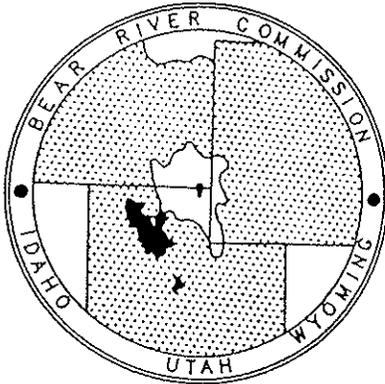


# BEAR RIVER COMMISSION

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## MINUTES

### BEAR RIVER COMMISSION REGULAR MEETING ONE-HUNDRED FIRST COMMISSION MEETING

November 19, 2002

The regular meeting of the Bear River Commission was called to order by Vice Chair Rodney Wallentine at 1:00 p.m. on Tuesday, November 19, 2002 at the Utah Department of Natural Resources Building in Salt Lake City, Utah. This was the one-hundred and first meeting of the Commission. Wallentine welcomed everyone to the Commission meeting and asked Jack Barnett to introduce Dee Hansen, the new Federal Chair of the Commission.

Jack Barnett indicated that Dee Hansen was appointed by President Bush. Dee is from Ephraim and began working in the State Engineer's office in 1956 doing surveys in connection with adjudication work. Dee ultimately was transferred to Cedar City to be the Area Engineer. He went from there to Utah State and was the Area Engineer in Logan while he finished his education in engineering. Larry Anderson then indicated that Dee was appointed as the State Engineer by Governor Rampton in 1973. Hansen served through Rampton's administration, through Governor Matheson's administration and through Governor Bangerter's administration. During his service his assignment was changed from the position of State Engineer to the position of the Director of the Department of Natural Resources. Dee then retired and is actively involved in engineering consulting. He also serves on the Western States Water Council. Dee Hansen then thanked Barnett and Anderson for their introductions and expressed his appreciation for the opportunity to work with the Bear River Commission.

A special welcome was given to Denice Wheeler, Wally and Mickey Jibson and Norm Stauffer. Those in the room introduced themselves. A list of those in attendance at the meeting is attached as Appendix A.

Commissioner Pat Tyrrell then read a resolution of appreciation for Denice Wheeler. A copy of the resolution is attached as Appendix B. Denice expressed appreciation for the resolution and for the opportunity of being a part of the Commission for several years.

Chairman Hansen presented the agenda for the meeting. It was moved that the agenda be approved. The motion was seconded and carried. A copy of the approved agenda is attached as Appendix C.

#### COMMISSION MEMBERS

##### Chair

Dee C. Hansen

##### Idaho Members

Karl J. Dreher  
Rodney Wallentine  
Dean M. Mathews

##### Utah Members

D. Larry Anderson  
Blair Francis  
Charles W. Holmgren

##### Wyoming Members

Patrick T. Tyrrell  
James Crompton  
John A. Teichert

#### ENGINEER-MANAGER

Jack A. Barnett  
Suite 101  
106 West 500 South  
Bountiful, UT 84010

The Commission then moved to agenda item II and considered the draft minutes of the April 16, 2002 Commission meeting and the special Conference Call/Commission meeting on October 21, 2002. Larry Anderson indicated he had just a few editorial changes to the April 16 minutes. There was a motion to approve the April 16 minutes with the few changes to be made. The motion was seconded and carried. There was then a motion to approve the October 21 minutes without change. The motion was seconded and carried.

The time was then turned to Larry Anderson for the Secretary-Treasurer's report, agenda item III. Anderson asked Randy Staker to review the financial status of the Commission. Staker distributed two handouts and reviewed the information with the Commission. A copy of the handouts is attached as Appendix D. Larry Anderson then indicated that the state assessments were increased from \$30,000 to \$35,000 per state. There were no questions for Anderson or Staker. It was moved that the Commission approve the Secretary-Treasurer's report. The motion was seconded and carried.

The Commission moved to agenda item IV, PacifiCorp issues. Monte Garrett distributed an explanatory statement for the Bear River Settlement Agreement and a copy of the statement is attached as Appendix E. Garrett reported that the Bear River Settlement Agreement was recently reached between PacifiCorp and all the parties. The agreement regarding the relicensing of the hydro projects on the Bear River resolved the outstanding issues that were still existing from the beginning of the relicensing process in 1996. Garrett explained that the relicensing process for these projects has been going on for some time. The process is led by the utility company and a consultation with all the parties is conducted, studies are completed, a draft application which summarizes the results of the studies is prepared and submitted to the FERC. The FERC then begins an environmental analysis and issues requests for additional information if needed.

In the process, steps were taken with all the parties to consider all the constraints that are on the projects and find some resolution. PacifiCorp decided to go through the settlement agreement process. The goals of the settlement process were to gain new licenses from the FERC for the projects, preserve the economic viability of the projects, determine what the appropriate mitigation is to mitigate the impacts of the projects on resources, continue prevention of irrigation water for flood control and a continued maintenance of the storage practices regarding Bear River water defined in the contracts, compacts and legal agreements. The number one settlement issue was the restoration of Bonneville Cutthroat Trout and the second issue was appropriate instream flows near the projects which go to restoring and sustaining fish, water quality concerns (all relicensing of projects requires a 401 certification under the Clean Water Act), the recreational needs and land use issues. Between December 2001 and August 2002 there were ten meetings/conference calls held with stakeholders. Settlement was reached and signed on August 28 in Boise. The draft EIS, the results of the environmental analysis, was issued in October. Comments are due by December 31. If everything goes well, the new licensing may be possible from the FERC by late spring or early summer of 2003.

Garrett then discussed some of the specifics of the settlement agreement. The first issue was how decisions were to be made and this issue was dealt with by deciding on certain funding levels for a collaborative group of individuals comprised of stakeholders to use to accomplish the goals within the constraints. This coordination and decision making is going to be accomplished by the development of an environmental coordination committee whose job is to coordinate and consult among the parties, make decisions on implementing the protection mitigation and enhancement measures, make decisions regarding the use of the funding and determining monitoring needs. Regarding the issue of restoration of Bonneville Cutthroat Trout, it will include studies and development of a restoration plan for this native fish, funding for fish stocking beginning in year eight of the new license, habitat restoration actions, funding to provide

restoration of wetlands and riparian areas and instream habitat needs of the fish and funding for land and water acquisition from landowners to provide for conservation for Bonneville Cutthroat Trout and other native fish and other aquatic resources. With regard to the issue of instream flows and ramp rates, minimum flows were established in downstream reaches of all four hydro projects to improve fish habitat and restore more natural hydrograph with available water. Available water means water that is already coming downstream for purposes of historic practices.

Ramp rates are described as the rate at which the river can come up and go down due to releases from the hydro projects and protect resources while providing flood control and delivery of irrigation water and to contribute to improving water quality in compliance with the state's TMDL's. With regard to water quality, the goal is to reach some Section 401 water quality certifications and to meet the state TMDL implementation plan, and to have a monitoring program with procedures for reporting and maintaining consistency with water contracts and agreements. Recreation was a big issue and the goals being reached are to provide improved flow with available water for boating in Black Canyon and Oneida Narrows, boating access facilities, flow phones so that one can call and find out when they can expect to see water coming into certain reaches, and improved campsite facilities and development of Oneida's safety plan. A land management plan will be developed for the projects. An historic property management plan will be developed and documented.

Commissioner Anderson asked Garrett to explain the Oneida safety plan. Garrett indicated that the Oneida safety plan will be developed in consultation with the BLM and will provide for increased road maintenance (widen shoulders, smoother surface, decrease blind corners).

Commissioner Holmgren indicated that with regard to the FERC license, it has been observed that at the Cutler project there are such narrow criteria that the dam can be operated in that it works to the detriment of storage/irrigation water. He asked if this project or license will be that tight and how it will impact the irrigation water. Garrett indicated that one of the qualifiers in the settlement agreement is that the reservoir elevations are maintained in order to comply with historic practices. One of the requirements is to make sure that the reservoir, for example, at Oneida is maintained in a way to provide water when needed to backfill Cutler when the irrigation withdrawals or demands are made on it. The same is true of Soda. Holmgren asked if the organizations listed on the settlement agreement are just organizations that have had problems with PacifiCorp's proposal. Garrett indicated that the licensing process is open to the public and anyone can apply for intervener status. Everything was publically announced and there is still an EIS comment period. Jody Williams indicated that the process which led to the settlement agreement came about to resolve environmental interests. Throughout the process, PacifiCorp has made sure that the environmental interests understood the operating constraints, the requirements of delivery of irrigation water to the irrigators and that there could be no delivery of storage water from Bear Lake for these interests. Garrett pointed out that it wasn't until the very last hour that there was a lot of interest shown by the irrigation parties. The interests of irrigators, of historic practices, of compliance with the irrigation contracts are well taken care of in the settlement agreement.

Commissioner Holmgren asked Garrett about the cost over the project period. Garrett indicated that he took the generation capabilities of the projects and ran them through a financial 30-year model. The funding amounts to about \$750,000 annually.

Jack Barnett pointed out that Garrett reported to the Water Quality Committee yesterday and in response to a question as to where the funds will be spent it was the impression that the \$750,000 will be spent below the outlet canal to the Utah-Idaho state line unless the committee finds that there are purposes

outside of that geography where funds should be spent. Garrett indicated that the funds will be spent in an action area. An action area is defined as the confluence of the outlet canal to the Bear River down to the Idaho-Utah border. Any funds outside that area will only be spent on the consensus of the ECC and PacifiCorp. There were no further questions for Mr. Garrett.

The time was turned to Kelly Holt to give his report. Holt distributed and reviewed a summary of PacifiCorp's 2002 operations. A copy of that handout is attached as Appendix F. Holt indicated that not shown on the handout is the current elevation of Bear Lake and that elevation is 5907.60. Commissioner Tyrrell asked Holt what is involved in the forecasting procedure. Holt reported that mostly snowpack is used in forecasting but there is some soil moisture information used. Carly Burton indicated that PacifiCorp does not make the runoff forecast, the NRCS makes that forecast. Burton stated that he was going to touch on this subject later in the agenda. There were no further questions for Mr. Holt.

Jack Kolkman then discussed the dredging permit and indicated that PacifiCorp applied for an application to dredge Bear Lake in March of 2001. Through a long process, PacifiCorp received approval to dredge from the Army Corps of Engineers, the Idaho Department of Lands and the Idaho DEQ in June of 2002. The dredging permit is for a five-year term. The Idaho Department of Lands permit is for a three-year term. The channel intake bottom elevation was at 5908 in August of 2001. In July of 2002 it was 5905. The current intake channel freeboard is 2.58 feet. A lot of rain is needed in order to not have to dredge. There is a 90% chance PacifiCorp will have to dredge in March of 2003. The equipment is ready for use. The dredging would take three to four months. Commissioner Anderson asked what the criteria will be to dredge in March. Kolkman stated that the criteria will be whether PacifiCorp can deliver the water to the irrigators that is allocated under the Settlement Agreement with the elevation that they expect to be in the lake. It will be a conservative estimate. Anderson then read from the minutes of two years ago regarding the dredging process. Anderson pointed out that PacifiCorp is taking a big risk to wait until March to begin dredging. There was then a lengthy discussion about the pro's and con's of dredging earlier than March. Carly Burton indicated that one of the problems with dredging in the fall is that over the course of the winter months the chances are great that the channel will fill back in again. So PacifiCorp would be starting over again in the spring. The dredging issue is discussed frequently. Plans are already forming for building the containment dikes. The channel will be ready when irrigation starts. PacifiCorp can pump and dredge at the same time as long as the turbidity levels don't go up in the outlet canal. Suction dredging is the best method for removing material and reducing turbidity.

The time was then turned to Carly Burton to discuss agenda item V, streamflow forecasting on the Bear River. Burton reported that there has been a change in the organization of the NRCS in Portland. The runoff forecasting is done out the Portland office. Tom Perkins is the hydrologist who is assigned to do the forecasting in the Bear River Basin. Perkins' plan is to try and improve the forecasting capability for the Bear River. The idea is to look at the forecasting methodology and improve the forecasting through better communication using operational constraints on the river as another criterion. This year, for example, Woodruff is, for all intents and purposes, empty. If there is an average runoff year, Woodruff could store xx amount of water under the Compact and is restricted in storage because of the Compact restriction of 5911 on Bear Lake. The forecasters don't know this. If Woodruff Narrows filled, this is equivalent to a foot on Bear Lake which is a substantial amount in terms of water supply available for Bear Lake storage. Perkins wants to incorporate some of the operating constraints to be able to tweak the models to reflect the conditions of the river, Bear Lake elevation and how this affects Woodruff and so forth. Burton and Perkins went on a tour of the river to see the important stream gaging stations and forecasting points. Don Barnett met with Burton and Perkins to talk about forecasting.

Don Barnett pointed out that it is refreshing that Tom Perkins is coming from doing Colorado River forecasts. He is finding that the model on the Bear River hasn't been looked at or revamped for at least fifteen years. He dug into the actual input values for the model and the goal of the model was to forecast natural or virgin flow at any certain point. When they gave the forecast, they believed that they had added back in whatever the operational changes and irrigation diversions might have been. So if Blair Francis is getting a forecast for flows to Woodruff Narrows, he would have to take the value that was delivered to Woodruff and subtract out upstream diversions and reduce the forecast number. The same would be true for forecasts down to Rainbow Canal. As they dug into the model, it was realized that all that is being taken into account in the Upper Division is only the Chapman Canal. None of the values from any of the other canals are included. When you get down to the Central Division, it is only the twelve diversions in Idaho. There is no accounting for Wyoming diversions. They are taking a serious look at what is in the model. There is discussion that the NRCS will take the historic data and see if a better forecast run can be made without adding in diversion data. The NRCS would just forecast the flows to the river given whatever the average diversions and operations have been, with the exception of Woodruff Narrows Reservoir and potentially Sulphur Creek which could make a major difference to the forecast. The Commission is providing NRCS with some of the data. The NRCS has better modeling techniques and doesn't have to stick with linear regression.

The question was asked if anything has been done with regard to soil moisture stations in Utah. Carly Burton indicated that more stations are being added all the time. There are 30 stations in all of Utah. Burton reminded the Commission that it will take a number of years of data to be able to equate soil moisture into the formula for predicting runoff. It was then asked if this information is available on a website. Burton stated that this is done through Randy Julander's office as his office is responsible for the snow telemetry program. Don Barnett reported that he recently received a call from the National Weather Service looking for canal diversion data. The Weather Service has an independent model and they indicated to Barnett that they needed the data from the Commission to do a verification run on how good their forecast was last year.

Chair Hansen then asked Jack Barnett to report on the regulation of storage above Bear Lake in 2003. Barnett reported that the Operations Committee discussed the fact that Bear Lake is significantly below 5911 and it is not expected that the lake will recover to above 5911 during the storage season of 2003. The Commission has to be prepared to regulate the storage in the reservoirs upstream of Bear Lake to the storage that was in place before the Compact and to the storage that was allowed by the original Compact and not allow for any storage that has been identified by the amended Compact. Barnett has asked the states to provide him with two pieces of information, how much carry over storage the states had at the end of the last water year and how the states are intending to move any of the original Compact storage that isn't going to be used in another reservoir site into an active reservoir site. This information should be provided to Barnett within the next three weeks. At that time, Barnett should be able to calculate how much storage could be allowed in each of the reservoirs for next year. There was some discussion in the Operations Committee meeting about criteria relating to the opportunity to move storage from one reservoir to another and most Commissioners heard that discussion so Barnett did not review that discussion. It is clear that the Commission will be in regulation during the next irrigation season. There were no questions for Barnett.

The Commission then moved to agenda item VII, the report of the Water Quality Committee. Don Ostler reported that the Water Quality Committee met yesterday. The committee spent a great deal of time being briefed by PacifiCorp on the settlement agreement. The committee noted with interest the mitigation measures and the very close tie that they have on water quality for the Bear River. The efforts in restoring fisheries and habitat and the riparian efforts will certainly have an impact on water quality within the Bear River. There is a great interest in coordinating closely with the Environmental Coordinating Committee for

the settlement agreement. The Water Quality Committee does not want to duplicate and wants to make sure that things the Water Quality Committee does and things the Environmental Coordinating Committee does are complementary and mutually beneficial. Idaho, being a signatory of this agreement, has volunteered to serve as the coordinating point for the Water Quality Committee and the Environmental Coordinating Committee for PacifiCorp on their mitigation measures. The committee also discussed with PacifiCorp their expenditure plans for the significant investment of funds in conducting these activities. The committee did discuss and confirm, to the committee's satisfaction, that the portion of the matching monies for the state watershed grant which was discussed on a conference call appears to be adequately there and would be appropriate to meet the needs of the grant if the Commission is successful in obtaining that grant.

The second item which the Water Quality Committee discussed was the status of the consultant contract the Commission has with Cirrus. This is a contract that received funding from the EPA through a grant to fund the collection of water quality management plan information throughout the Basin. There are between fifty and sixty impaired water bodies in the Bear River Basin, lakes and segments of the Bear River and tributaries of the Bear River. The impaired water bodies are all at various stages of having TMDL's completed. All are addressing various pollutants. There is a great need to coordinate.

This contract is to collect this data, the status of all the waters that are impaired, the status of the work on completing TMDL's, the details of the TMDL as to what the pollutants of concern are in all of the reaches, and the status of implementation and, in terms of a measurement tool, the number of dollars and the number of projects that are being conducted in the region to make progress on improving water quality. Of particular interest is a geographic information system that Cirrus has developed in doing this process. It is hoped that at the next Commission meeting Cirrus could briefly report. This system has a complete display of the waters within the Bear River Basin, first order streams, second order streams and third order streams. The system has the ability to zoom in on the streams, determine the status of the TMDL by color coding and determine the content of the TMDL and the restoration plans. The system also has the ability to link water quality monitoring data. There are also photo galleries for every stream segment that crosses the border of any of the states.

When the Commission requested funding from the EPA last year, the EPA did not grant the full funding request. There was basically only enough money to collect data. There wasn't sufficient money to do any analysis of the data and interpretation of the data as far as what the states need to do to work better together. The Water Quality Committee would like to apply for the remainder of the funds that were not granted last year. In order to do this, the committee will need to make a brief proposal containing that portion of the proposal submitted last year which was not funded. This proposal needs to be to the EPA by December 3. It was moved that the Water Quality Committee be authorized to prepare a follow-up proposal seeking the rest of the funds needed to complete the work. The motion was seconded and carried.

Ostler then reported on the status of the Watershed Initiative Grant which was the subject of a Commission conference call a month ago. In the President's budget is \$20 million for competitive awarding of grant proposals for water quality improvement projects. The committee felt that the Bear River would be a potential good project. The Commission authorized the committee to proceed with the preparation of an application. A proposal has been prepared and is being forwarded to the EPA today. The proposal is accompanied by a letter from each Governor and many letters of support from watershed groups throughout the Basin. It is anticipated that the Commission will hear back from the EPA in the spring.

The Commission moved to agenda item VIII, the report of the Operations Committee. Blair Francis reported that the committee spent a lot of time discussing regulation. He reiterated that Jack Barnett had

requested numbers from the states. Regulation in the Central Division was discussed. There was no regulation this year in the Upper Division. In the Lower Division, the water users didn't call for all their water at the end and there was a mention that the Commission needs to bring the two models closer. There were no questions for Commissioner Francis.

The time was then turned to John Teichert to give the report of the Records & Public Involvement Committee. Commissioner Teichert reported that the committee discussed the Bear Lake Symposium that was held and felt it was a successful meeting. The committee discussed what might possibly be done this coming year and felt that in March the Commission could go to the water lab in Logan and receive a report from Cirrus. The Water Quality Task Force may sponsor this meeting. The committee discussed the biennial report for the years 1999-2000 which should be ready about the first of January. In this report, the committee thought the Commission might include a tribute to S. Reed Dayton. The states have a draft report that should be reviewed by December 10. The 2001-2002 report will probably be ready after the next Commission meeting. Teichert reported that the State of Idaho has taken on the funding of the Pescadero gage station. Commissioner Holmgren reported that the committee discussed Kimball Goddard of the U.S. Geological Survey and his transfer to Nevada. Goddard is being replaced by Pat Lambert. There were no questions for Commissioner Teichert.

Chair Hansen then turned the time to Jack Barnett for the Commission's celebration of the 100<sup>th</sup> meeting of the Commission. Barnett led the Commission in reminiscing and role playing the Commission's history. Commission memorabilia were distributed, pictures were taken and refreshments were served.

Following the celebration, the time was turned to Jack Barnett for the Engineer-Manager's report, agenda item XI. Barnett indicated that he received a letter from PacifiCorp asking that the TAC look into the model and the issues that developed this year when the averaging was occurring between the Utah and the Idaho model. It made a difference on the specific day that the Last Chance Canal Company's right went off natural flow. There were no questions for Barnett.

The Commission then moved to agenda item XII and Karl Dreher was asked to present items from the Management Committee. Dreher indicated that the PacifiCorp letter was not discussed at length in the Management Committee meeting. The Management Committee assigned the TAC to investigate the principal factors that are causing the differences in the two models during drought conditions. Dreher indicated that beyond that it is his understanding that when the model that was run by Utah showed the Last Chance Canal Company had used their storage allocation, they disseminated that information and the Last Chance Canal Company started getting phone calls that they were out of water. At that point in time, the Idaho model was still showing that they had storage water left. The water was turned off and they really didn't have to turn off at that point. No irrigators were harmed because of some rain that fell. It is appropriate to see what is causing the differences. In the future, when there is a discrepancy in the results of the two models, whether the entity is in Utah or in Idaho and regardless of which model is showing what, if one of the models is showing that the entity still has an allocation of water coming they should not be curtailed or shut off until there is consensus that they are out of water. The states are attempting to use forecasted data in running the models and making an estimate. How good the estimate is cannot be found out until later. In some respects, running the two models is a good check. Under average conditions, the models are very close. The TAC was asked to report on this issue at the next Commission meeting.

Dreher then reported that the State of Utah has had discussions with the USGS regarding developing a uniform land use map or land use coverage for GIS layers. Utah has committed to do this for the Cache Valley and an invitation has been given the states of Idaho and Wyoming to join in this effort. Wyoming has

expressed its concern that the state has done something like this as part of its water planning efforts in 1999. Idaho's concern is that it has no money. In Idaho, Dreher has twenty positions that he had to eliminate because of lack of funds. It was the consensus of the Management Committee that the TAC should sit down with the Geological Survey, get more details on what the Geological Survey has in mind and take a look at what the states can and can't offer and what they already have to see what it would take to get uniform coverage. After this process, the states could decide on their involvement.

The Commission moved to the state reports. Commissioner Dreher reported that in August 2001 he issued an order designating the Bear River Ground Water Management Area and established an advisory committee that was to work with the Department of Water Resources to develop a ground water management plan. Eleven representatives comprise the advisory committee, one representative each from PacifiCorp and the Bear River Water Users Association, two representatives from the applicants who have pending applications to appropriate ground water, two representatives from municipalities, one representative each from Caribou, Bear Lake and Franklin Counties, and two representatives from concerned citizen groups. The advisory committee has met on numerous occasions. This fall a Proposed Ground Water Management Plan was submitted to the Department. A final review of the plan is being completed and it is believed the plan will be put in place by the end of December.

Dreher then reported that the cuts that Idaho has made have put it on the verge of not being able to complete what are considered core tasks. Idaho is now not able to fully respond to various responsibilities. For example, as a result of the last cut, Idaho suspended much of its regulation of stream channel alterations and passed a temporary rule under which an entity which obtains a 404 permit from the Corps is deemed to have satisfied the state's minimum requirements for stream channel alteration. Dreher doesn't feel that initially the people who depend upon this program understand the ramifications of this because it means that if one has a normal activity that requires a permit to alter a stream channel, instead of a month to six month process the process could take one to two years or more. This will have a chilling effect on economic activities that require stream channel alterations. Two people were kept in place whose responsibilities have changed from regulating through issuance of permits to bringing enforcement actions against illegal alterations. In the event of an emergency condition, either economic or due to flooding, Idaho will still be in the position of issuing emergency permits under the state program. There have been cuts in the dam safety program, in the well construction program and in the water rights administration program. There is a backlog of work. It looks like Idaho will be in this economic slump for at least another year, if not longer.

Commissioner Dreher then introduced Eulalie Langford who was recently re-elected to the Idaho House of Representatives. Ms. Langford had asked for some of Idaho's time to briefly discuss the Rocky Point project and local efforts that are under way to get a FERC license at this site. Commissioner Dreher also pointed out that Senate pro tem Bob Geddes was also in attendance. Ms. Langford indicated that she was a charter member of LOVE Bear Lake. This organization was founded in 1993 for the purpose of preserving and protecting the beauty of Bear Lake for future generations to enjoy. One of the things the group has always promoted is upstream storage. They are concerned about the fact that Bear Lake is currently being used for flood control and that when the irrigation season ends with the lake level at 5918 or above water is released downstream for flood control. This happened as recently as 1999. This has been happening since the 1970's when the Power Company was sued by two farmers in Bear Lake County who held that the flooding on the sides of the Bear River had destroyed their crops. The court decided in favor of the farmers and ordered the Power Company to keep Bear River within its banks. The Power Company developed the policy that when Bear Lake was above 5918, it would take water downstream for flood control. Ms. Langford pointed out that they do not know how much water has been released for flood control over the years or how much run of the river water has gone downstream during the winter when it could have been

stored had there been flood control above Bear Lake. A study by the Corps of Engineers could tell exactly that. Ms. Langford feels that if all this water were in Bear Lake right now the Power Company wouldn't be facing the expense of dredging. The Power Company wouldn't be facing the expense of pumping water because it would flow out by gravity. This year the State of Utah had to dredge their harbor because it wasn't deep enough to accommodate boats. The State of Idaho has considered building a deep harbor and the cost would be \$5 million. The benefits of having the lake full would be tremendous. It would mean that Woodruff Narrows could certainly fill every year, there would be no curtailment in the amount of water for irrigation, and the Bear Lake Cutthroat trout can get to their spawning habitat much more safely.

Ms. Langford continued by saying that two years ago they began talking with the Corps of Engineers and the Corps indicated that flood control was their job. The Corps will build a dam and pay 65% of the cost. This would be a gift from the Corps, not a loan. The other 35% would have to come from some non-federal entity. The Corps told them that the first thing to do is apply to the FERC for the hydro rights. This application has been sent to the FERC. No permit has been issued yet. As a courtesy to the Commission and to the public, Ms. Langford wanted to alert others of what is going on at this time. There have been motions to intervene, some from the State of Idaho and some from the irrigators. The concerns mentioned in the motions to intervene are the very concerns that will be solved by having the storage above Rocky Point. As far as the study by the Corps of Engineers is concerned, the Corps will pay for half of the study. The other half has to be paid locally. It is hoped that the costs for the studies that have already been conducted, for example the study made by Vince Lamarra on the TMDL on the Bear River, will count as the remaining 50% that will be needed in order for the Corps to proceed with a study. Ms. Langford indicated that one thing that will be insisted upon is that a policy be established that Bear Lake be the first to fill and the last to empty so that the water in Bear Lake will be stabilized. A dam at Rocky Point will provide 300,000 af of storage but it is not wanted for storage but for flood control. The surface elevation of Bear Lake is 70,000 af so when four feet is taken off the top of Bear Lake for flood control, that is, 280,000 af, the flood control that would be provided above Bear Lake would be 300,000 af. It is hoped that the Corps of Engineers will find it feasible to do a study. It is hoped that approval will be given to have the studies that have already been funded apply toward the local portion so it won't require an expenditure of money by the states. There were no questions for Ms. Langford.

The time was then turned to Commissioner Anderson for the Utah report. Anderson indicated that Utah is in the process of updating its Bear River Basin Water Plan. An advisory review draft has already gone out and a public review draft is currently being prepared which should be completed by the end of December. The original plan was completed in 1990. Anderson then reported on Utah's budget situation. During the last fiscal year, the Utah legislature held five special sessions. Utah reduced its budget last year by \$460 million. The Governor and the legislative leadership met yesterday and it was announced today that the state anticipates holding a special budget session in December to address the shortfall in the budget. The shortfall is somewhere in the neighborhood of \$100 million. The legislature feels it needs to address this issue before the regular session. Anderson indicated that he thought they based the budget projections on a 4% growth and the budget is growing at about 2%. In the newspaper today, it was indicated that the legislature would be looking at the water funding monies as a possible way to balance the budget. These would be programs that are run both by the Division of Water Resources, by the Department of Environmental Quality and the Department of Water Quality.

Anderson mentioned that Utah is planning on doing an updated land use inventory on the Bear River Basin in Utah. Utah has been doing these updates about every five or six years in basins that appear to be changing quite a bit. The USGS has contacted him to see if there is an interest in updating the land use inventory for the entire basin at the same time Utah is planning on doing its work. It will be left up to the

TAC to see if there is enough interest for all three states to do something in conjunction with the USGS. As a final item, Anderson informed the Commission that former Bear River Commissioner Calvin Funk passed away on November 16. His funeral will be held tomorrow in Richmond, Utah. Anderson will prepare a letter of condolence to Cal's widow on behalf of the Commission.

Commissioner Tyrrell was then asked to give the Wyoming report. Tyrrell indicated that Wyoming is not facing the budget cuts that Idaho and Utah are at this time. Wyoming is benefitting from a small surplus right now due to its natural resources. Wyoming has a new Governor, Dave Freudenthal, and the inauguration is January 6. Tyrrell indicated that to the best of his knowledge the various agency heads have not yet met with the new Governor. Tyrrell noted that Wyoming has issued eight to ten instream flow permits in the Cokeville area totally on U.S. Forest land. These were permits that were in a backlog and they have been worked through to the extent that they provide some additional assurances against a future listing of the Bonneville Cutthroat trout. These are current day priorities, late 1990's, but they have now been advanced to permits. Regarding other basins in Wyoming, Wyoming has had its second North Platte Decree Committee meeting on the North Platte Basin. Tyrrell reminded the Commission of the settlement that Wyoming, Nebraska and the Bureau reached on the Platte River. It is a little different in that the Decree Committee operates somewhat like the Bear River Commission but it is not a commission, the reason being that a committee is a creature of a Supreme Court decree and not a ratified compact.

Tyrrell reported that this last summer Wyoming had a regulatory call on the main stem of the Bighorn River that extended across Boysen Reservoir (the head of Wind River Canyon just upstream of where the Wind River turns into the Bighorn River). Boysen Reservoir is actually on the Wind River, so to speak. This was an historic call in that this particular administration had never been done before. There has never been a call honored from the irrigators in the Worland area across Boysen to call natural flow on through the reservoir. Wyoming also had a call on the main stem of the Bear River. Jade Henderson indicated that this section is below Randolph (they refer to it as the Lower Section of the Bear River Compact) where the Bear River main stem comes back into Wyoming. Henderson stated that as far as they know there has not been a call for regulation on that main stem before. They believe the call was due primarily to lack of storage deliveries anticipated from Woodruff for the Wyoming shareholders. There were no questions for Tyrrell.

Chair Hansen asked for other items of business under agenda item XIV. Commissioner Tyrrell presented the signed resolution of appreciation to Denice Wheeler.

As a final agenda item, it was then determined that the next Bear River Commission meeting would be held in Salt Lake City on Tuesday, April 15, 2003. The meeting was adjourned at 4:05 p.m.

## ATTENDANCE ROSTER

### BEAR RIVER COMMISSION REGULAR MEETING

Utah Department of Natural Resources Building  
Salt Lake City, Utah  
November 19, 2002

#### IDAHO COMMISSIONERS

Karl J. Dreher  
Rodney Wallentine  
Dean M. Mathews

#### UTAH COMMISSIONERS

D. Larry Anderson  
Blair R. Francis  
Charles Holmgren

#### WYOMING COMMISSIONERS

Patrick T. Tyrrell  
James L. Crompton  
John A. Teichert  
Sue Lowry (Alternate)  
Gordon Thornock (Alternate)  
Jade Henderson (Alternate)

#### ENGINEER-MANAGER & STAFF

Jack A. Barnett  
Don A. Barnett  
Nola Peterson

#### FEDERAL CHAIR

Dee C. Hansen

#### OTHERS IN ATTENDANCE

##### IDAHO

Hal Anderson, Department of Water Resources

##### UTAH

Todd Adams, Division of Water Resources  
Will Atkin, Division of Water Rights  
Scott Clark, Division of Water Rights  
Bob Fotheringham, Division of Water Rights  
Robert King, Division of Water Resources  
Jerry Olds, Division of Water Rights  
Don Ostler, Division of Water Quality  
Randy Staker, Division of Water Resources

##### WYOMING

Kevin Payne, State Engineer's Office  
Kevin Wilde, State Engineer's Office

##### OTHERS

Robert Baskin, U.S. Geological Survey  
Marvin Bollschweiler, Wyoming  
Randy Budge, BRWUA  
Gary Burgener, Bear Lake Watch  
Carly Burton, PacifiCorp

**APPENDIX A**  
**PAGE TWO**

Jim Christensen, Bear River Water Cons. District  
Francoise Cleveland, Senator Craig's office  
Claudia Conder, PacifiCorp  
Claudia Cottle, Bear Lake Watch  
David Cottle, Bear Lake Watch  
Scott Evans, Cirrus Ecological Solutions  
Monte Garrett, PacifiCorp  
Bob Geddes, Idaho Legislature  
Marc Gibbs, BRWUA  
Kelly Holt, PacifiCorp  
Dave Humphreys, PacifiCorp  
Mickey Jibson, Guest  
Wally Jibson, Guest  
Ann Johnson, Bear Lake Watch  
Jack Kolkman, PacifiCorp  
Eulalie Langford, Idaho Legislature  
Steve Noyes, U.S. Bureau of Reclamation  
Merlin Olsen, Bear Lake Watch  
Jeff Phillips, U.S. Geological Survey  
Mitch Poulsen, Bear Lake Regional Commission  
Don Riches, Emerald Beach, Inc.  
Norm Stauffer, Retired (Utah Div. of Water Resources)  
Dave Styer, Bear River Canal Company  
Denice Wheeler, past Federal Chair  
Jody Williams, PacifiCorp

RESOLUTION OF APPRECIATION  
For

DENICE WHEELER

**WHEREAS**, the Bear River Commission wishes to express its appreciation for the service of Denice Wheeler during her term as Federal Chair, and

**WHEREAS**, Denice served as the Federal Chair from January, 1995 to July, 2002, and

**WHEREAS**, Denice used her scintillating personality and inquisitive mind to become well informed and well recognized around the Bear River Basin and made significant contributions to the accomplishments of the Commission, and

**WHEREAS**, the Commission, because of Denice's propensity to go the extra mile, benefited greatly from her leadership and

**WHEREAS**, the Commission recognizes the long hours spent by Denice at many extra meetings and events during her term as Federal Chair and further recognizes that her only payment for her efforts comes in the form of "thanks";

**NOW THEREFORE BE IT RESOLVED** that the Bear River Commission recognizes the outstanding contributions of Denice Wheeler, and

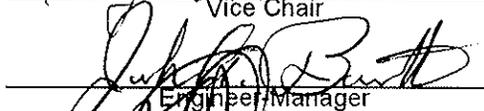
**BE IT FURTHER RESOLVED** that the Commission members express their sincere appreciation for the opportunity to have associated with Denice as a friend and colleague, and

**BE IT FURTHER RESOLVED** that the Commission members express their best wishes to Denice in her future endeavors.

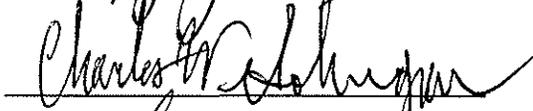
Resolution passed November 19, 2002

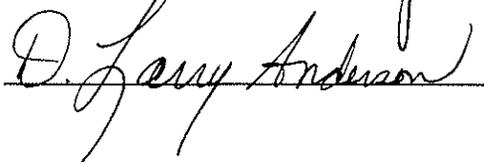
  
Chair

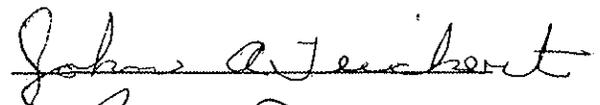
  
Vice Chair

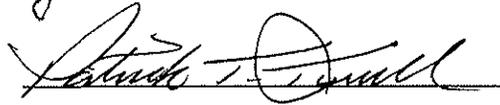
  
Engineer/Manager

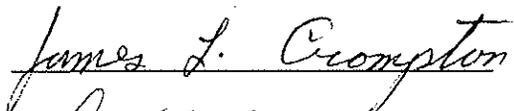




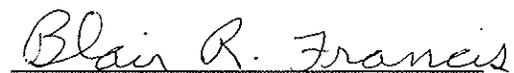












AGENDA

Bear River Commission Regular Meeting  
November 19, 2002

Utah Department of Natural Resources  
Auditorium  
1594 West North Temple  
Salt Lake City, Utah

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COMMISSION AND ASSOCIATED MEETINGS

November 18

10:00 a.m. Water Quality Committee Meeting, Room 314 Ostler

November 19

9:00 a.m. Operations Committee Meeting, Room 314 Francis

10:15 a.m. Records & Public Involvement Committee Mtg, Room 314 Teichert

11:15 a.m. Informal Meeting of Commission, Room 314 Barnett

11:30 a.m. State Caucuses and Lunch Dreher/Tyrrell/Anderson

1:00 p.m. Commission Meeting, Auditorium Hansen

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REGULAR COMMISSION MEETING

November 19, 2002

**Convene Meeting:** 1:00 p.m., Vice Chairman Rodney Wallentine

- I. Call to order Wallentine
  - A. Introduction of new Federal Chairman J. Barnett/ L. Anderson
  - B. Welcome of guests and overview of meeting Hansen
  - C. Approval of agenda Hansen
- II. Approval of minutes of last two Commission meetings (April 16, 2002 and October 21, 2002) Hansen
- III. Report of Secretary/Treasurer Anderson
- IV. PacifiCorp issues
  - A. Relicensing with FERC/Settlement Agreement Garrett
  - B. Dredging Holt
  - C. Water deliveries in 2002 Holt
  - D. Anticipated water deliveries in 2003 Holt
- V. Streamflow forecasting on the Bear River D. Barnett/Burton
- VI. Regulation of storage above Bear Lake in 2003 J. Barnett

**APPENDIX C**  
**PAGE TWO**

VII.	Report of the Water Quality Committee	Ostler
VIII.	Report of Operations Committee	Francis
IX.	Report of the Records & Public Involvement Committee	Teichert
X.	Celebration of convening of 100 <sup>th</sup> Bear River Commission meeting	J. Barnett
XI.	Engineer-Manager report	J. Barnett
XII.	Items from the Management Committee	Dreher
XIII.	State Reports	
	A. Idaho	Dreher
	B. Utah	Anderson
	C. Wyoming	Tyrrell
XIV.	Other Items	Hansen
XV.	Next Commission Meeting	Hansen

**Anticipated adjournment: 3:30 p.m.**



APPENDIX D  
PAGE TWO

BEAR RIVER COMMISSION

DETAILS OF EXPENDITURES

FOR PERIOD ENDING JUNE 30, 2002

536	Jack Barnett	8,264.16
537	Lake Shore Motor Coach Lines	1,210.00
538	Uintah County 4-H	640.00
539	Cokeville Senior Center	315.00
540	Bear River Lodge	562.28
541	Lake Shore Motor Coach Lines	150.00
542	Jack Barnett	4,400.92
543	Jack Barnett	5,942.13
544	Jack Barnett	4,700.65
545	USGS	50,870.00
546	Jack Barnett	4,399.67
547	VOID	0.00
548	Jack Barnett	4,532.21
549	Jack Barnett	4,196.79
550	Jack Barnett	4,342.13
551	CNA Surety	100.00
552	Jack Barnett	4,453.79
553	Jack Barnett	2,475.60
554	Cirrus Ecological Solutions	246.50
555	Jack Barnett	4,600.18
556	Cirrus Ecological Solutions	3,238.97
557	Jack Barnett	4,988.11
558	Cirrus Ecological Solutions	1,705.72
559	Dalton Gilchrist & Harden	1,430.00
560	Jack Barnett	133.77

TOTAL EXPENSE 117,898.58

BANK RECONCILIATION

Cash in Bank per Statement 06-30-02	2,974.48
Plus: Intransit Deposits	11,250.00
Less: Outstanding Checks	3,269.49
Total Cash in Bank	17,493.97
Plus: Savings Account-Utah State Treasurer	83,339.58
TOTAL CASH IN SAVINGS AND IN CHECKING ACCOUNT	100,833.55

BEAR RIVER COMMISSION

STATEMENT OF INCOME AND EXPENDITURES

FOR THE PERIOD OF JULY 1, 2002 THRU NOVEMBER 11, 2002

INCOME	CASH ON HAND	OTHER INCOME	FROM STATES	TOTAL REVENUE
Cash Balance 07-01-01	100,833.55			100,833.55
State of Idaho			35,000.00	35,000.00
State of Utah			35,000.00	35,000.00
State of Wyoming			35,000.00	35,000.00
US Fish & Wildlife EPA Grant BR Tour Income				
Interest on Savings		1,155.23		1,155.23
 TOTAL INCOME TO NOVEMBER 30, 2002	 100,833.55	 1,155.23	 105,000.00	 206,988.78

DEDUCT OPERATING EXPENSES

	APPROVED BUDGET	UNEXPENDED BALANCE	EXPENDITURES TO DATE
Stream Gaging/USGS Contract	52,415.00	52,415.00	
 SUBTOTAL	 52,415.00	 52,415.00	
 EXPENDED THROUGH COMMISSION			
Personal Services Jack	49,585.00	28,924.60	20,660.40
Travel (Eng-Mgr)	1,200.00	852.26	347.74
Office Expenses	1,600.00	1,099.57	500.43
Printing Biennial Report	2,000.00	2,000.00	0.00
Treasurer Bond & Audit	1,400.00	1,400.00	0.00
Printing	1,600.00	1,177.08	422.92
Contingency	5,000.00	5,000.00	0.00
 SUBTOTAL	 62,385.00	 40,453.51	 21,931.49
 BR TOUR EXPENSES	 0.00	 0.00	 0.00
EPA WATER QUALITY GRANT	22,285.46	15,425.54	6,859.92
 TOTAL EXPENSES	 137,085.46	 108,294.05	 28,791.41
 CASH BALANCE AS OF 11-11-02			178,197.37

APPENDIX D  
PAGE FOUR

BEAR RIVER COMMISSION

DETAILS OF EXPENDITURES

FOR PERIOD ENDING NOVEMBER 30, 2002

561	Jack Barnett	4,132.08
562	Bear Lake Regional Commission	100.00
563	Jack Barnett	4,132.08
564	Cirrus Ecological Solutions	3,594.34
565	Jack Barnett	4,546.13
566	Jack Barnett	4,767.50
567	Cirrus Ecological Solutions	1,762.07
568	Jack Barnett	4,253.70
569	Jack Barnett	1,503.51

TOTAL EXPENSE 28,791.41

BANK RECONCILIATION

Cash in Bank per Statement 11-11-02	3,702.56
Plus: Intransit Deposits	
Less: Outstanding Checks	
Total Cash in Bank	3,702.56
Plus: Savings Account-Utah State Treasurer	174,494.81
TOTAL CASH IN SAVINGS AND IN CHECKING ACCOUNT	178,197.37

EXPLANATORY STATEMENT

FOR THE SETTLEMENT AGREEMENT  
AMONG  
PACIFICORP  
UNITED STATES FISH AND WILDLIFE SERVICE  
UNITED STATES BUREAU OF LAND MANAGEMENT  
UNITED STATES NATIONAL PARK SERVICE  
USDA FOREST SERVICE  
SHOSHONE-BANNOCK TRIBES  
IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY  
IDAHO DEPARTMENT OF FISH AND GAME  
IDAHO DEPARTMENT OF PARKS AND RECREATION  
TROUT UNLIMITED  
IDAHO RIVERS UNITED  
GREATER YELLOWSTONE COALITION  
AMERICAN WHITEWATER

DATED AUGUST 28, 2002

CONCERNING THE RELICENSING OF THE  
BEAR RIVER HYDROELECTRIC PROJECTS  
FERC PROJECT NOS. 20, 472, AND 2401  
CARIBOU AND FRANKLIN COUNTIES  
IDAHO

Explanatory Statement  
for the Bear River Settlement Agreement

I. Introduction

In 1999, PacifiCorp filed with the Federal Energy Regulatory Commission (“FERC”) applications for New Licenses for the Bear River Hydroelectric Projects, the Soda (FERC No. 20), Grace/Cove (FERC No. 2401) and Oneida (FERC No. 472), (hereinafter collectively referred to as the “Bear River Project” or the “Project”).<sup>1</sup> Now, after lengthy discussions between PacifiCorp, state and federal agencies, tribes, and non-governmental organizations, PacifiCorp is submitting an Offer of Settlement describing the terms of the Settlement Agreement (“Agreement”) under which PacifiCorp and these entities will support FERC’s issuance of the New Licenses. Pursuant to FERC’s regulations at 18 C.F.R. § 385.602, PacifiCorp is submitting this separate Explanatory Statement (“Statement”) which provides the rationale behind the protection, mitigation and enhancement (“PM&E”) measures and decision-making provisions contained in the Agreement. Nothing in this Statement is intended to modify the terms of the Agreement. Any conflict between the language in the Agreement and this Statement should be resolved in favor of the Agreement. This Statement should not be used to interpret Agreement terms.

The Agreement was executed on August 28, 2002 (the “Effective Date”) among PacifiCorp, an Oregon corporation (“PacifiCorp” or “Licensee”), United States Fish and Wildlife Service (“USFWS”); United States Bureau of Land Management (“BLM”); United States National Park Service (“NPS”); USDA Forest Service (“USFS”); Shoshone-Bannock Tribes (“Tribes”); Idaho Department of Environmental Quality (“IDEQ”); Idaho Department of Fish and Game (“IDFG”); Idaho Department of Parks and Recreation (“IDPR”); ; Idaho Council of Trout Unlimited (“ITU”); Idaho Rivers United (“IRU”); Greater Yellowstone Coalition (“GYC”); American Whitewater (“AW”), and other intervenors to the FERC relicensing proceedings for the Bear River Project who have executed the Agreement, each referred to individually as a “Party” and collectively as the “Parties.” The Agreement resolves all issues regarding relicensing of the Projects for the purpose of obtaining a FERC order issuing to PacifiCorp a New License for the Project (“New License”).

The Parties submit that the Agreement is fair and reasonable and in the public interest within the meaning of Rule 602, 18 C.F.R. § 385.602(g)(3), for the reasons set forth in this Statement, including the following:

- (1) The Agreement contains specific measures that will substantially improve environmental conditions in the Bear River watershed near the Project;

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<sup>1</sup> The license applications refer to the Soda, Grace/Cove and Oneida projects as separate projects for which the FERC would issue three separate new licenses. As stated in Section 6.11 of the Settlement Agreement, the Parties intend that PacifiCorp will request as part of its Offer of Settlement that the three facilities be consolidated under one New license. Therefore, this Statement refers to the three facilities as one Project under one New License.

Explanatory Statement  
for the Bear River Settlement Agreement

- (2) The Agreement provides important resource protection and restoration measures that will benefit fish and wildlife habitat, consistent with regional restoration planning;
- (3) The Agreement provides for various interests and river uses, including irrigation, power production and natural resource values; and
- (4) The Agreement establishes a process for the Parties to collaborate to manage and enhance natural resources in the Bear River watershed throughout the terms of the New License.

The PM&E measures contained in the Agreement represent the Parties' preferred alternative to measures proposed in PacifiCorp's September 27, 1999 license applications. The Parties will file revised recommendations, terms, conditions, and prescriptions consistent with the Agreement, and intend that the Agreement and the revised terms, conditions, prescriptions, and recommendations supersede any inconsistent prior filings by the Parties in this proceeding.

## **II. Background**

### **A. The Bear River Project**

The Bear River Project is located on the Bear River in Caribou and Franklin Counties, Idaho, and is partially located on United States lands administered by BLM. The Project generates approximately 84.5 megawatts of electricity.

The Soda facilities consist of: (1) the 103-foot-high and 433-foot-long concrete gravity Soda dam with a 114-foot-long spillway section; (2) the Soda reservoir with a surface area of 1,100 acres, and active storage capacity of 16,300 acre-feet, and a maximum water surface elevation of 5,720 feet; (3) the Soda powerhouse containing two units with a total installed capacity of 14 megawatts; and (4) other appurtenances.

The Grace/Cove facilities consist of the Grace and Cove developments. The Grace development consists of: (1) a 51-foot-high and 180-foot-long rock filled timber crib dam that creates a 250-acre forebay; (2) a 26,000-foot-long flowline and surge tanks; and (3) a powerhouse with three units with a total installed capacity of 33 megawatts. The Cove development consists of: (1) a 26.5-foot-high and 141-foot-long concrete dam containing a 60-acre forebay; (2) a 6,125-foot-long concrete and wood flume; (3) a 500-foot-long steel penstock; and (4) a powerhouse with a 7.5-megawatt unit.

The Oneida facilities consist of: (1) the 111-foot-high and 456-foot-long concrete gravity Oneida dam; (2) the Oneida reservoir with an active storage of 10,880 acre-feet and a surface area of 480 acres; (3) a 16-foot-diameter, 2,240-foot-long flowline; (4) a surge tank; (5) three 12-foot-diameter, 120-foot-long steel penstocks; (6) the Oneida powerhouse with three units with a total installed capacity of 30 megawatts; and (7) other appurtenances.

Explanatory Statement  
for the Bear River Settlement Agreement

The FERC licenses for these facilities expired on October 1, 2001. Since that time, the facilities have been operating on annual licenses. Since 1996, PacifiCorp has been in the process of seeking New Licenses for these facilities by undertaking studies, consulting with state, federal and tribal resource agencies, preparing license applications, and responding to Additional Information Requests from FERC. Final license applications for these facilities were filed with FERC on September 27, 1999.

**B. History of Settlement Discussions**

Comments received from public and agency participants on the draft license applications, distributed in November 1998, suggested that significant disagreements existed between PacifiCorp and the stakeholders. A draft offer of settlement was prepared and discussed with stakeholders in June 1999, but no consensus was reached. Based on comments received on the final license applications, and Additional Information Requests issued by the FERC, company representatives began informal communications during 2001 with agency stakeholders regarding issues and priorities in the Bear River basin related to the Project.

Agency stakeholders requested PacifiCorp's presence at a meeting on November 8, 2001, to discuss relicensing of the Bear River Project. Attendees at that meeting concluded that consensus among the parties on actions to resolve outstanding issues would be preferable to license conditions developed by the FERC with information provided in the license applications. The parties agreed to petition the FERC to delay the Ready for Environmental Analysis ("REA") notice to provide the necessary time to reach agreement. At a follow-up meeting on December 8, 2001, PacifiCorp and agency participants discussed potential components of an enhancement package targeted primarily toward restoration of Bonneville cutthroat trout ("BCT").

Subsequent meetings included agency and non-governmental stakeholders, referred to collectively as the Consensus Group. Nine Consensus Group meetings (including one teleconference call and two meetings that involved primarily legal representatives of the parties) were conducted between January 15 and May 23, 2002. An additional public meeting was conducted on February 5 to inform and encourage participation of the public. A final draft Agreement was distributed for a 30-day review to Consensus Group members and all intervenors to the Bear River licensing proceedings. Comments on the draft Agreement were discussed by interested parties during a conference call on July 29, 2002. The final Agreement was signed by the Parties in the State of Idaho Governor's office on August 28, 2002.

**C. Mandates and Responsibilities of the Parties**

Development of the PM&E measures and decision-making provisions of the Agreement was based on resource agency mandates and mutual agreement of the Parties to employ an ecosystem restoration approach to accomplish resource restoration and enhancement in conjunction with hydropower operations, recreation uses, and other beneficial uses of the Bear River. This section discusses the specific mandates and responsibilities of PacifiCorp; the USFWS, BLM, NPS, USFS, IDEQ, IDFG, IDPR and IDWR (the "Governmental Parties"), the Shoshone-Bannock Tribes (the "Tribes"); and ITU, IRU, GYC and AW (the "Non-governmental Parties" or "NGOs").

Explanatory Statement  
for the Bear River Settlement Agreement

**1. The Licensee**

PacifiCorp is a public utility incorporated under the laws of Oregon. The immediate goal of PacifiCorp is to obtain a new FERC license for the existing Project at a reasonable transaction cost and with license conditions that will provide safe, economical and reliable electric generation in a responsible and environmentally sensitive manner over the term of the New License. The long-term goal of PacifiCorp is for the Project to continue to be a competitive source of least cost, reliable and flexible hydroelectric generation for meeting customer needs. PacifiCorp is obligated to shareholders and customers for service responsiveness, managed risk, and sound investment, given the ultimate need for the Public Utility Commission's ("PUC") prudence finding, which includes a public interest review. PacifiCorp has determined that the Agreement, if approved by FERC as drafted, will satisfy these goals and obligations.

**2. The Governmental and Tribal Parties**

**a. United States Fish and Wildlife Service**

USFWS, a bureau of the Department of the Interior, is the principal federal agency responsible for conserving, protecting, and enhancing fish, wildlife, plants, and their habitats. Pursuant to the Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-667(e), USFWS makes recommendations for the conservation of ecosystems upon which such species depend. USFWS also has responsibilities under the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531 *et seq.*, to help federal agencies ensure that their actions do not jeopardize the continued survival and recovery of threatened and endangered species. The only listed species potentially present in the area of the Project is the bald eagle, and the Project is not expected to adversely affect that species; however, BCT, which occurs below the Project, is not listed but is a species of special concern. Although the Agreement can not take the place of consultation under the ESA and therefore should not be considered determinative of USFWS' conclusions under that statute, USFWS believes after careful analysis that the Agreement, if approved unchanged by FERC, will satisfy the requirements of the ESA.

In addition to the above authorities, the Federal Power Act ("FPA"), 16 U.S.C. §§ 791(a) *et seq.*, delegates to the Secretary of the Interior the responsibility to prescribe fish passage requirements in hydroelectric licenses pursuant to Section 18, to provide recommended terms and conditions for the protection, mitigation and enhancement of fish and wildlife and related habitat pursuant to Section 10(j), and to submit recommendations for FERC's consideration pursuant to Section 10(a). Pursuant to these authorities, USFWS intends to submit revised recommendations, terms, conditions and prescriptions consistent with the Agreement.

**b. Bureau of Land Management**

BLM, a bureau of the Department of the Interior, administers public lands located primarily in 12 Western States for the use and enjoyment of present and future generations. The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) established the BLM as a multiple use agency and set forth the mandate for the land use planning process and the

Explanatory Statement  
for the Bear River Settlement Agreement

development of Resource Management Plans. The Resource Management Plan directs the BLM in all natural resource management activities and establishes standards and guidelines for that management. The Project is partially located within BLM-administered lands. Section 4(e) of the FPA, 16 U.S.C. § 791(a) allows BLM, as delegated by the Secretary of the Department of the Interior, to include in licenses for hydroelectric projects such conditions as it deems necessary for the adequate protection and utilization of BLM-administered lands upon which the Project is located. In addition, BLM may provide recommendations for license conditions pursuant to Section 10(a) of the FPA. Pursuant to these authorities, BLM intends to submit revised recommendations, terms and conditions consistent with the Agreement.

The National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*, sets forth federal agency decision making procedures which involve cooperation and communication with state and local governments, public and private organizations, and concerned members of the public. The measures included in the Agreement as well as the rationale provided herein will be used by BLM in completing any required NEPA analyses. The Parties have agreed to request that FERC include the Agreement in its NEPA documentation as the preferred alternative.

**c. National Park Service**

NPS, also a bureau of the Department of the Interior, preserves unimpaired the natural and cultural resources and values of the national park system for the enjoyment, education, and inspiration of this and future generations, and cooperates with partners to extend the benefits of natural and cultural resource conservation and outdoor recreation throughout this country and the world. Pursuant to Section 10(a) of the FPA, the NPS may submit recommendations for the New License for FERC’s consideration. NPS intends to submit revised Section 10(a) recommendations consistent with the Agreement.

**d. USDA Forest Service**

USFS is an agency of the Department of Agriculture and is responsible for managing public lands in national forests and grasslands. The USFS administers National Forest Lands located outside of the Project boundaries within the Bear River basin. Pursuant to Section 10(a) of the FPA, the USFS may submit recommendations for the New License for FERC’s consideration. USFS intends to submit revised Section 10(a) recommendations consistent with the Agreement.

**e. Shoshone-Bannock Tribes**

The measures contained in the Agreement are intended to fulfill the United States’ fiduciary duties towards the Tribes and any obligations that PacifiCorp may have in regards to operation of the Project over the term of the New License pursuant to the Fort Bridger Treaty of 1868 (15 Stat. 673) and other federal, state and tribal laws and regulations. The Project is not located within the Tribes’ reservation. The Parties have not determined in the Settlement Agreement whether any portion of the Project land includes unoccupied lands where Tribal hunting and fishing are reserved under Article 4 of the For Bridger Treaty of 1868.

Explanatory Statement  
for the Bear River Settlement Agreement

**f. Idaho Department of Environmental Quality**

IDEQ is the state agency responsible for implementing environmental protection laws and programs for the state of Idaho. IDEQ manages a broad range of activities, including identification of problem areas; regulation of facilities that generate air, water, and hazardous waste pollution; air and water quality monitoring; cleanup of contaminated sites; and providing education and technical assistance to businesses, local and state government agencies, and interested Idaho citizens. Pursuant to Section 10(a) of the FPA, IDEQ may submit recommendations for the New License for FERC's consideration. IDEQ intends to submit revised Section 10(a) recommendations consistent with the Agreement.

In addition, pursuant to Section 401 of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251-1387, IDEQ is responsible for certifying that the Project, as operated under the New License, will meet water quality standards ("401 Certification"). As of the Effective Date of the Agreement, IDEQ had not yet issued its 401 Certification. The Agreement and its Appendices set forth a process to achieve 401 Certification and IDEQ's intended conditions for the 401 Certification.

**g. Idaho Department of Fish And Game**

Pursuant to Section 10(j) of the FPA, IDFG is responsible for providing recommended terms and conditions for the protection, mitigation and enhancement of fish and wildlife and related habitat. IDFG may also submit recommendations for the New License for FERC's consideration pursuant to FPA Section 10(a). IDFG intends to submit revised Sections 10(a) and 10(j) recommendations, terms and conditions consistent with the Agreement.

**h. Idaho Department of Parks And Recreation**

IDPR is the state agency charged with formulating and executing a long range, comprehensive plan and program for the acquisition, planning, protection, operation, maintenance, development and wise use of areas of scenic beauty, recreational utility, historic, archaeological or scientific interest, to the end that the health, happiness, recreational opportunities and wholesome enjoyment of the life of the people may be further encouraged. Pursuant to Section 10(a) of the FPA, IDPR may submit recommendations for the New License for FERC's consideration. IDPR intends to submit revised Section 10(a) recommendations consistent with the Agreement.

**i. Idaho Department Of Water Resources**

IDWR is the state agency charged with ensuring that water and energy are conserved and available for the sustainability of Idaho's economy, ecosystems, and resulting quality of life. IDWR achieves this mandate through controlled development, wise management, and protection of Idaho's surface and ground water resources, stream channels, and watersheds; and promotion of cost-effective energy conservation and use of renewable energy sources. Pursuant to Section 10(a) of the FPA, IDWR may submit recommendations for the New License for FERC's

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consideration. IDWR intends to submit revised Section 10(a) recommendations consistent with the Agreement.

**3. The Non-governmental Parties**

**a. Idaho Council Trout Unlimited**

ITU's mission is to conserve, protect and enhance the watersheds and cold water fisheries of the state of Idaho. ITU intends to submit to FERC revised comments and recommendations for the New License consistent with the Agreement.

**b. Idaho Rivers United**

IRU's mission is to protect, restore and improve the rivers of Idaho and the communities that depend on them, focusing on issues such as establishment of instream flows, protection of wild rivers, keeping rivers clean and healthy, defending at-risk populations of fish, and minimizing the impacts of dams on Idaho's rivers. IRU intends to submit to FERC revised comments and recommendations for the New License consistent with the Agreement.

**c. Greater Yellowstone Coalition**

GYC's mission is to protect and conserve the Greater Yellowstone Ecosystem (GYE) and its full range of life, now and for future generations. GYC advocates ecosystem-level sustainability as a guide to the management of the region's public and private lands. GYC works to ensure that a thoughtful and holistic approach is taken to managing the natural resources of the GYE. GYC works to shape a future where wildlife populations maintain their full diversity and vitality, where ecological processes function on public lands with minimal intervention, where exceptional recreational opportunities abound for visitors and residents alike, and where communities can enjoy a healthy and diversified economy. GYC intends to submit to FERC revised comments and recommendations for the New License consistent with the Agreement.

**d. American Whitewater**

American Whitewater Affiliation (AW) is a national organization with a membership of 8,000 individual whitewater boating enthusiasts and more than 160 local canoe club affiliates, representing approximately 80,000 whitewater paddlers. AW was founded in 1954 to protect and enhance the recreational enjoyment of private whitewater sports in America. AW is dedicated to safety, education, and the conservation of America's whitewater rivers. The mission of the organization is to conserve America's whitewater resources and to enhance opportunities to safely enjoy them. The AW web site is located at [www.americanwhitewater.org](http://www.americanwhitewater.org). A significant percentage of the membership resides in the interior Rocky Mountains and has a direct interest in the outcome of the relicensing of hydropower projects located on the Bear River.

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**D. Operational Constraints**

A critical component underlying the Agreement is the Parties' recognition that PacifiCorp's ability to manipulate reservoir levels and provide flows at the Projects is restricted by and subject to water rights and flood control responsibilities that are memorialized in part in water contracts and agreements, judicial decrees, and interstate compacts. These constraints arise in part out of historic practices that evolved over years of operating to satisfy the vested rights of irrigators and avoid court-imposed flooding liability. The Agreement stipulates that in no event shall PacifiCorp be required to breach or take any action inconsistent with such constraints, each of which are described in further detail below.

**1. Sugar Company Contract**

The Bear River/Bear Lake system was developed for irrigation. Work began in 1889 on the major irrigation canals near the mouth of the river and in 1902 on the diversion from Bear River into Bear Lake for storage to supply the irrigation canals. The promoter who commenced this work went broke, and the U&I Sugar Company acquired the promoter's position. The Sugar Company developed a small hydro plant near the intake of its canals to supply power to its sugar processing plant. In 1912, U&I Sugar Company conveyed all of its interest in its project, water rights, hydro plant, lands, easements and transmission lines to Utah Power & Light Company, PacifiCorp's predecessor, in return for an absolute guarantee in perpetuity to supply the Sugar Company and its successors with 900 cfs during the irrigation season and 150 cfs during the non-irrigation season. That transaction is called the 1912 Sugar Company Conveyance and Agreement (the "Sugar Company Contract").

The Sugar Company Contract is not a typical water supply contract where water is delivered for a fee. Its basis was a conveyance of real property (including water rights) to PacifiCorp in consideration for water delivery. The Utah Supreme Court held that the Sugar Company Contract is perpetual, and that the Sugar Company's shareholders own not "shares," but "deeds of perpetual water rights" based on the Sugar Company Contract. Holmgren v. Utah-Idaho Sugar Co., 582 P.2d 856 (Utah 1978).

PacifiCorp delivers the Sugar Company Contract water to the lower end of the Bear River. The canals are located at the Cutler hydroelectric project dam. In all but flood years, there is insufficient water flowing naturally in the Bear River to make the guaranteed water delivery, even without hydro generation at Cutler. PacifiCorp must pump water it has previously stored in Bear Lake into a canal, which flows into the Bear River above the Projects to make the guaranteed irrigation water deliveries. The contract provides that if any time PacifiCorp fails to release sufficient water to make the 900 cfs or the 150 cfs available to the Sugar Company, "the Power Company and its successors and assigns *on demand* will forthwith release a sufficient quantity of water from *its reservoir or reservoirs, (whether natural or artificial)*," or will allow the Sugar Company to operate its reservoirs to supply the contracted water. (Italics added). The obligation to supply irrigation water attaches to PacifiCorp's Project reservoirs on the Bear River

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if necessary. PacifiCorp must balance operations at each Project with the overriding irrigation water delivery obligation.

**2. Last Chance Canal Company Contract**

PacifiCorp's contractual arrangement with the Last Chance Canal Company ("Last Chance") is almost as longstanding as its contract with the Sugar Company. Last Chance was the major named defendant in the litigation, Utah Power & Light v. Last Chance Canal Co., (the "Dietrich Decree") to apportion the waters of the Bear River. In the lawsuit, Last Chance filed a counterclaim alleging that PacifiCorp had interrupted the natural flow from the Bear Lake area to the Bear River, which accrued to the benefit of Last Chance's earlier priority natural flow water rights. In 1919, PacifiCorp formalized its Bear Lake relationship with Last Chance by entering into an irrigation contract with Last Chance for supplemental irrigation water stored in and released from Bear Lake. That contract is called the Last Chance Canal Company Contract.

**3. Other Irrigation Company Contracts**

PacifiCorp has entered into other contracts to supply Bear Lake storage water when the natural flow of the Bear River is insufficient to satisfy the water rights of mainstem irrigators. For example, the Cub River Irrigation Company and the West Cache Irrigation Company contracts were executed in 1916 and 1919, respectively. In 1989 and 1990, PacifiCorp entered into contracts with individual pumpers from the Bear River. These users had been diverting water for many decades, but previously had not been brought under regulation due to their small size. After executing the pumper contracts, PacifiCorp ceased executing new irrigation contracts because PacifiCorp's vested water rights in Bear Lake are fully allocated to the existing irrigation water supply contracts. Not only is there no Bear Lake storage water available for new irrigation contracts, there is no Bear Lake storage water available for relicensing purposes.

**4. Judicial Decrees**

There are two major court decrees regarding the Bear River between Bear Lake and the Great Salt Lake. The Dietrich Decree established rights in Idaho and, most unusually, recognized the Sugar Company's rights in Utah. Judge Kimball's decree in Utah Power & Light Co. v. Richmond Irrigation Co. (the "Kimball Decree") established rights in Utah while specifically recognizing Judge Dietrich's decree and PacifiCorp's rights to store and release water in Bear Lake.

In each of the decrees, the "aggregate quantity of water to be simultaneously diverted" by PacifiCorp and the Sugar Company for power generation and irrigation at what is now the Cutler hydroelectric plant, below the Projects, is limited, recognizing the intertwined nature of the two users. Additionally, Judge Dietrich recognized the special status of the Sugar Company contract in his decision rendered in connection with the 1920 decree:

Plaintiff's [PacifiCorp's] earlier rights in Utah were acquired by contract from the Utah-Idaho Sugar Company. In view of the peculiar character of the contract, no attempt will be made to define the several interests of the two companies, but the

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appropriation in its entirety will be decreed without prejudice to any question that may arise between them touching their relative or separate interests. In the discussion which follows all the rights are referred to as those of plaintiff [PacifiCorp], but it will be understood that such rights include also the interest of the Sugar Company.

Dietrich Decree at 1.

### 5. Amended Bear River Compact

In 1980, Congress approved the Amended Bear River Compact, which had been ratified by the Wyoming, Idaho and Utah state legislatures the preceding year. Once ratified by Congress, the Compact became federal law. The Bear River Compact was created, among other things, “to accomplish an equitable apportionment of the waters of the Bear River among the compacting States.” Amended Compact, Art. I, A. It further states that “the physical and all other conditions peculiar to the Bear River constitute the basis for this Compact.” Amended Compact, Art. I, B.

In other words, the historic regulation of the Bear River system as well as the existing water rights of users in all three states at the time the Compact was ratified served as its foundation. Waters of the Bear River include Bear Lake. The states agreed to the Compact to protect their water rights and remove the cause of present and future controversy over the distribution and use of the waters of the Bear River. They rely on the Compact to ensure the equitable apportionment of their water entitlements. The longstanding historic management regime for Bear River and Bear Lake, which was the basis of the Bear River Compact, creates vested rights on which the states and the water rights holders rely.

One example of the Bear River Compact creating vested rights for irrigation is found in Article VI, D, where the irrigation reserve is established. Although PacifiCorp is the sole owner of the right to store and release water from Bear Lake, it may not release water from the lake except to satisfy the irrigation contracts when the lake is below the irrigation reserve, now calculated at over elevation 5914.70. Through experience with several droughts, PacifiCorp found that the Compact irrigation reserve did not adequately address evaporation on the lake and otherwise protect its ability to supply the irrigation contracts, so it established its own target irrigation reserve at approximately elevation 5918.00.

When Bear Lake falls below elevation 5912.00, storage of Bear River water upstream of Bear Lake is curtailed by the Compact. Extended droughts require greater irrigation releases from Bear Lake due to lower natural flows in the Bear River. During the non-irrigation season in extended droughts, PacifiCorp stores all available water in Bear Lake. Releases of Bear Lake storage water to satisfy instream flows not only would interfere with storage for irrigation, they would violate federal and state law (the Compact) when the lake is below the irrigation reserve and interfere with the vested rights to store water upstream when the lake is at elevation 5912.00 or lower.

## 6. Flood Control Liability and Operational Responsibility

In addition to the irrigation contracts, agreements and Compact described above, PacifiCorp's ability to manipulate flows at the Projects is also subject to PacifiCorp's flood control obligations. In Kunz v. Utah Power & Light Co., 526 F.2d 500 (9<sup>th</sup> Cir. 1975), the Ninth Circuit Court of Appeals imposed a duty of flood control on PacifiCorp. The Court found that, "in its installation and operation of the water storage system, Utah Power established a relationship in which the landowners had to rely on Utah Power to control the spring runoff." Id., at 503-4. The Court reasoned that PacifiCorp's duty of care extended to and required anticipation of extraordinary flood conditions. As a result, PacifiCorp can be held liable for failing to anticipate spring runoff and evacuating Bear Lake to provide room to capture it. In another case, Gossner v. Utah Power & Light Co., 612 P.2d 337 (Utah 1980), the Utah Supreme Court similarly imposed strict flood control liability on PacifiCorp. For these reasons, operation of the Projects is subject to PacifiCorp's flood control obligations.

## 7. Agreements with Wyoming, Idaho and Utah

As a condition to approval of the ScottishPower-PacifiCorp merger, the three Bear River Compact states required PacifiCorp to formalize its historic Bear River and Bear Lake operational practices. On October 5, 1999, PacifiCorp agreed that its "water rights are constrained by the historic practice of not making a delivery call for hydropower generation; and that 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." October 5, 1999 Agreement with Wyoming, Idaho and Utah.

An April 18, 2000 Agreement with Wyoming, Idaho and Utah further described PacifiCorp's operation. A major concern of the states was that PacifiCorp continue to honor natural flow water rights on the Bear River, the majority of which are irrigation rights earlier in priority than PacifiCorp's water rights, and not alter its Project operations in any way to interfere with irrigation. PacifiCorp's historic operations had prioritized irrigation deliveries and flood control operations above hydropower generation where there was a potential for conflict.

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 hydropower water rights. Such historic operation is consistent with PacifiCorp's FERC licenses.

April 18, 2000 Agreement, ¶ 3.B. Thus, under state law, PacifiCorp may not interfere with earlier priority irrigation water rights by its hydropower operation on the Bear River. Pursuant to the April 18, 2000 Agreement, its historic practice of non-interference with irrigation water rights became a vested right enforceable not only by those holding the irrigation water rights, but by the three Bear River Compact states.

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During drought cycles, the natural flow in the Bear River is very low. It must be supplemented during the irrigation season by Bear Lake storage water releases for the irrigation contracts. After the irrigation season, all water at Stewart Dam is diverted into Bear Lake and stored to recover the lake and provide for the following year's irrigation supply. During high water cycles, natural flow in Bear River is high, and often Bear Lake is at a high elevation and must be evacuated. This makes flows in the river even higher. These conditions, together with the water contracts, agreements, Compact and judicial decrees discussed above, significantly constrain PacifiCorp's operation of the Projects. In developing the Agreement which is the subject of this Statement, the Parties considered these constraints and crafted provisions which maximize the benefits that can be provided to the important resources of the Bear River watershed, without requiring PacifiCorp to breach or otherwise act inconsistently with the constraints described in this section. For these reasons, it is important that FERC incorporate Appendix A of the Agreement without modification into the New Licenses.

### **III. The Affected Environment**

There are six hydroelectric facilities located on the Bear River in Idaho and Utah. Described below is the environment near the Bear River Project involved in this relicensing proceeding.

#### **A. Soda**

The Soda facility consists of the Alexander Reservoir, dam, spillway, intake, gatehouse, flow conduit, powerhouse housing two vertical Francis turbines, and an adjacent substation. Approximately 16,300 acre-feet of storage are available in Alexander Reservoir. However, increased recreational use of the reservoir, combined with the coordinated control now required to operate the system, have reduced its usable capacity. The reservoir low water elevation cannot fall below the low-level discharge penstock elevation of 5,670.00. The combined authorized discharge for the Soda Plant is 2,624 cfs. The low-level discharge is capable of passing 900 cfs at a normal operating pool of 5,719.00. The maximum water surface level, due to the Probable Maximum Flood (PMF), is elevation 5,735.80.

The Soda facility is situated in the Basin and Range tectonic province of the Intermountain Seismic Belt, a region that extends from southern Montana, through eastern Idaho, western Wyoming and central Utah. Cover types in the Project area are composed of water, cropland/pastureland and sagebrush steppe. Emergent and scrub-shrub wetlands occur in the area, mostly associated with coves along Soda Reservoir. Kelsey's phlox, a sensitive plant species, occurs in the Soda Springs Natural Scenic Area at the north shore of Soda Reservoir. Sensitive wildlife species observed near the Project include the ESA-listed bald eagle, sharp-tailed grouse and trumpeter swan. Suitable habitat for sharp-tailed grouse is found above the ordinary high water, and the reservoir provides suitable habitat for bald eagles and trumpeter swans. Canada geese and mallard ducks have been observed nesting near Soda Reservoir.

Soda Reservoir is a moderately enriched reservoir, occasionally exceeding IDEQ's criterion of dissolved oxygen for cold water biota. The Soda reach is a 2.2 mile-long section of

the Bear River that extends from the Soda Dam to the upper end of the pool formed by the Last Chance Diversion Dam. Water quality in the Soda reach meets IDEQ standards with the occasional exception water temperature in summer. Soda Reservoir supports a warm water fish community primarily composed of yellow perch, common carp and Utah sucker. The game fish community downstream of powerhouse is dominated by stocked rainbow and brown trout, and there is no evidence of trout spawning in the river in the Soda reach.

There are three existing recreational facilities within the Soda Project boundary: a small day use area at the downstream end of Soda Reservoir near Soda Dam; a second day use area on the reservoir about 0.5 mile upstream of Soda Dam know locally as Second Bridge site; and the Oregon Trail Park on the reservoir near Soda Springs. PacifiCorp owns and maintains the day use site near the dam. The recreation facilities are weekend destinations to fish, motorboat and water ski. PacifiCorp estimates that current facilities are adequate to meet current and future demand. The river downstream of Soda Dam flows through a narrow rocky canyon for about two miles until it enters the Last Chance Division Dam impoundment. The river supports some limited fishing and conditions suitable for flatwater boating. PacifiCorp's relicensing studies identified eight sites near the Soda facility eligible for inclusion in the National Register of Historical Places (NRHP).

#### **B. Grace-Cove**

The Grace/Cove facility consists of two hydroelectric developments (total capacity of 40.5 MW) located on the Bear River in Caribou County near the town of Grace, Idaho. The facility consists of the Grace and Cove diversion dams, forebays, flow lines, and powerhouses.

The Grace forebay covers 38 surface acres and has a total storage capacity of 320 acre-feet. At full pool, the forebay has an average depth of about 14 feet, and the surface elevation varies by about 0.3 foot in any one day and about eight feet over a typical operating year. The Grace bypass is a 6.0-mile long section of the Bear River that extends from the Grace dam to the Grace powerhouse. The Cove forebay covers about 10 surface acres and storage capacity of 60 acre-feet. At full pool, the forebay has an average depth of about seven feet and may vary by about 0.1 foot in any one day and about four feet over a typical operating year. The Cove bypass is a 1.3-mile long section of the Bear River that extends from Cove dam to Cove powerhouse. Currently flows in the bypass reaches are provided by leakage from the dams and natural springs in the lower end of the Grace bypass reach.

Cover types in the area of the Grace/Cove facility consist of cropland/ pastureland, sagebrush steppe, and cliff/rock/tallus. A small amount of emergent and scrub-shrub wetlands occur in the area, mostly associated with the Bear River upstream and downstream of Black Canyon and along the Cove Bypass. No ESA-listed or sensitive plant species are known to be present in the vicinity of the facility. The only sensitive wildlife species observed near the Project is the ferruginous hawk; suitable habitat for ferruginous hawk occurs above the ordinary high water and away from Grace/Cove facilities. Canada geese nest in the vicinity of the Grace and Cove forebays, and mallards have been observed nesting throughout the area. In addition to hydroelectric development, land use in the area includes agriculture crop production and livestock.

Grace forebay is meso-eutrophic, or moderately enriched. Water quality in the forebay meets all water quality standards established by IDEQ to support designated uses for the forebay with the exception of dissolved oxygen for cold water biota. While in summer DO levels in the forebay are occasionally less than the established standard, levels rarely drop below 3.9 milligrams per liter (mg/l). These DO levels would have little impact on the warm-water fish populations (carp, smallmouth bass, yellow perch, Utah sucker and redbreasted sunfish) that occur in the forebay since the low levels rarely occur and affect only the deepest portion of the forebay.

Grace Bypass is a 6.0-mile long section of the Bear River that extends from the Grace Dam to the Grace Powerhouse. Currently, flow in Grace Bypass is composed of leakage from Grace Dam (ranging from 1 to 10 cfs depending on the time of year and weather conditions), and contributions from five major springs (ranging from 40 to 70 cfs, depending on the time of year and weather conditions) that enter Grace Bypass about three miles downstream of Grace Dam.

Relicensing studies indicated that water quality in Grace and Cove Bypasses meet all water quality standards established by IDEQ to support designated uses in the bypass with the exception of water temperature to support salmonid spawning and cold water biota. Grace Bypass supports an IDFG-stocked fishery composed of juvenile and adult rainbow trout, primarily in the lower section of the bypass.

### **C. Oneida**

The Oneida facility consists of the Oneida Reservoir, dam, spillway, three 12-foot diameter penstocks, a powerhouse housing three generating units rated at 30 MW, and other appurtenances. Oneida Reservoir is a long and narrow reservoir covering 480 surface acres with a usable storage capacity of 11,500 acre-feet. At full pool, the reservoir has an average depth of about 28 feet, with a maximum depth of about 85 feet.

Most of the cover types in the Oneida facility area are composed of juniper/maple woodland, sagebrush steppe, cropland/pasture, and water. Emergent, scrub-shrub and forested wetlands occur in the area, mostly associated with the upstream end of Oneida Reservoir and the Bear River downstream of Oneida Dam. Established riparian vegetation is composed of species tolerant of frequent watering. No TES plant species were found in the vicinity of the Oneida facility. Sensitive wildlife species observed in the vicinity of the Oneida facility include bald eagle, ferruginous hawk, sharp-tailed grouse, trumpeter swan, leopard frog and rock squirrel.

Relicensing studies indicated that Oneida Reservoir is meso-eutrophic, or moderately enriched. Water quality in the reservoir meets all water quality standards established by IDEQ to support designated beneficial uses with the exception of dissolved oxygen. Oneida Reservoir supports a warm water fish population primarily composed of walleye, carp and yellow perch. The nearest known populations of BCT near the project occur in headwater of tributaries such as Cottonwood Creek and Mink Creek. The Bear River from Oneida Dam to Oneida Powerhouse (Oneida Bypass) supports a naturally-reproducing population of brown trout, and the game fish

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community in the Bear River downstream of powerhouse is dominated by a self-sustaining population of mountain whitefish and stocked brown and rainbow trout.

PacifiCorp studies show that the existing recreational facilities on Oneida Reservoir (Maple Grove Campground and Oneida Day Use Area) facilities are popular weekend destinations for camping, fishing, and boating. The recreational facility on the Bear River downstream of the Oneida facility owned by BLM (Redpoint Campground) also is a popular weekend destination where users camp, fish, wade, tube, and kayak the river. At high flows, the river downstream of the Oneida facility is a Class I or II whitewater boating opportunity suitable for beginners. Relicensing studies indicated that the carrying capacity for these recreational facilities is met or exceeded on about one-half of the weekends in summer. PacifiCorp currently accommodates fishing by limiting releases below the powerhouse to 500 cfs for several hours on weekends in the summer. Boaters/tubers have expressed a desire for higher and more reliable flows on weekends.

#### **IV. Studies and Existing Information**

Relicensing studies were conducted between 1996 and 1998 to assess the effects of the presence and operation of the Bear River projects (PacifiCorp 1999a, b, c). Applications submitted to the FERC on September 27, 1999, document the results of these studies, including:

- Water Quality studies
- Bathymetry studies
- Dissolved oxygen studies
- Sediment loading study
- Erosion and bank stability study (reported in Dobrowolski and Allred 1999)
- Fish community studies
- Fish littoral zone and habitat mapping studies
- Benthic macroinvertebrate studies
- Zooplankton studies
- Instream flow studies
- Juvenile fish stranding study
- Trout spawning gravel study
- Threatened and endangered wildlife species studies
- Migratory bird species surveys
- Vegetation cover type mapping
- Riparian zone vegetation studies
- Threatened and endangered botanical species studies
- Cultural resources studies
- Recreation resources studies
- Land use and aesthetics studies

In addition to studies conducted as part of project license preparation, PacifiCorp also conducted a number of studies in response to Additional Information Requests (AIRs) from the FERC, including:

- General investigations to clarify information to the FERC (PacifiCorp 2000, 2001a)

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- Grace whitewater boating (PacifiCorp 2001b)
- Oneida recreation use (PacifiCorp 2001c)
- Wetland and riparian habitat assessment (PacifiCorp 2001d)
- Bonneville cutthroat trout restoration feasibility (PacifiCorp 2001e)
- Cove bypassed reach instream flow study (PacifiCorp 2001f)

Other information referred to in planning for Bonneville cutthroat trout restoration and discussed during settlement meeting included the *Range-wide Conservation Agreement and Strategy for Bonneville Cutthroat Trout* (RCAS 2000) and *Cutthroat Trout Management: A Position Paper, Genetic Considerations associated with Cutthroat trout Management* (CTMAPP 2000).

## V. Implementation

### A. Timing

A significant benefit provided by the Agreement is increased certainty concerning the timing and implementation of PM&E measures. The Parties have negotiated a comprehensive schedule for implementing such measures to ensure that beneficial measures are implemented in a timely way, recognizing the potential delays often encountered in the relicensing process. Such a schedule likewise enables PacifiCorp to better plan and coordinate its future capital expenditures.

The Parties have agreed to implement a suite of PM&E measures before the New Licenses issued by FERC become final. Such measures, which will be implemented upon FERC's issuance and PacifiCorp's acceptance of the New Licenses, include (1) funding for BCT measures such as genetic sampling and analysis, aerial photography, Geographic Information System depictions, and telemetry studies; (2) implementation of minimum flows at the Cove bypass; and (3) designation of representatives to an environmental decision-making committee, discussed in further detail below. Implementation of such measures immediately following issuance and acceptance of the New Licenses will allow the Parties to begin planning restoration and other important PM&E measures as soon as possible in the license terms.

### B. Coordination and Decision Making

The Agreement creates an Environmental Coordination Committee ("ECC") whose responsibilities include, among other things, (1) facilitating coordination and consultation among the Parties on implementation of PM&E measures; (2) proposing and approving restoration and flow measures; (3) establishing monitoring criteria to evaluate the effects of PM&E measures; and (4) coordinating and implementing PM&E measures. Another important function of the ECC is to provide a forum for involvement by other interested parties. The ECC will be comprised of one representative from PacifiCorp, the Tribes, each Governmental Party, and each NGO. Each Party that is a member of the ECC will designate a representative to the ECC within sixty days of FERC's issuance and PacifiCorp's acceptance of the New Licenses.

Creation of the ECC will improve the protection of ecological, cultural, aesthetic, and recreational resources by ensuring that there is a high level of communication and coordination

among resource agencies, PacifiCorp and other members of the ECC prior to implementation of management actions. Creation of the ECC will also ensure a continued collaborative approach among the Parties, thus establishing an atmosphere of cooperation that will speed implementation of the Agreement and ensure its efficacy.

**C. Duration**

The Parties recommend that FERC adopt 30-year license terms for the New Licenses. This period provides PacifiCorp with sufficient certainty and gives the ECC sufficient time to implement significant resource measures to protect and enhance aquatic habitat.

**VI. Rationale for PM&E Measures**

**A. Aquatic Resources**

A history of water diversion for irrigation, hydropower development, and cattle grazing in the Bear River basin in Southeast Idaho has resulted in habitat degradation to native fish populations; impacts to riparian, wetland and other terrestrial habitat; a disruption of geomorphological processes; fragmentation of fish populations; and reduced water quality in the mainstem Bear River near the Project. Remedies to improve upon these conditions is complicated by human demands on the Bear River that are expected to continue through the next license period. Therefore, the Parties agreed that restoration of river processes, water quality, and habitat conditions should be the first step in mitigating effects of the Bear River Project. This, in addition to enhanced instream flows in river reaches affected by Project operations, may be expected to improve conditions in the mainstem Bear River near the Project.

The Parties will collaborate in the preparation of a plan for restoration of native fish and direct the use of mitigation funding. During the first few years of the new license, the Parties will conduct studies that will lead to the development of a BCT restoration plan. The restoration plan will provide a framework for the long-term protection, mitigation, and enhancement of habitats necessary to the persistence of BCT in the Bear River drainage. Implementation of conservation actions that are identified in the restoration plan will address the elimination or reduction of threats to the species' survival. Funding will also be available to conduct actions to restore aquatic habitat, acquire land and water rights from willing landowners in the area, and stock native fish species as habitat improvements are made.

**B. Recreation Resources**

Recreational boating has been a popular activity in the Bear River near the Project, but available flow in some sections of the river affected by Project operations have not in the past met the needs of some Parties. Inasmuch as water available for whitewater boating and power generation is subject to legally mandated water rights and multi-state agreements, the Parties agreed to increase recreational boating opportunities in the Grace bypass reach consistent with historic water uses and other priorities in the Bear River basin. As water is available, PacifiCorp will re-divert water from the project flowline to the bypass reach for specified time periods during spring and early summer each year, and notify the public when releases will occur. Put-in

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and take-out access points will be improved. Monitoring studies of the effects of these high flows will be conducted during initial years of the new license to assure that recreational boating releases are consistent with native fish habitat restoration in the Grace bypass reach.

Camping and day use will continue to be popular activities during the next license period. The parties agreed that a relatively undeveloped and primitive experience is the desired condition, while maintaining safety for the public. Pursuant to these goals, PacifiCorp will develop a safety plan and provide funding for upgrading facilities near the Oneida development, and provide support to the county for recreation facilities at Soda reservoir.

**C. Cultural Resources**

PacifiCorp conducted inventories of cultural resources and historic properties during relicensing studies. As part of the Agreement, these resources will be conserved during the next license period. PacifiCorp will prepare an Historic Properties Management Plan to protect cultural resources potentially affected by project operations. The Plan will be developed consistent with the FERC guidelines and in consultation with the Tribes and state and federal agencies.

**D. Land Management**

PacifiCorp owns relatively little land near the Project. However, a Land Management Plan will be developed to protect resources on company lands due to Project operations. Consistent with identified goals of habitat restoration and improved water quality, PacifiCorp lessees will be required to maintain a buffer zone on parcels near project reservoirs and the Bear River in order to reduce grazing impacts to riparian vegetation. Further, PacifiCorp will fence a buffer zone on its property in the particularly impacted area of the Cove bypass reach.

**VII. Conclusion**

For the reasons set forth in this Statement and in the Agreement, the Parties believe that the Agreement is fair, reasonable, and in the public interest, and recommend that FERC accept and incorporate without modification the PM&E measures set forth in Appendix A of the Agreement as license articles in the New License.

**VIII. Literature Cited**

Dobrowolski, J. P. and M. D. Allred. 1999. Potential for bank stability decline due to drastic flow level change in the Bear River. Utah State Univ. final report submitted to PacifiCorp. December 8, 1999.

PacifiCorp. 1999a. Soda Hydroelectric Project License Application. FERC Project No. 2401. Portland, Oregon.

PacifiCorp. 1999b. Grace/Cove Hydroelectric Project License Application. FERC Project No. 20. Portland, Oregon.

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BEAR LAKE/BEAR RIVER SYSTEM  
SUMMARY OF 2002 OPERATION

BEAR LAKE

- Low elevation, fall of 2001 (10/31/01) . . . . .5911.15
- High elevation, spring of 2002 (4/21/02) . . . . . 5912.20
- Elevation, September 30, 2002 . . . . .5907.88
- Elevation, November 16, 2002 . . . . . 5907.58
- Remaining capacity at Nov. 16 level . . . . .340,000 Ac. Ft. (24%)

BEAR LAKE RUNOFF

- Rainbow Inlet canal runoff forecast (April 1, 2002) . . .110,000 Ac. Ft. (38%)
- Actual runoff (April-July, 2002) . . . . .8,000 Ac. Ft. (2.7%)
- Runoff for water year ending Sept. 30,2002 . . . . .28,827 Ac. Ft. (10.6)
- Net Runoff for 2002 . . . . . -18,000 Ac. Ft.
- Net Runoff for 2000,2001,2002 . . . . . 66,000 Ac. Ft. (21% annual ave)

Note: This is the first time in history that negative runoff occurred on consecutive years

BEAR LAKE RELEASES

- 2002 Bear Lake storage allocation . . . . . 215,000 Ac. Ft. (88%)
- Net storage release . . . . . 204,000 Ac. Ft.

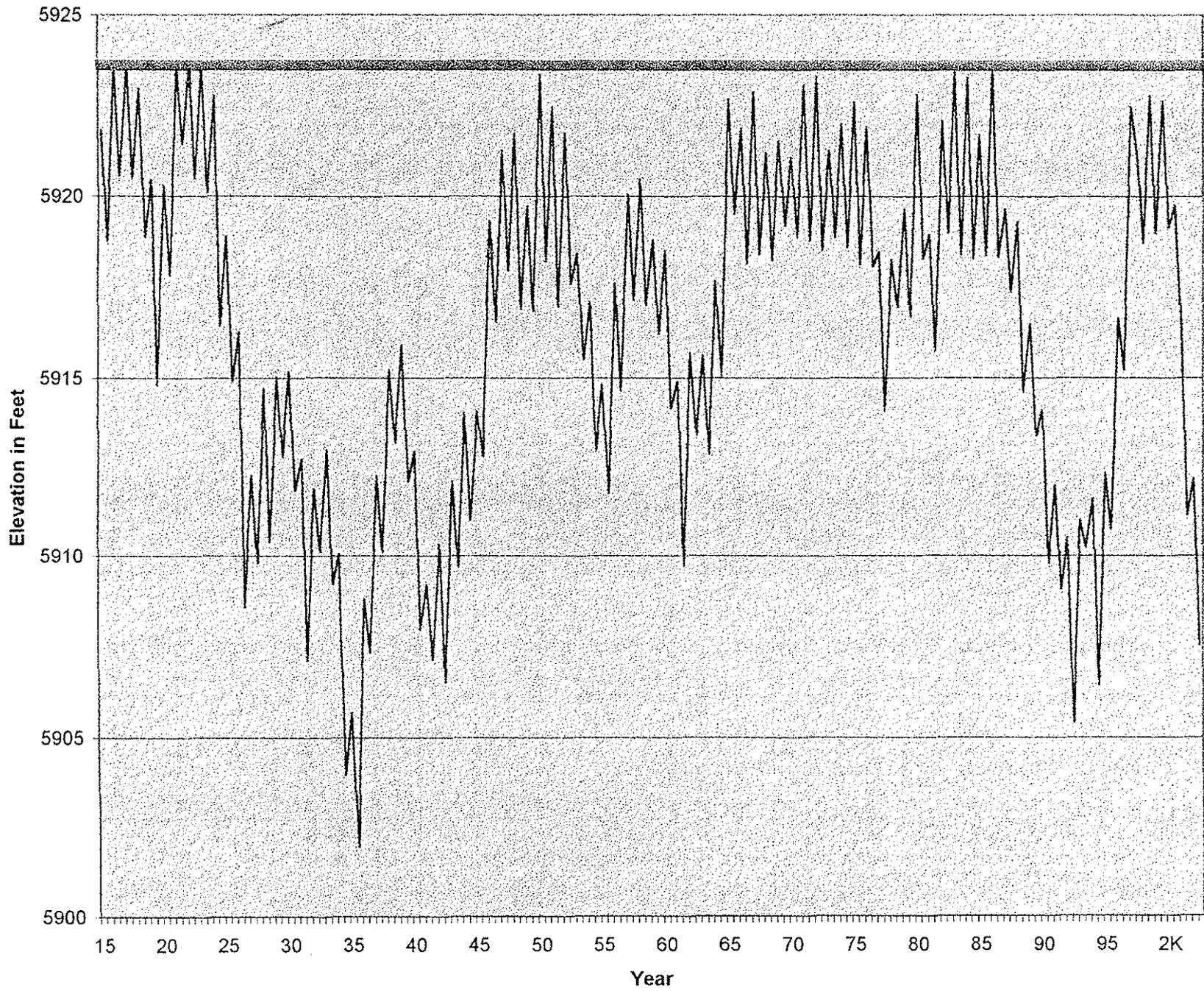
STATUS OF DREDGING

- Dredging permit application filed - March, 2001
- Dredging permit approved - June, 2002
- Channel intake bottom elevation – August, 2001 – 5908
- Channel intake bottom elevation - July, 2002 – 5905
- Current intake channel freeboard - 2.58 ft.

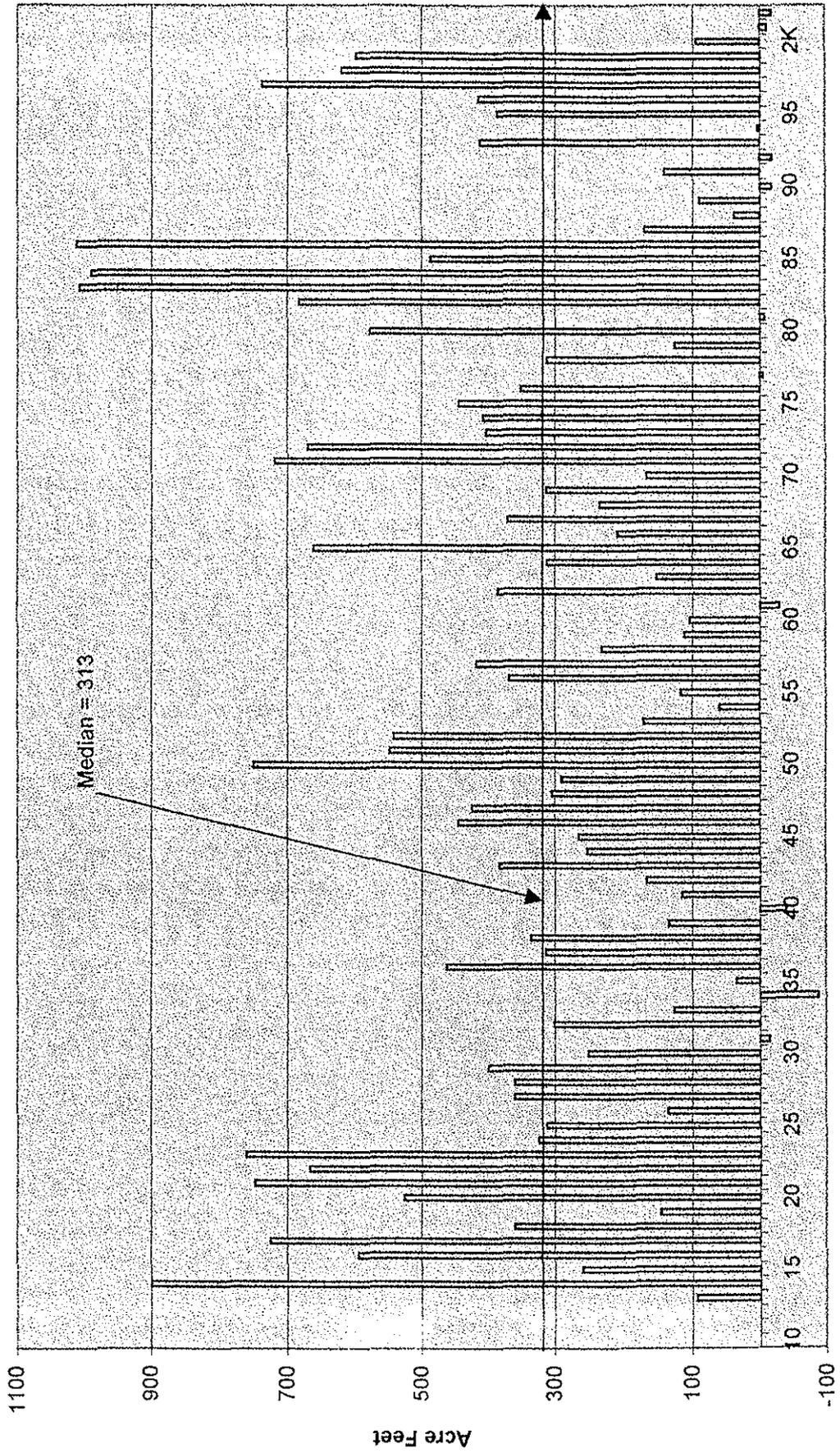
2003 STORAGE ALLOCATIONS

- Assuming a repeat of 2002 . . . . .177,000 Ac. Ft. (72%)
- Assuming average runoff conditions . . . . . 210,000 Ac. Ft. (86%)
- Assuming high runoff conditions . . . . .230,000 Ac. Ft. (94%)

# Bear Lake Elevation From 1916 to 2002



Bear Lake Net Runoff



Year (1913-2002)