

AMENDED AND RESTATED
BEAR LAKE SETTLEMENT AGREEMENT

THIS AMENDED AND RESTATED BEAR LAKE SETTLEMENT AGREEMENT (the "Agreement") is made and entered into this 2nd day of July, 2004, by and between LAST CHANCE CANAL COMPANY, CUB RIVER IRRIGATION COMPANY, WEST CACHE IRRIGATION COMPANY, BEAR RIVER CANAL COMPANY, and THE BEAR RIVER WATER USERS ASSOCIATION, INC. (referred to collectively as the "Company Irrigators"); and BEAR LAKE WATCH, INC. in its own behalf and as successor in interest to JIM KIMBAL, EMERALD BEACH, INC., and BEAR LAKE EAST, INC. (referred to collectively as the "Bear Lake Group"); and PACIFICORP. The foregoing are sometimes referred to herein individually as a "Party" or collectively as the "Parties."

RECITALS

A. WHEREAS, PacifiCorp owns certain decreed rights under the Dietrich Decree in Idaho (*Utah Power & Light Company v. Last Chance Canal Company, Limited, et al.*, in Equity No. 203, July 14, 1920) and the Kimball Decree in Utah (*Utah Power & Light Company v. Richmond Irrigation Company, et al.*, February 21, 1922) to divert water from Bear River for storage in the top 21.65 feet of Bear Lake between elevations 5902 and 5923.65 and to operate, manage and release the same for irrigation in the Bear River Valley in Idaho and Utah; power generation incidental to releases for irrigation, stockwatering and flood control; and flood control and for other beneficial uses; and

B. WHEREAS, the Company Irrigators and certain individual small irrigators diverting water from Bear River under State granted water rights in the States of Idaho and Utah (the "Small Irrigators") hold contracts with PacifiCorp to receive Bear Lake storage water which has historically been applied to beneficial use for the supplemental irrigation of more than 157,000 acres in Idaho and Utah (the "Contracts"); and

C. WHEREAS, the Bear Lake Group represents the interests of its members who consist of property owners around Bear Lake, recreationalists and others who use waters of Bear Lake for recreation, aesthetic and other non-consumptive purposes; and

D. WHEREAS, the Parties have heretofore entered into that certain agreement entitled "Bear Lake Settlement Agreement," dated April 10, 1995 (the "Original Settlement Agreement"); and

E. WHEREAS, the signatories to the Original Settlement Agreement included two unincorporated associations of individual irrigators identified as the "Idaho Pumpers Association" and the "Utah Pumpers Association" (the "Associations"). The members of the Associations are referred to in this Agreement as the "Small Irrigators"; and

F. WHEREAS, as contemplated in the Original Settlement Agreement, the Parties have pursued with the states of Idaho, Utah and Wyoming the concept and implementation of a single interstate model and modeling process for the administration and distribution of water in

the Bear River System (the "Interstate Model"), including the delivery of supplemental irrigation storage water out of Bear Lake allocated by PacifiCorp among the Company Irrigators and Small Irrigators holding Contracts with PacifiCorp as set forth herein; and

G. WHEREAS, because the Interstate Model improved the accuracy of accounting for Bear River natural flow and Bear Lake storage water use, PacifiCorp and certain of the Company Irrigators and Small Irrigators amended their Contracts to adjust the amount of Bear Lake storage water releases to them, which Contracts specifically made reference to the Original Settlement Agreement; and

H. WHEREAS, subsequent to the Original Settlement Agreement, PacifiCorp entered into certain agreements referencing the Original Settlement Agreement, among them the October 5, 1999 and April 19, 2000 agreements with the States of Wyoming, Idaho and Utah; and

I. WHEREAS, as contemplated in the Original Settlement Agreement, the Parties have been able to resolve conflicts by pursuing means other than litigation, and appropriate changes to the "Irrigation Water Allocation Lake Recovery Proposal for Bear Lake" have been demonstrated; and

J. WHEREAS, certain provisions of the Original Settlement Agreement are no longer applicable; and

K. WHEREAS, the Parties desire to amend and restate in its entirety the Original Settlement Agreement to facilitate the changes set forth above in this Agreement.

AGREEMENT

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED among the Parties as follows:

1. The Bear Lake Irrigation Water Allocation and Lake Recovery Table attached hereto as EXHIBIT "A" and incorporated by reference herein, is hereby approved by the Company Irrigators and Bear Lake Group, and adopted by PacifiCorp as established policy for the supplemental irrigation water delivery component of its operation and management of Bear Lake. The Bear Lake Irrigation Water Allocation and Lake Recovery Table attached as Exhibit "A" hereto replaces and supersedes the "Irrigation Water Allocation Lake Recovery Proposal for Bear Lake" table attached to the Original Settlement Agreement.

2. The Parties acknowledge and agree that PacifiCorp shall retain the authority and discretion to determine the "Estimated Lake Elevation" set forth in Column (A) of Exhibit "A;" adjust the "Estimated System Losses" set forth in Column (H) of Exhibit "A;" and make all decisions regarding the operation and maintenance of PacifiCorp's Bear River and Bear Lake system facilities. Under extreme conditions of unforeseen circumstances, and for good cause shown, PacifiCorp, after consultation with the Bear Lake Preservation Advisory Committee (the "Advisory Committee"), may adjust the Annual Allocation set forth in Column (E) of Exhibit "A."

3. The Advisory Committee shall remain in effect and consists of a representative of each of the Company Irrigators, representatives of the entity or entities comprising the Small Irrigators, each of the entities comprising the Bear Lake Group, representatives for PacifiCorp, and representatives from the Bear River Commission and the States of Idaho, Utah and Wyoming should they desire to participate, as well as other parties who have an interest in promoting the goals enumerated below. The purpose of the Advisory Committee will be to address and attempt to resolve through compromise and negotiations disagreements among the Parties and others concerning the use, operation and management of Bear Lake. Among other things, the purposes of the Advisory Committee will include the following;

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

4. PacifiCorp shall present its Estimated Annual Allocation to the Company Irrigators and Small Irrigators based upon the Estimated Lake Elevation of Bear Lake as set forth in Exhibit "A" or its anticipated flood control release projections at a meeting of the Advisory Committee. The Advisory Committee will meet at least annually as scheduled by the Advisory Committee or PacifiCorp.

5. The Company Irrigators shall be allocated 92.2% of the Estimated Annual Allocation to Irrigators as set forth in Column (E) of Exhibit "A." The 92.2% of the Estimated Annual Allocation to Irrigators shall be apportioned by the Company Irrigators among themselves according to a written apportionment schedule established by the Company Irrigators at their sole discretion and approved under the bylaws of the Bear River Water Users Association. The remaining 7.8% of the Estimated Annual Allocation to Irrigators shall be allocated by PacifiCorp to the Small Irrigators as follows: Idaho Small Irrigators 3.0% and Utah Small Irrigators 4.8%. The Idaho Small Irrigators and/or the Utah Small Irrigators may organize corporations or entities to which the individual Contracts of the Small Irrigators are assigned. The Parties do not object to such assignments so long as no more than 7.8% of the Estimated Annual Allocation to Irrigators is allocated to such corporations or entities. The Bear Lake Group does not agree or disagree with, or in any manner take part in, this provision of this Agreement.

6. The Parties provide and hereby intend that the Small Irrigators participate in this Agreement either as set forth in Paragraph 5 above, or as one or two representative organizations receiving allocations of the Estimated Annual Allocation as set forth in Paragraph 5 above. If the Small Irrigators participate as one organization, said organization shall include all of the Small Irrigators. If the Small Irrigators participate as two organizations, said organizations shall be organized by State and include all Idaho Small Irrigators in one organization and all Utah Small Irrigators in one organization. Subsequent to the execution of this Agreement, the Small

Irrigators' organization(s) may execute a counterpart to this Agreement stating the name of the representative organization, providing a statement of the individual Small Irrigators represented and proof of assignment of Contracts to the representative organization, and a statement of unconditional concurrence with the terms of this Agreement. Once the counterpart or counterparts to this Agreement are so executed and copies delivered to the original signatories, the organization(s) or entities shall be considered to be Parties to this Agreement. The Bear Lake Group does not agree or disagree with, or in any manner take part in, this provision of this Agreement.

7. The Parties acknowledge and agree that the Company Irrigators have entered into this Agreement voluntarily with the other Parties, for the purpose of allocating Bear Lake storage water for supplemental irrigation use in times of shortage, when nature does not otherwise provide a full supply. Nothing in this Agreement shall be construed as an abandonment or forfeiture of any appropriated or Contract rights of the Company Irrigators and Small Irrigators, or rights of Bear Lake Group under environmental laws, or other rights belonging to the Parties.

8. Subsequent to the implementation of the Interstate Model, certain of the Company Irrigators and Small Irrigators amended their Contracts with PacifiCorp. PacifiCorp entered into agreements with the States of Wyoming, Idaho and Utah dated October 5, 1999 and April 18, 2000 referencing PacifiCorp's operations at Bear Lake and in Bear River. Said Contracts and agreements made specific reference to the Original Settlement Agreement. By executing this Agreement, the Parties agree to the following:

- a. all references to the Original Settlement Agreement in the November 16, 1999 "Last Chance Bear Lake Storage Water Agreement" shall be replaced with and refer to this Agreement; and
- b. all references to the Original Settlement Agreement in the November 11, 1999 "West Cache Irrigation Company Amendatory Agreement" shall be replaced with and refer to this Agreement.
- c. any and all references to the Original Settlement Agreement in the October 5, 1999 and April 18, 2000 agreements with the States of Wyoming, Idaho and Utah and PacifiCorp shall be replaced with and refer to this Agreement;

To the extent the Parties to this Agreement have any legal or equitable rights, duties, or obligations under any agreement or contract containing references to the Original Settlement Agreement, each Party agrees that said references to the Original Settlement Agreement shall be replaced with and refer to this Agreement.

9. Any Party shall be excused from performance under this Agreement but only during and to the extent that it is unable to perform, or its performance is delayed or interrupted, for a cause beyond its reasonable control. Such causes may include lack of water, labor or material, fire, storm, flood, acts of God, war (whether or not declared), labor disputes or an order or necessity of any governmental authority so long as the cause is not a result of any negligence of the Party claiming inability to perform. In the event of a claim of inability to perform pursuant to this provision, then the Party making such claim shall give immediate written notice with explanation to the other Parties. Following such notice, the affected obligations of the Party

giving notice shall be suspended only during the continuance of the events giving rise to the cause, provided that the affected Party is acting with all reasonable speed and due diligence to remedy the events giving rise to the cause of its inability to perform.

10. Copies of this Agreement shall be provided to the U.S. Army Corps of Engineers, the Idaho Department of Lands, the Bear River Commission, the Idaho Department of Water Resources, the Utah Divisions of Water Resources and Water Rights, and the Wyoming State Engineer's Office.

11. With respect to the rights and obligations of the Parties, this Agreement shall replace and supersede the Original Settlement Agreement in its entirety.

12. General Provisions:

a. Each Party to this Agreement will bear its expenses incurred in connection with the preparation, execution and performance of this Agreement, including all fees and expenses of agents, representatives, counsel and accountants.

b. All notices, consents, waivers and other communications under this Agreement must be in writing and will be deemed to have been duly given when (i) delivered by hand (with written confirmation of receipt), or (ii) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addressees set forth below (or to such other addresses and fax numbers as a party may designate by notice to the other Parties):

Last Chance Canal Company	P O Box 287 Grace, ID 83241 _____
Cub River Irrigation Company	P O Box 215 Lewiston UT 84320 _____
West Cache Irrigation Company	Trenton, UT 84338 _____ _____
Bear River Canal Company	275 North 1600 East Tremonton UT 84337 _____
The Bear River Water Users Association, Inc.	_____ _____ _____

Bear Lake Watch, Inc.	c/o David R. Cottle 3539 Brighton Point Dr. Salt Lake City UT 84121 (801) 733-5243
Emerald Beach, Inc.	c/o Don C. Riches 8626 Scottish Dr. Sandy UT 84093-2132 (801) 944-9019
Bear Lake East, Inc.	Bruce Passey 4326 Rupp Court Taylorsville UT (801) 969-7787
PacifiCorp	Connely Baldwin Hydro Resources Department 1407 West North Temple, Suite 330 Salt Lake City, UT 84116

c. The rights and remedies of the Parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any Party in exercising any right, power or privilege under this Agreement or the documents referred to in this Agreement, nor the single or partial exercise of any such right, power or privilege, will operate as a waiver of such right, power or privilege. To the maximum extent permitted by applicable law, (i) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other Parties; (ii) no waiver that may be given by a Party will be applicable except in the specific instance for which it is given; and (iii) no notice to or demand on one party will be deemed to be a waiver of any obligation of such Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

d. PacifiCorp may assign its interest in this Agreement to a successor without the prior consent of the other Parties so long as the successor assumes all of PacifiCorp's agreements, liabilities and obligations relating to Bear Lake. No other Party may assign this Agreement without the prior consent of each other Party. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the Parties. Nothing expressed or referred to in this Agreement will be construed to give any person other than the Parties to this Agreement any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement.

e. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

f. The headings of sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

g. This Agreement will be governed by the laws of the State of Utah, without regard to its conflicts of laws principles.

h. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same Agreement.

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

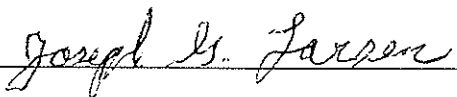
LAST CHANCE CANAL COMPANY

By: 

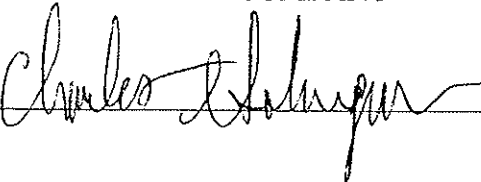
CUB RIVER IRRIGATION COMPANY

By: 

WEST CACHE IRRIGATION COMPANY

By: 

BEAR RIVER CANAL COMPANY

By: 

Signatures continue on the following page.

BEAR RIVER WATER USERS ASSOCIATION,
INC.

By: *W. James J. Gibbs*

BEAR LAKE WATCH, INC., in its own behalf and
as successor-in-interest Jim Kimbal

By: *David R. Lott*

EMERALD BEACH, INC.

By: *McRuler*

BEAR LAKE EAST, INC.

By: *Bruce Passey*

PACIFICORP

By: *St. Cunningham*

EXHIBIT "A"
(To Amended and Restated Bear Lake Settlement Agreement)
BEAR LAKE IRRIGATION WATER ALLOCATION AND LAKE RECOVERY TABLE

(Quantities Expressed in Acre-feet)

(A) Estimated Lake Elevation (in feet) (Footnote 1)	(B) Calculated Storage Content (Footnote 2)	(C) Estimated Lake Evaporation (Footnote 3)	(D) Estimated Net Storage Water Available (Footnote 4)	(E) Estimated Annual Allocation to Irrigators (Footnote 5)	(F) Decreased Transit Losses (Averaged) (Footnote 6)	(G) Estimated Head Gate Delivery to Irrigators (Footnote 7)	(H) Estimated System Losses (Averaged) (Footnote 8)	(I) Estimated Balance for Lake Recovery (Footnote 9)
5923.65 (Full)	1,421,000							
5914.7	801,000	125,000	676,000	230,000 (100%)	8,200	221,800	17,000	429,000
5914	754,000	125,000	629,000	225,000 (98%)	8,100	216,900	17,000	387,000
5913	688,000	125,000	563,000	220,000 (96%)	8,000	212,000	17,000	326,000
5912	622,000	125,000	496,000	215,000 (93%)	7,800	207,200	17,000	264,000
5911	557,000	125,000	432,000	210,000 (91%)	7,600	202,400	17,000	205,000
5910	492,000	125,000	372,000	205,000 (89%)	7,400	197,600	17,000	150,000
5909	428,000	125,000	303,000	181,000 (79%)	6,700	174,300	17,000	105,000
5908	365,000	125,000	240,000	168,000 (73%)	6,000	162,000	17,000	55,000
5907	303,000	125,000	177,000	141,000 (61%)	5,000	136,000	17,000	19,000
5906	241,000	125,000	115,000	104,000 (45%)	3,700	100,300	17,000	- 6,000
5905	180,000	125,000	55,000	55,000 (24%)	2,000	53,000	17,000	- 17,000
5904	119,000	125,000	0	0 (0%)	0 (0%)	0 (0%)	17,000	0
5903	59,000	125,000	0	0 (0%)	0 (0%)	0 (0%)	17,000	0
5902	0	125,000	0	0 (0%)	0 (0%)	0 (0%)	17,000	0

THE ACTUAL QUANTITY OF WATER TO BE RELEASED FROM BEAR LAKE EACH YEAR IS MEASURED AT THE OUTLET CANAL GAGE AND CALCULATED BY ADDING THE QUANTITY IN COLUMN E TO THE QUANTITY IN COLUMN H.

FOOTNOTES TO EXHIBIT "A"

1. The "Estimated Lake Elevation," Column A, represents PacifiCorp's estimated, maximum water level in Bear Lake, in any given year, calculated by adding the forecasted amount of storable spring runoff (i.e. the forecasted flow in the Bear River less the flow required to satisfy natural flow rights) to the actual quantity of water then in storage in Bear Lake on April 10 of said year.
2. The "Calculated Storage Content," Column B, is the calculated content according to PacifiCorp data at each projected lake elevation.
3. The "Estimated Evaporation," Column C, represents the estimated amount of water lost out of Bear Lake in any given year due to evaporation, according to PacifiCorp data.
4. The "Estimated Net Storage Water Available," Column D, is calculated by subtracting the Estimated Evaporation in Column C from the Calculated Storage Content in Column B.
5. The "Estimated Annual Allocation to Irrigators," Column E, represents the total, estimated quantity of supplemental irrigation storage water determined as of April 10 to be available for release by PacifiCorp to the BRWUA on behalf of the Company Irrigators and by PacifiCorp to the Small Irrigators from Bear Lake pursuant to the Contracts during those periods when the elevation of Bear Lake is within the Irrigation Reserve range between 5914.7 feet and 5902 feet, subject to the following:
 - a. The Estimated Annual Allocation available at each estimated Bear Lake elevation is subject to the maximum flow rates deliverable through PacifiCorp facilities, PacifiCorp's historic Bear Lake operational practices, and other operating and legal constraints and subject to Contract limitations of each of the Company Irrigators and Small Irrigators.
 - b. PacifiCorp shall send written notice of the Estimated Annual Allocation to Company Irrigators to the Bear River Water Users Association (BRWUA) on behalf of the Company Irrigators and to the Small Irrigators or their duly appointed representatives with a copy to the Bear River Commission Engineer-Manager. The BRWUA shall apportion 92.2% of the Estimated Annual Allocation to Irrigators among the Company Irrigators. Such apportionment shall not exceed the Contract limitations of each of the Irrigators. BRWUA shall send written notice of its apportionment to PacifiCorp and the Bear River Commission Engineer-Manager annually prior to the commencement of the irrigation season. The remaining 7.8% of the Estimated Annual Allocation to Irrigators shall be apportioned to the Small Irrigators as follows: Idaho Small Irrigators 3.0% and Utah Small Irrigators 4.8%.
 - c. Unused water allocated to the BRWUA on behalf of the Company Irrigators or to the Small Irrigators under the Estimated Annual Allocation may not be accrued or carried over by the BRWUA or any Company Irrigator or Small Irrigator to any future year and will remain in Bear Lake for additional lake recovery.

- d. PacifiCorp will not deliver storage water from Bear Lake to new contracts, or otherwise additionally encumber its Bear Lake storage water, over and above the water allocated to the BRWUA on behalf of the Company Irrigators and the Small Irrigators for their existing Contracts.
 - e. No allocation of Bear Lake storage water will be made to the BRWUA on behalf of the Company Irrigators and Small Irrigators if PacifiCorp calculates the Estimated Lake Elevation (Column A) to be 5904 feet or below. If, however, PacifiCorp calculates that the Estimated Lake Elevation will be higher than 5904 feet, PacifiCorp will pump, subject to operating and legal constraints, in order to release water from Bear Lake until such time as its operation, together with anticipated evaporation, is expected to result in a calculated Bear Lake elevation of 5902 feet after evaporation and releases.
 - f. The Estimated Annual Allocation to the BRWUA on behalf of the Company Irrigators and Small Irrigators will be refined by PacifiCorp by pro-rating between the nearest even foot elevations set forth in the table above and below the actual Bear Lake elevation projected on April 10, calculated in tenths of a foot.
 - g. PacifiCorp's historical maximum delivery of Bear Lake storage water to the Company Irrigators and the Small Irrigators for supplemental irrigation was 245,000 acre feet in 1961. Two hundred forty-five thousand acre feet shall be the maximum Estimated Annual Allocation to Irrigators at all Bear Lake elevations above 5914.7 feet. However, under extreme conditions, and only when elevations are above 5914.7 feet, delivery of Bear Lake storage water to the BRWUA may exceed 245,000 acre feet in order to satisfy the Company Irrigators' and Small Irrigators' Contracts.
6. The "Decreed Transit Losses (Averaged)," Column F, represents the transit losses calculated for the purpose of this Agreement using an average of 3.6% to cover all reaches of the Bear River. The Decreed Transit Losses are deducted from the "Estimated Annual Allocation to Irrigators" (Column E). The actual transit losses will be calculated pursuant to the Dietrich and Kimball Decrees and accounted for in the Interstate Model.
 7. The "Estimated Head Gate Delivery," Column G, is the aggregate quantity of supplemental Bear Lake storage water allocated to BRWUA on behalf of the Company Irrigators and Small Irrigators by PacifiCorp to be diverted at the Company Irrigators' and the Small Irrigators' individual head gates on the Bear River, and is determined by subtracting the total Decreed Transit Losses in Column F from the total Estimated Annual Allocation in Column E. PacifiCorp will make said Bear Lake storage water available to the Bear River for subsequent diversion by the Company Irrigators and the Small Irrigators at their individual head gates as described in Footnote 5(b) above.
 8. The "Estimated System Losses," Column H, represents the operating losses to the Bear River System measured at the stream gauging station below the Cutler hydroelectric plant and are accounted for under the Interstate Model as Bear Lake storage water. The actual system losses will be calculated each year by the Interstate Model and be accounted for

by PacifiCorp in determining the actual quantity of water to be preserved for Bear Lake Recovery under Column I.

9. The "Estimated Balance for Lake Recovery," Column I, is calculated by subtracting the Estimated Annual Allocation quantity in Column E and the Estimated System Losses quantity in Column H from the Estimated Net Storage Water Available quantity in Column D. Note that the actual amount preserved for Bear Lake recovery in any given year will be determined once the actual system losses have been determined each year. If actual system losses exceed the Estimated System Losses, PacifiCorp will provide notice to the Advisory Committee stating the reason, and then release additional storage water from Bear Lake to cover the increased amount of system losses. If actual system losses are less than Estimated System Losses, PacifiCorp will hold the remaining water allocated to Estimated System Losses in Bear Lake for lake recovery.