

OPERATIONS AGREEMENT

FOR PACIFICORP'S BEAR RIVER SYSTEM

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

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

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

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

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

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

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

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

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

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

1. Purpose of this Agreement.

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

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

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

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

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

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

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

2. PacifiCorp's Regulation of Bear Lake.

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

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

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

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

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

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

3. PacifiCorp's Hydroelectric Operations on Bear River

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

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

(*FERC License Exemption)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PACIFICORP

By: _____

STATE OF IDAHO

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

STATE OF WYOMING

APPROVED AS TO FORM

By: _____
Gordon W. Fassett
State Engineer

By: _____
For Wyoming

STATE OF UTAH

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

ACKNOWLEDGEMENTS

STATE OF _____)
) ss.
COUNTY OF _____)

On the ____ day of _____, 2000, before me, _____,
a notary public, personally appeared _____, a _____
of PacifiCorp, known or identified to me to be the person who executed the foregoing
instrument on behalf of PacifiCorp, and he acknowledged to me that he executed the
same.

NOTARY PUBLIC

residing at:

STATE OF _____)
) ss.
COUNTY OF _____)

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

NOTARY PUBLIC

residing at:

STATE OF _____)

COUNTY OF _____) ss.

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

NOTARY PUBLIC

residing at:

STATE OF _____)
_____) ss.
COUNTY OF _____)

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

NOTARY PUBLIC

residing at:

