs	01/01/1910	License	Power	Oneida Hydro
13-04337	0.08 cfs	06/17/1910	Claim	Domestic	Oneida Hydro
13-04338	0.08 cfs	06/17/1910	Claim	Irrigation	Oneida Hydro
13-00962	1500 cfs	03/09/1916	Decree	Power	Cove Hydro
13-00963	4000 af	03/28/1916	Decree	Power	Cove Hydro
13-00976	270 cfs	12/01/1903	Decree	Power	Cutler Hydro

13-00977	135 cfs	12/01/1906	Decree	Power	Cutler Hydro
13-00978	135 cfs	12/01/1908	Decree	Power	Cutler Hydro
RIGHT NO.	AMOUNT	PRIORITY DATE	STATUS	TYPE OF USE	PLACE OF USE
13-00979	500 cfs	12/12/1912	Decree	Power	Cutler Hydro
11-02018	40 cfs	08/09/1907	License	Power Generation	Georgetown Hydro
13-02013	50 cfs	12/23/1905	License	Power Generation	High Creek Hydro

PACIFICORP'S BEAR RIVER BASIN WATER RIGHTS UTAH

Bear Lake Storage water rights are underlined

WATER RIGHT	AMOUNT	PRIORITY DATE	STATUS	TYPE OF USE	PLACE OF USE
	<u>3000 cfs</u>	<u>03/01/1911</u>	<u>Decree</u>	<u>Irrigation / Power Storage / Other</u>	<u>Bear Lake</u>
	<u>2500 cfs</u>	<u>09/11/1912</u>	<u>Decree</u>	<u>Irrigation / Power Storage / Other</u>	<u>Bear Lake</u>
	<u>300 cfs</u>	<u>09/01/1912</u>	<u>Decree</u>	<u>Irrigation / Power Storage / Other</u>	<u>Bear Lake</u>

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FEB 16 2000

	<u>200 cfs</u>	<u>09/01/1912</u>	<u>Decree</u>	<u>Irrigation / Power Storage / Other</u>	<u>Bear Lake</u>
23-1844	0.6 cfs	00/01/1910	Diligence	Stockwater/ Storage	Swan Creek
25-9437	102.72 af	05/01/1880	Decree	Irrigation	Cutler Area
WATER RIGHT	AMOUNT	PRIORITY DATE	STATUS	TYPE OF USE	PLACE OF USE
25-9827	2 cfs / 162.4 af	10/11/1955	Application / WUC	Irrigation / Storage	Bear River
25-9828	91.2 af	07/26/1973	Application / WUC	Irrigation	Bear River
25-9829	52.4 af	03/24/1953	Certificate	Irrigation	Bear River
25-9830	16 af	12/26/1952	Certificate	Irrigation	Bear River
25-9831	16 af	02/18/1960	Application / WUC	Irrigation	Bear River
25-1844	25 cfs / 22.35 af	01/01/1901	Decree	Stockwater / Irrigation	Cutler Area
25-1867	25 cfs/663.54 af	05/01/1880	Decree	Stockwater / Irrigation	Cutler Area
25-2014		05/01/1880	Diligence	Stockwater	Cutler Area
25-2031	25 cfs / 693.3 af	01/01/1880	Decree	Stockwater / Irrigation	Cutler Area
25-2739	.006 cfs		Diligence	Stockwater	Cutler Area

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25-2741	.002 cfs	01/01/1900	Diligence	Stockwater	Cutler Area
25-2743	.004 cfs	01/01/1900	Diligence	Stockwater	Cutler Area
25-4405		01/01/1858	Diligence	Stockwater	Cutler Area
WATER RIGHT	AMOUNT	PRIORITY DATE	STATUS	TYPE OF USE	PLACE OF USE
25-4406		01/01/1858	Diligence	Stockwater	Cutler Area
25-4408		01/01/1858	Diligence	Stockwater	Cutler Area
25-4411		01/01/1958	Diligence	Stockwater	Cutler Area
25-4413		01/01/1958	Diligence	Stockwater	Cutler Area
25-4688	0.05 cfs	05/01/1878	Decree	Stockwater / Irrigation	Cutler Area
25-4789	.01 cfs	01/01/1935	Diligence	Stockwater	Cutler Area
25-4928	20 af	10/13/1965	Application / WUCS	Irrigation / Storage	Spring
25-4930	40 af	02/16/1963	Application / WUCS	Irrigation / Storage	Spring
25-5883	136.8 af	05/01/1860	Decree	Stockwater / Irrigation	Cutler Area
25-6626	3 cfs / 160.4 af	05/01/1918	Decree	Irrigation	Pump

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FEB 16 2000

25-6852	.35 cfs/ 209.2 af	04/16/1976	Application / WUCS	Stockwater / Irrigation	BR Slough
25-6943	7.5 af	10/31/1965	Application / WUCS	Irrigation / Storage	Spring
25-7780		01/01/1860	Diligence	Stockwater	BR Project
WATER RIGHT	AMOUNT	PRIORITY DATE	STATUS	TYPE OF USE	PLACE OF USE
29-1953 (a21627)		01/01/1900	WUC	Stockwater	Cutler Area
25-9637		09/18/1995	Application	Stockwater	Cutler Area
HYDRO PROJECTS					
• Bear River hydro water rights appear in bold print					
WATER RIGHT	AMOUNT	PRIORITY DATE	STATUS	TYPE OF USE	PLACE OF USE
29-1506	2500 cfs	12/19/1923	Certificate	Power	Cutler Hydro
29-1855	270 cfs	12/01/1903	Decree	Power	Cutler Hydro
29-2146	135 cfs	12/01/1906	Decree	Power	Cutler Hydro
29-2147	135 cfs	02/01/1908	Decree	Power	Cutler Hydro
29-2148	500 cfs	12/02/1912	Decree	Power	Cutler Hydro

RAFT January 28, 2000

25-8186	32.5 cfs	08/11/1980	Application	Power	High Creek Hydro
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FEB 15 2000

January 29, 1971

Re: License No. 13-2013

United States Department of Agriculture
Farmers Home Administration
Preston, Idaho 83263

ATTENTION: Gaylord K. Harward, County Supervisor

Dear Mr. Harward:

Pursuant to your letter of January 15, 1971, we have researched our files and find that Mr. Lavon W. Bowman may have some decreed water on a portion of the lands as described in your letter.

Our records indicate that water master Roland Carter delivers 1 c.f.s. of water to at least a portion of Mr. Bowman's land. You should contact Roland Carter. Route #2, Post Office Box #100, Preston, Idaho, for any additional information as to the extent of the water right invested in Mr. Bowman's land.

If we may be of any further assistance in this matter, please do not hesitate to contact us.

Very truly yours,

Dorian Clay
Appropriation Examiner

DC:cm

13 2013

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION
Preston, Idaho 83263

1750

January 15, 1971

Bureau of Reclamation
State House
Boise, Idaho 83702

Gentlemen:

Mr. Lavon W. Bowman has made application with our agency for a loan. We are interested in what water rights you show for this property. He claims title to the following described land:

Commencing at the NW corner of SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 24, Township 15 South, Range 40 East, Boise Meridian, thence running East 80 rods; thence South 80 rods; thence West 27 rods; thence South 1300 feet; thence West 53 rods; thence North 2620 feet to the place of beginning.

May we thank you in advance for this information.

Gaylord K. Harward
Gaylord K. Harward
County Supervisor

13 2013

W $\frac{1}{2}$ SW 24
15 S 40E