

Jeff

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WILLIAM D. OLSON
W. MARCUS W. NYE
GARY L. COOPER
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL*
JOHN B. INGELSTROM
DANIEL C. GREEN
REED W. LARSEN
BRENT O. ROCHE
FRED J. LEWIS
KIRK B. HADLEY
MITCHELL W. BROWN
ERIC S. HUNN
DAVID E. ALEXANDER**

*ALSO MEMBER IL & WY BARS
**ALSO MEMBER MO BAR

Rent Paul
Ron

LAW OFFICES OF
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FAX
208-232-6109

April 11, 1995

RECEIVED

APR 12 1995

Department of Water Resources
Eastern District Office

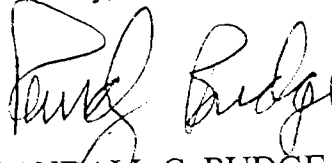
R. Keith Higginson, Director
Norman C. Young, Administrator
Idaho Department of Water Resources
1301 N. Orchard Street
Boise, Idaho 83706

Re: Bear River Settlement Agreement

Dear Keith and Norm:

I thought you would be interested in the enclosed Bear Lake Settlement Agreement which was negotiated and executed in Salt Lake yesterday. I expect it will be presented to the Bear River Commission at the meetings next week in Logan.

Sincerely,


RANDALL C. BUDGE

RCB:rr

Enclosure

cc: Ron Carlsen, Eastern Div., IDWR
Harold Jones

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APR 12 1995

Department of Water Resources
Eastern District Office

BEAR LAKE SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into this 10th day of April, 1995, by and between LAST CHANCE CANAL COMPANY, CUB RIVER CANAL COMPANY, WEST CACHE CANAL COMPANY, BEAR RIVER CANAL COMPANY, IDAHO PUMPERS ASSOCIATION, UTAH PUMPERS ASSOCIATION, and THE BEAR RIVER WATER USERS ASSOCIATION, INC. (referred to collectively as the "Irrigators"), BEAR LAKE WATCH, INC., EMERALD BEACH, INC., BEAR LAKE EAST, INC., and JIM KIMBAL (hereinafter referred to collectively as the "Bear Lake Group"), and PACIFICORP.

RECITALS:

A. PacifiCorp has certain decreed rights under the Dietrich Decree in Idaho and the Kimball Decree in Utah to divert water from Bear River for storage in the top 21.65 feet of Bear Lake between elevations 5902 and 5923.65 and to operate, manage and release the same for irrigation in the Bear River Valley in Idaho and Utah, for power generation, and for other beneficial uses.

B. The Irrigators each hold contracts with PacifiCorp to receive Bear Lake storage water which has historically been applied to beneficial use for the irrigation of more than 150,000 acres in Idaho and Utah.

C. The Bear Lake Group represents the interests of their members who are homeowners around Bear Lake, recreationalists and other non-consumptive users of Bear Lake water.

D. The Bear Lake Group has filed a lawsuit against the U.S. Army Corps of Engineers and the Environmental Protection Agency in the U.S. District Court for the District of Utah, Civil Action No. 94-NC-157W, challenging certain permits previously issued to PacifiCorp which allow for dredging of Bear Lake.

E. PacifiCorp has submitted applications for dredging permits to the U.S. Army Corps of Engineers which is pending at U.S. No. 920302450 and also to the Idaho Department of Lands, which is pending at State No. L-11-S-131D (collectively referred to

as the "Dredging Permit Proceedings). In said proceedings, PacifiCorp is the Applicant; the Bear Lake Group and the Irrigators are interested and affected parties.

F. Upon the terms set forth below, the parties desire to compromise, settle and resolve the above described disputes and general disagreements that exist concerning the operation and management of Bear Lake by PacifiCorp and the use, release and distribution of Bear Lake storage water.

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES WHOSE SIGNATURES ARE AFFIXED BELOW AS FOLLOWS:

1. Bear Lake Group will dismiss, without prejudice, their Complaint for Declaratory Judgment and Injunctive Relief pending in the U.S. District Court for the District of Utah, Civil Action No. 94-NC-157W. Such dismissal will occur as soon as practicable as will be arranged with other parties to that suit.

2. PacifiCorp agrees not to dredge Bear Lake prior to or during the 1995 irrigation season.

3. The Bear Lake Group's request for a contested case hearing before the Idaho Department of Lands in Case No. L-LE-95-002 will be withdrawn immediately. The Idaho Department of Lands and the U.S. Army Corps of Engineers will be provided with a copy of this Stipulated Settlement Agreement and are requested to act upon the pending Dredging Permit application and approve the Permit based upon the record established, without further notice and hearing. The parties hereby agree that this Stipulated Settlement Agreement shall be attached to and become a part of the Dredging Permit and that this Settlement Agreement shall be enforceable among the parties in conformance with the terms hereof without notice or hearing by Idaho Department of Lands or U.S. Corps of Engineers. All parties reserve their rights to appeal the decisions entered by the Idaho Department of Lands and/or U.S. Army Corps of Engineers in the pending Dredging Permit Proceedings and this Agreement will be without prejudice or effect upon such appeal rights.

4. The "Bear Lake Storage Allocation and Recovery Proposal," consisting of two pages, attached hereto and incorporated by reference is hereby approved by the

Irrigators and Bear Lake Group, and adopted by PacifiCorp as its established policy and guideline for the operation and management of Bear Lake. The parties acknowledge and agree that the authority to change the annual amount of Bear Lake storage water allocated pursuant to the proposal shall remain solely within PacifiCorp's discretion, upon reasonable cause and following consultation with the "Bear Lake Preservation Advisory Committee" as discussed below.

5. The parties agree to form a new "Bear Lake Preservation Advisory Committee." The task force will consist of a representative of Last Chance Canal Company, Cub River Canal Company, West Cache Canal Company, Bear River Canal Company, Idaho Pumpers Association, Utah Pumpers Association, Bear River Water User's Association, Inc., Bear Lake Watch, Inc., Emerald Beach, Inc., Bear Lake East, Inc., and PacifiCorp, a representative of the Bear River Commission, a representative from each of the Utah and Idaho Departments of Water Resources, and such other interested parties who have an interest in promoting the goals enumerated below. The purpose of the task force will be to address and attempt to resolve through compromise and negotiations disagreements between the parties and other multiple users concerning the use, operation and management of Bear Lake. Among other things, the goals of the Advisory Committee will include the following:

- a. To promote water conservation and efficient use practices;
- b. To promote more reliable water supplies in Bear Lake and Bear River for all users;
- c. To promote soil and energy conservation and improved water quality;
- d. To pursue means other than litigation to resolve conflicts;
- e. To periodically review the Allocation Proposal and recommend changes in that policy to PacifiCorp as may be appropriate; and
- f. To promote the concept of a single allocation model for administration of water on the Bear Lake/Bear River System.

The Advisory Committee will first meet in May, 1995, and at least annually thereafter prior to the annual spring meeting of the Bear River Compact Commission.

6. The parties hereby acknowledge and agree that the Bear Lake Storage Allocation and Recovery Plan is a voluntary plan for allocating water in times of shortage, when nature does not otherwise provide a full supply, and nothing in this Settlement Agreement shall be construed as an abandonment or forfeiture of any appropriated, contract or other rights belonging to the parties.

7. Copies of this Settlement Agreement shall be provided to the U.S. Army Corps of Engineers and Idaho Department of Lands and become a part of the record in the pending Dredging Permit Proceedings, and also will be provided to the Bear River Commission, Idaho Department of Water Resources, and Utah Division of Water Resources.

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

LAST CHANCE CANAL COMPANY

By: W. Marcus J. Sholtz

CUB RIVER CANAL COMPANY

By: _____

WEST CACHE CANAL COMPANY

By: Joseph G. Larsen

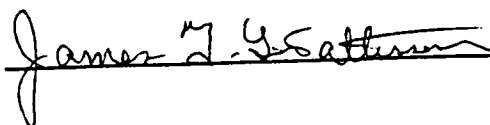
BEAR RIVER CANAL COMPANY

By: Reid E. Egan

IDAHO PUMPERS ASSOCIATION

By: 

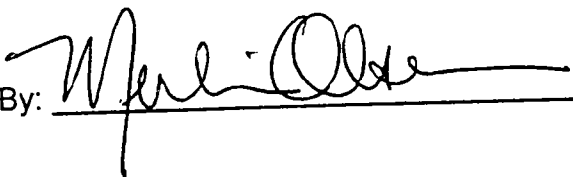
UTAH PUMPERS ASSOCIATION

By: 

BEAR RIVER WATER USERS ASSOCIATION

By: 

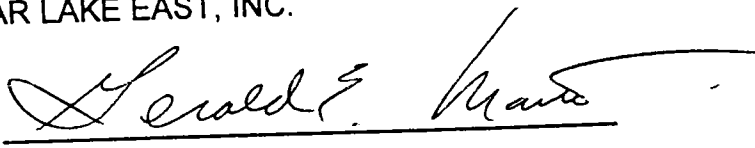
BEAR LAKE WATCH, INC.

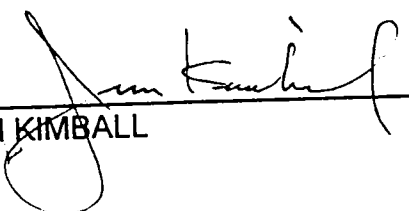
By: 

EMERALD BEACH, INC.

By: 

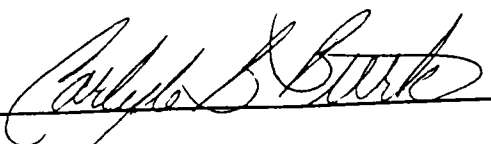
BEAR LAKE EAST, INC.

By: 



JIM KIMBALL

PACIFICORP

By: 

IRRIGATION WATER ALLOCATION AND LAKE RECOVERY PROPOSAL FOR BEAR LAKE

<u>Calculated Elevation¹</u>	<u>Storage Content(A.F.)</u>	<u>Calculated Evaporation</u>	<u>Calculated Net Storage Avail.</u>	<u>Annual Allocation²</u>	<u>Balance Preserved For Lake Recovery</u>
Full 5923.85	1,414,000				
5914.7 (Irr. Reserve)	801,000	(125,000)	676,000	230,000 (100%)	446,000
5914	754,000	(125,000)	629,000	225,000 (98%)	404,000
5913	688,000	(125,000)	563,000	220,000 (96%)	343,000
5912	621,000	(125,000)	490,000	215,000 (93%)	275,000
5911	557,000	(125,000)	432,000	210,000 (91%)	222,000
5910	497,000	(125,000)	372,000	205,000 (89%)	167,000
5909	428,000	(125,000)	303,000	181,000 (79%)	122,000
5908	365,000	(125,000)	240,000	168,000 (73%)	72,000
5907	302,000	(125,000)	177,000	141,000 (61%)	36,000
5906	240,000	(125,000)	115,000	104,000 (45%)	11,000
5905	180,000	(125,000)	55,000	55,000 (24%)	0
5904	119,000	(125,000)	0	0 (0%)	119,000
5903	59,000	(125,000)	0	0 (0%)	59,000
5902	0		0	0 (0%)	0

* Footnotes are found on the following page.

(1) The "Calculated Elevation" represents the estimated, maximum lake level, in any given year, calculated by adding the forecasted amount of storable spring runoff to the actual quantity of water in storage on March 1 of said year. Full lake is 5923.65. The "irrigation Reserve" under the Bear River Compact is 5914.7' to 5902'.

(2) The "Annual Allocation" represents the total, estimated quantity of water available to be delivered to holders of contracts with PacifiCorp. The maximum historic delivery of 245,000 acre feet (1961) shall be available at all elevations above the "irrigation reserve". The reduced allocations available at each elevation below the "irrigation reserve" of 5914.7 shall be subject to the following conditions:

- (a) The stated allocation available at each elevation is subject to the maximum flow rates deliverable to PacifiCorp facilities and other operating and legal constraints.
- (b) The total Annual Allocation shall be allocated among the contract holders, subject to contract limitations, on a per-acre basis, based upon 151,000 total irrigated acres as set forth in the attached schedule entitled Contract Holders - Bear Lake Storage. By virtue of the fact that Bear River Canal Co. has the earliest contract with PacifiCorp and has no acre-footage limitation under its contract, any water allocated and available for use, which is in excess of the water to which the holders of contracts with PacifiCorp are entitled under their respective contracts, shall be available for use first by Bear River Canal Co., up to 48.6% of the total allocation, and then to other contract holders as may be agreed upon between the contract holders.
- (c) Unused water under the allocation may not be accrued or carried over by any contract holder to any future year and will remain in the lake for additional recovery.
- (d) PacifiCorp will not deliver storage water from Bear Lake to new contracts or

otherwise, over and above the existing contracts.

- (e) No allocation of water will be made to the contract holders on March 1 if the Calculated Elevation of the lake is 5904' or below. If, however, on March 1 of any year the Calculated Elevation is higher than 5904', PacifiCorp will pump, if necessary, and subject to legal and operating constraints, to deliver the Annual Allocation until such time as its operation, together with anticipated evaporation, is expected to result in a calculated lake elevation of 5902' after evaporation and deliveries.