

September 21, 2011

***VIA ELECTRONIC FILING  
AND OVERNIGHT DELIVERY***

Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250

Attn: David W. Danner  
Executive Secretary

**RE: Affiliated Interest Filing for PacifiCorp**

Dear Mr. Danner:

Pursuant to the provisions of RCW 80.16.020 and WAC 480-100-245, PacifiCorp, d.b.a. Pacific Power & Light Company (PacifiCorp or Company), files one verified copy each of the Non-Exclusive Easement Agreement (Easement) and the Non-Exclusive Surface Use and Damages Agreement (Surface Use Agreement) by and between PacifiCorp and Cottonwood Creek Consolidated Irrigation Company (CCCIC). The Easement is included as Attachment A and the Surface Use Agreement is included as Attachment B. CCCIC is a non-profit company that holds water rights in the Cottonwood Creek drainage, located in Utah. The Company currently owns approximately 26 percent of the shares of CCCIC. Additionally, CCCIC helps to manage access to certain water supplies on behalf of PacifiCorp. RCW 80.16.010 includes in its definition of “affiliated interest,” “every corporation or person with which the public service company has a management or service contract.” Therefore, PacifiCorp’s ownership interest in CCCIC creates an affiliated interest.

The Company uses the water obtained through CCCIC as part of the supply to its Hunter Plant located in Emery County, Utah. While the Company has owned a certain percentage of shares in CCCIC since the early 1970’s, a recent review of the ownership structure led to the conclusion that PacifiCorp’s relationship with CCCIC creates an affiliated interest. The water obtained through CCCIC is used in a generation plant that is not included in the West Control Area allocation methodology and therefore not included in Washington rates. Notwithstanding, the Company is providing this notice out of an abundance of caution to ensure consistent treatment of affiliate contracts under the requirements of RCW 80.16.

**Easement**

CCCIC requested a perpetual easement from PacifiCorp across a portion of the Hunter generation plant property (Hunter Plant) for the purpose of holding a regulating

reservoir and a portion of a water pipeline. The Easement is necessary as part of the “Cottonwood Project,” which will convert its delivery system from “open-ditch” to a pressurized pipeline delivery/irrigation system. Part of this project involves the construction of the Adobe Wash Reservoir, which will uniquely benefit PacifiCorp. This is currently under construction in the Cottonwood Creek drainage area in Utah.<sup>1</sup> To define the terms and conditions for the construction of the Adobe Wash Reservoir, among other things, PacifiCorp and CCCIC entered into the Construction Funding and Share Assessment Agreement executed in February 2011.<sup>2</sup> Paragraph 6(g) of this agreement requires PacifiCorp to provide an easement to accommodate the portion of the Adobe Wash Reservoir that will be located on PacifiCorp property. The Easement is intended to fulfill the requirements of Paragraph 6(g) of the Construction Funding and Share Assessment Agreement.

The CCCIC Board of Directors and all CCCIC shareholders have agreed that landowners that are CCCIC shareholders granting an easement to CCCIC for the project would charge no fees. Therefore, as a shareholder, PacifiCorp has agreed not to charge CCCIC for the easement. The estimated market value of the easement, developed through an internal valuation process, is approximately \$10,769.74.

### **Surface Use Agreement**

Paragraph 6(f) of the Construction Funding and Share Assessment Agreement requires PacifiCorp to enter into a non-exclusive surface use agreement to provide gravel and clay for the Adobe Wash Reservoir. The Surface Use Agreement at issue here is intended to fulfill the requirements of Paragraph 6(f) the Construction Funding and Share Assessment Agreement. A legal description of the affected property is included with the Surface Use Agreement as Exhibit A.

The Surface Use Agreement would allow CCCIC to use certain PacifiCorp property near the Hunter Plant. CCCIC may test the subsurface materials to determine if they will be suitable for use in construction of the Adobe Wash Reservoir. If the materials are deemed suitable, CCCIC will present PacifiCorp with a plan of operations to describe how the materials will be extracted. CCCIC must use the property in such a way as to not interfere with utility operations. CCCIC must also pay fair market value, as established in Addendum 1 to the Surface Use Agreement, for any materials extracted and removed from PacifiCorp’s property. CCCIC will also be responsible for any damages to PacifiCorp property incurred as a result of operations occurring under the Surface Use Agreement.

The Easement and Surface Use Agreement are in the public interest because they are part of a project to provide a more reliable and long-term source of water for the Hunter Plant and reduce operation and maintenance costs.

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<sup>1</sup> PacifiCorp previously provided information regarding the Adobe Wash Reservoir in its notice of affiliated interest with CCCIC, filed February 17, 2011, which became Docket UE-110309.

<sup>2</sup> On file with the Washington Utilities and Transportation Commission, Docket UE-110309.

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Also included with this filing is a notarized verification from Natalie Hocken, Vice President and General Counsel, Pacific Power, regarding the Agreement.

Please do not hesitate to contact Ezra Richards, Regulatory Manager if you have any questions (503) 813-5959.

Sincerely,

A handwritten signature in black ink that reads "Andrea L. Kelly" followed by the initials "EWR" in a smaller, less distinct script.

Andrea L. Kelly  
Vice President, Regulation  
Pacific Power

Enclosures

**ATTACHMENT A**

**WASHINGTON AFFILIATED INTEREST FILING**

**NON-EXCLUSIVE EASEMENT AGREEMENT**

WHEN RECORDED, RETURN TO:  
PacifiCorp  
Property Management Department  
1407 West North Temple, Suite 110  
Salt Lake City, Utah 84116

## NON-EXCLUSIVE EASEMENT AGREEMENT

**PacifiCorp, an Oregon Corporation**, whose address is 1407 West North Temple, Salt Lake City, Utah 84116, (“Grantor”) for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants to **Cottonwood Creek Consolidated Irrigation Company**, a non-profit mutual irrigation company organized under the laws of the State of Utah, whose address is P.O. Box 678, Orangeville, Utah 84537 (“Grantee”) a perpetual non-exclusive easement and right of way (“Easement”) over and across certain parcels of real property owned by Grantor (“Grantor’s Land”) located in Emery County, Utah, more particularly described in **Exhibit “A”** hereto, for the sole purpose of constructing, operating, maintaining, repairing, inspecting, laterally supporting, and replacing a water delivery pipeline system, water regulating reservoir, and related facilities (collectively, the “Facilities”) subject to the terms and conditions set forth below, said Easement lying within Easement No. 6 in Exhibit “B”, hereto and within a strip thirty (30) feet wide and extending fifteen (15) feet on each side of and lying parallel and adjacent to the lines of reference and projections thereof described more particularly at Easement Nos. 1 through 5 in Exhibit “B”, hereto.

1. Grantee’s Use.

a. Grantee shall have a non-exclusive right to install, operate, inspect, repair, replace, and maintain the Facilities. During construction periods, not to exceed three (3) years from the execution date of this Easement, Grantee and its agents may use twenty (20) additional feet of Grantor’s property extending ten (10) feet on each side of and lying parallel and adjacent to said Easement in connection with the construction of said Facilities.

b. Grantee will not store materials for extended periods or refuel vehicles or equipment on Grantor’s Land. The use of hazardous materials is prohibited on Grantor’s Land.

c. Grantee acknowledges that Grantor’s existing or future power lines, pipelines, or generation facilities are or may be located within the Easement boundaries and agrees to conduct its activities in compliance with all applicable laws, codes, rules, regulations, and standards regarding such power lines. Grantee’s use of Grantor’s Land shall comply with National Electric Safety Code, and OSHA clearance standards. Except as provided in this Agreement, Grantee shall not make or allow any use of Grantor’s Land that is inconsistent with or that may interfere with Grantor’s operation, maintenance, repair, or upgrade of its existing power line, pipeline, or generation facilities and installations or any additional powerline, pipeline, or generation facilities or installations that may be constructed hereafter.

d. Except at the Adobe Wash Reservoir and Dam site, Grantee shall at no time place, use or permit to be used on said Easement construction cranes or other equipment having a boom or similar attachment which may come in contact with Grantor's overhead electric lines. At no time shall Grantee place any equipment or material of any kind that exceeds fifteen (15) feet in height, or that creates a material risk of endangering Grantor's facilities, or that may pose a risk to human safety within twenty (20) feet overhead electric lines. Grantee shall maintain a minimum distance of twenty (20) feet between equipment and transmission line conductors (wires).

e. Grantee will not excavate within fifty (50) feet of Grantor's existing transmission structures. Grantee shall maintain a minimum distance of fifty (50) feet between the Facilities and Grantor's structure(s) and transmission line conductors (wires). Grantee shall maintain a minimum distance of thirty-five (35) feet from finished grade to conductors. Grantee shall maintain a minimum distance of fifty (50) feet between approved facilities and the point where the transmission line (steel/wood pole/guy anchor/steel pole) enters the earth. To the extent these distances provided in this paragraph prevent the reasonable exercise of Grantee's rights under this Agreement; the Easement boundaries will be altered as reasonably necessary.

f. Grantee shall, at its own expense, promptly repair any damage to the Easement area or adjacent lands to Grantor's reasonable satisfaction caused by, or in any way arising out of, Grantee's use of the Easement, including replacing topsoil to the original surface contour or elevation. Grantee agrees to repair any substantial material surface damages due to erosion or settling that may occur due to natural precipitation events within the easement area. This commitment shall be for a period of three (3) years or until native vegetation is established through natural processes. If Grantee fails to do so within a reasonable amount of time after written request from Grantor, Grantor may perform the restoration work at Grantee's expense.

g. This Easement is limited to the construction of the identified Facilities along the route contemplated herein. Grantee may not install laterals, taps, or sub-feeds from the Facilities without a separate grant of easement from Grantor.

h. Grantee shall be solely responsible for the cost of any cathodic or other protection of the Facilities necessitated by its proximity to Grantor's existing or future electric power lines.

i. Grantor's maintenance and future construction of additional power lines and other facilities require the use and operation of equipment weighing twenty thousand (20,000) pounds per axle (including wire pullers and similar equipment weighing in excess of one hundred thousand (100,000) pounds and cranes weighing one hundred thirty thousand (130,000) pounds above and over the Facilities. Grantee shall bury that portion of the Facilities that will be placed underground to a depth that is sufficient to protect the Facilities from Grantor's use of equipment with weights identified above. Grantee shall be solely responsible for any damage to Grantee's facilities caused any failure to meet this standard.

j. Grantee shall restore and level the surface of Grantor's Land, as nearly as can reasonably be done, from any damage caused by construction, inspection, maintenance, repairs or removal of the Facilities. If Grantee fails to do so within a reasonable amount of time after written request from Grantor, Grantor may perform the restoration work at Grantee's expense.

2. Right of Access. Grantee shall have the right of reasonable ingress and egress to and from said Easement over and across Grantor's Land, provided that such access does not materially interfere with Grantor's utility operations.

3. Grantor's Use. Grantor expressly reserves the right to use the Easement for any purpose that is not inconsistent with the purposes for which this Easement is granted, including the right to cross and re-cross the Easement with equipment, personnel, overhead or underground power lines, and access roads at any location or locations, and to grant or convey additional uses of the Easement to others for any purpose not inconsistent with the rights granted hereunder. Grantee will provide adequate protection for the Facilities for such uses.

4. Use of Grantor's Remaining Property. This Easement shall impose no restrictions upon Grantor's use of Grantor's Land outside the Easement ("Grantor's Remaining Property"). Any uses of Grantor's Remaining Property, including but not limited to uses for electricity generation, transmission or other utility purposes, shall not be deemed to interfere with Grantee's uses under this Easement. Any use by Grantee of Grantor's Remaining Property shall be strictly limited to access as provided in this Easement. This Easement confers no secondary rights upon Grantee with respect to Grantor's Remaining Property.

5. Indemnification. Grantee shall protect, defend, indemnify, and hold harmless Grantor, its officers, directors, employees, subsidiaries and affiliates (collectively "Indemnitees") from and against any losses, claims, liens, demands and causes of action of every kind, including the amount of any judgment, penalty, interest, or court cost, arising in favor of any party, including governmental agencies or bodies, on account of taxes, claims, liens, debts, personal injuries, death or damages to property, violations of Environmental Laws and Regulations, and all other claims or demands caused by Grantee's use of or activities on or around Grantor's Land, except to the extent such losses, claims, liens, demands and causes of action are caused by the Indemnitees. For purposes of this agreement, "Environmental Laws and Regulations" shall mean all present and future federal, state and local laws and all rules and regulations promulgated thereunder, relating to pollution or protection of the environment.

6. Damages. In addition to the general indemnification provisions above, Grantee agrees that if Grantee or its activities under this Agreement cause any damage to Grantor's utility equipment or facilities, whether above or below ground, Grantee will reimburse Grantor for all costs incurred by Grantor to repair or replace such damaged equipment or facilities. As used in this Section, any reference to Grantor's equipment or facilities shall include any equipment or facilities owned by third parties that are lawfully located on the Grantor's Land, whether by easement, license, lease, or otherwise.

7. Abandonment. If Grantee ceases to use the Easement for a period of 12 consecutive months, this Easement shall terminate thirty (30) days after written notice from Grantor. Upon termination Grantee shall remove its Facilities and restore the land as near as possible to its condition prior to Grantee's entry thereon; or, with Grantor's prior written permission, leave all or a portion of its Facilities in place and relinquish all right, title, and interest to the Facilities to Grantor.

8. Taxes and Assessments. Grantee shall pay all taxes and assessments of any kind which shall be levied against the Easement by reason of Grantee's use or occupancy thereof, except those being contested in good faith, and shall keep the Easement free from any liens that may attach thereto by reason of Grantee's use or occupancy thereof.

9. Attorneys' Fees.

i. If a party to this Agreement commences an action or claim against the other party, whether litigation, arbitration or otherwise, respecting any dispute or claim arising out of or relating to this Agreement, each party shall be solely responsible for its own costs directly incurred related thereto and shall not have a right of contribution therefore or otherwise seek payment from the other party.

ii. Notwithstanding the foregoing, in the event a party commences an action or files a claim against the other party seeking to enforce any term or provision of this Agreement, PacifiCorp may be assessed or otherwise obligated to pay amounts related to such attorney fees otherwise chargeable to the corporation and which is chargeable to all shareholders, whether directly through a special assessment or indirectly through an annual-member minimum assessment. In such event, PacifiCorp, as a CCCIC shareholder, shall not be assessed an amount per Class A share greater than any other Class A shareholder. CCCIC Class B shares shall be assessed an amount per share as determined by the Board of Directors.

10. Governing Law. This agreement shall be governed by the laws of the State of Utah, without giving effects to its conflict of law rules contained therein.

11. Assignment. Grantee shall not assign or transfer its rights or interest in this Agreement without the written consent of Grantor.

12. Entire Agreement. This Agreement represents the entire and integrated agreement between Grantor and Grantee with respect to the matters contained herein and supersedes all prior negotiations, representation or agreement, either rewritten or oral. This Agreement may be amended only by written instrument signed by both Grantor and Grantee.

13. Severability. In case a provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.

14. Interpretation. Each term hereof shall be construed simply according to its fair meaning and not strictly for or against either party. The parties have jointly prepared



this agreement, and no term hereof shall be construed against a party on the ground that the party is the author of that provision.

15. Counterparts. This Agreement may be executed in one or more counterparts, which together shall constitute the Agreement.

16. Signatures. Each individual executing this Agreement, represents and warrants that he or she has been duly authorized by appropriate action of the governing body of the party for which he or she signs to execute and deliver this Agreement in the capacity and for the entity set forth where he or she signs and that as a result of his or her signature, this Agreement shall be binding upon the party for which he or she signs.

IN WITNESS WHEREOF, this Agreement shall be dated and effective upon the date of the last signature below:

**Grantor:**

PacifiCorp, an Oregon corporation

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Dated: \_\_\_\_\_

**Grantee:**

Cottonwood Creek Consolidated Irrigation Company, a non-profit mutual irrigation company organized under the laws of the State of Utah

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Dated: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, personally appeared before me \_\_\_\_\_, who being by me duly sworn, did say that he/she is the signer of the within instrument on behalf of PacifiCorp, an Oregon corporation, and that the within and foregoing Non-Exclusive Easement Agreement was signed on behalf of PacifiCorp by actual authority.

\_\_\_\_\_  
Notary Public

My commission expires:

Residing at \_\_\_\_\_

\_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, personally appeared before me \_\_\_\_\_, who being by me duly sworn, did say that he/she is the signer of the within instrument on behalf of Cottonwood Creek Consolidated Irrigation Company, a non-profit mutual irrigation company organized under the laws of the State of Utah, and that the within and foregoing Non-Exclusive Easement Agreement was signed on behalf of Cottonwood Creek Consolidated Irrigation Company by actual authority.

\_\_\_\_\_  
Notary Public

My commission expires:

Residing at \_\_\_\_\_

\_\_\_\_\_

## Exhibit "A"

### **Easement Parcel 1**

PacifiCorp Parcel UTEM-0514 (County Taxlot Number U5-34-5)  
SE/4 of the NE/4 of Section 18, Township 19 South, Range 8 East, SLM, less and excepting state road 10 right of way.

### **Easement Parcel 2**

PacifiCorp Parcel UTEM-0451 (County Taxlot Number U5-34-6)  
The SE/4 of the NE/4 and the SE/4 of the SW/4 lying South of State Highway 10 in Section 17, Township 19 South, Range 8 East, SLM; the NE/4 of the SE/4 of Section 17, Township 19 South, Range 8 East, SLM.

### **Easement Parcel 3**

PacifiCorp Parcel UTEM-0153 (County Taxlot Number U5-33-4)  
The N/2 of the SE/4 of Section 17, Township 19 South, Range 8 East, SLM; the NW/4 of the SW/4 of Section 17, Township 19 South, Range 8 East, SLM; all of the N/2 lying south of State Highway No. 10, Section 17, Township 19 South, Range 8 East, SLM.

### **Easement Parcel 4**

PacifiCorp Parcel UTEM-0120 (County Taxlot Number L4-16-12)  
Beginning at the NW corner of the SW Quarter of Section 14, Township 18 South, Range 7 East, SLM; running thence S. 89° 56' 40" East 220 feet; thence S. 51° 11' 44" East 2,149.27 feet; thence N. 89° 58' 27" East 764.42 feet; thence N. 89° 46' 07" East 473.91 feet; thence N. 01° 02' 25" East 561.08 feet; thence S. 88° 01' 59" East 155.28 feet; thence S. 38° 44' 06" East 83.46 feet; thence N. 53° 27' 53" East 83.25 feet; thence N. 41° 06' 43" West 232.02 feet; thence N. 01° 09' 31" East 294.76 feet; thence N. 89° 47' 25" East 379.83 feet; thence N. 64° 05' 37" East 34.63 feet; thence N. 42° 53' 55" East 67.11 feet; thence N. 71° 14' 01" East 287.53 feet; thence South 1,150 feet; thence East 1,320 feet; thence South 1,320 feet; thence West 5,280 feet; thence North 2,640 feet to point of beginning.

### **Easement Parcel 5**

PacifiCorp Parcel UTEM-0120 (County Taxlot Number L4-16-12 and L4-18-01)  
Beginning at the NW corner of the SW Quarter of Section 14, Township 18 South, Range 7 East, SLM; running thence S. 89° 56' 40" East 220 feet; thence S. 51° 11' 44" East 2,149.27 feet; thence N. 89° 58' 27" East 764.42 feet; thence N. 89° 46' 07" East 473.91 feet; thence N. 01° 02' 25" East 561.08 feet; thence S. 88° 01' 59" East 155.28 feet; thence S. 38° 44' 06" East 83.46 feet; thence N. 53° 27' 53" East 83.25 feet; thence N. 41° 06' 43" West 232.02 feet; thence N. 01° 09' 31" East 294.76 feet; thence N. 89° 47' 25" East 379.83 feet; thence N. 64° 05' 37" East 34.63 feet; thence N. 42° 53' 55" East 67.11 feet; thence N. 71° 14' 01" East 287.53 feet; thence South 1,150 feet; thence East 1,320 feet; thence South 1,320 feet; thence West 5,280 feet; thence North 2,640 feet to point of beginning.

### **Easement Parcel 6**

PacifiCorp Parcel UTEM-0136 (County Taxlot Number L4-19-06)  
The North/2 of the SE/4 of the SW/4 of Section 24, Township 18 South, Range 7 East, SLM.

## Exhibit "B"

### **Easement No. 1**

Beginning at a point on Grantor's north property line which is West, 15.00 feet along the 40 acres line from the Northeast corner of the Southeast quarter of the Northeast quarter of Section 18, Township 19 South, Range 8 East, SLB&M; thence S 0°30'32" E, 1,031.31 feet more or less to the Grantor's south property line.

### **Easement No. 2**

Beginning at a point on Grantor's north property line which is N 0°29'53" W, 98.77 feet along the 40 acres line and West, 15.00 feet from the East quarter corner of Section 18, Township 19 South, Range 8 East, SLB&M; thence S 0°29'53" E, 1,435.74 feet more or less to the Grantor's south property line.

### **Easement No. 3**

Beginning at a point on Grantor's west property line which is S 0°29'53" E, 860.74 feet along the 40 acres line from the East quarter corner of Section 18, Township 19 South, Range 8 East, SLB&M; thence S 66°10'09" E, 409.88 feet; thence S 73°46'39" E, 447.76 feet; thence S 75°33'34" E, 553.64 feet more or less to the Grantor's east property line.

### **Easement No. 4**

Beginning at a point on Grantor's north property line which is N 89°48'04" E, 2.69 feet along the 40 acre line from the West quarter corner of Section 14, Township 18 South, Range 7 East, SLB&M; thence S 28°50'34" E, 348.96 feet; thence S 78°58'24" E, 509.87 feet more or less to Grantor's east property line.

### **Easement No. 5**

Beginning at a point on Grantor's north property line which is S 89°43'10" W, 451.27 feet along the 40 acre line from the Northeast corner of the Southeast quarter of the Southwest quarter of Section 14, Township 18 South, Range 7 East, SLB&M; thence S 40°58'24" E, 17.19 feet; thence S 38°47'23" E, 57.00 feet; thence S 65°18'59" E, 145.77 feet to the beginning of a circular curve to the right having a radius of 200.00 feet and a central angle of 35°47'30"; thence southeasterly 124.94 feet along the arc of said curve (chord bears S 47°25'14" E, 122.92 feet); thence S 29°31'29" E, 186.87 feet; thence S 18°20'14" E, 444.80 feet; thence S 38°27'19" E, 1,034.31 feet; thence S 76°13'42" E, 290.98 feet; thence S 65°58'56" E, 412.32 feet; thence S 72°45'40" E, 143.62 feet; thence S 63°50'06" E, 908.36 feet; thence S 24°47'44" E, 460.64 feet; thence S 05°43'14" W, 138.58 feet more or less to Grantor's south property line

### **Easement No. 6**

That portion of the Southeast quarter of the Southwest quarter of Section 24, Township 18 South, Range 7 East, SLB&M that lies south and west of the Highway SR-57 right-of-way and more particularly described as follows: Beginning at the Northwest corner of the Southeast quarter of the Southwest quarter of Section 24, Township 18 South, Range 7 East, SLB&M and running thence S 0°18'46" E, 1,339.02 feet along 40 acre line to the Southwest corner of said Southeast quarter; thence N 89°39'59" E, 1,339.05 feet along 40 acre line to the Southeast corner of said Southeast quarter; thence N 0°26'59" W, 291.912 feet along 40 acre line to the southwesterly right-of-way of Highway SR-57; thence Northwesterly along said right-of-way to the north line of said Southeast quarter; thence S 89°36'18" W, 675.83 feet along 40 acre line to the point of beginning. Parcel containing 29.88 acres more or less.

**ATTACHMENT B**

**WASHINGTON AFFILIATED INTEREST FILING**

**NON-EXCLUSIVE SURFACE USE AND DAMAGES AGREEMENT**

**PacifiCorp**  
**Non-Exclusive Surface Use and Damage Agreement**

This Non-Exclusive Surface Use and Damage Agreement (“**Agreement**”) is made and entered into by and between PacifiCorp, an Oregon corporation, whose address is 1407 West North Temple, Salt Lake City, Utah 84116 (“**Owner**”) and Cottonwood Creek Consolidated Irrigation Company, a non-profit mutual irrigation company organized under the laws of the State of Utah, whose address is Cottonwood Creek Consolidated Irrigation Company, PO Box 678, Orangeville, Utah 84537 (“**Operator**”).

**RECITALS**

Whereas, as of the Effective Date (as defined below), Owner owns the surface of the real property described on **Exhibit A**, which is attached to and by this reference made a part hereof (the “**Property**”), located in Emery County, state of Utah, on which certain above-ground and below-ground facilities and improvements exist and on which Owner may construct certain above-ground and below-ground facilities and improvements in the future, including but not limited to electrical energy generation and transportation facilities and improvements (collectively, the “**Facilities**”).

Whereas, Owner has used and will continue to use the Property for the construction, operation, maintenance, repair, and replacement of water pipelines, transmission and distribution lines and other facilities and equipment normally associated with the generation and distribution of power and/or the use or leased use of the Property for communication structures, facilities, and equipment. Owner also uses and will continue to use the Property to access adjoining properties and facilities, including properties and facilities that may be used in the future.

Whereas, the surface of a portion of the Property (UTEM-0093) is currently being leased by Royal & Jule Ann Huntington (“Grazing Lessee”), with said lease expiring January 31, 2013.

Whereas, Owner and Operator deem it to be in their mutual interest to enter into this Agreement to provide for compatible use of the Property by each party and agree upon the compensation to be paid to Owner for use of Property.

Whereas, Owner and Operator have entered into an agreement called Construction Funding and Share Assessment Agreement dated, March 9, 2011, and paragraph 6(f) states that Owner shall enter into a Non-exclusive Surface Use Agreement and Damage Agreement to provide gravel and clay for the construction of the Adobe Wash Reservoir.

**NOW THEREFORE**, in consideration of the mutual benefits and consideration in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**1. Right-of-Way.** Owner grants Operator, its employees, contractors, and agents, a right-of-way to enter upon and use the Property for the purpose of extracting sand, gravel and

clay resources, including surveying, staking, sampling, drilling, completing, producing and operating a sand, gravel and clay mining operation (“**Activities**”) on the Property; constructing and maintaining access roads, mining operations, and gravel sorting facilities; and for other purposes specified in this Agreement, subject to the terms of this Agreement.

**2. Limitation on Rights.** Unless otherwise agreed to by the Owner in writing, the Property may not be used by Operator in connection with operations on premises located on land other than the Property without Owner’s written consent; such written consent will not be unreasonably withheld. Operator and its employees, contractors, and agents shall not disturb, use or travel on any of the property of Owner not subject to this Agreement without Owner’s prior consent. Operator may not use, for any purpose, lands within fifty (50) feet of any existing or projected Facilities as described on **Exhibit B**, which is attached to and by this reference made a part hereof and may be updated from time to time as required, without prior written consent of the Operator. Operator shall reasonably limit its activities so as to use only so much of the Property as is necessary for such limited purposes, while allowing Owner or its designees the greatest use of the Property for its own or any other purpose. Operator agrees to reasonably accommodate its activities and use of the Property to Owner for its primary use of the Property. Operator agrees to perform its activities in a manner that will not materially interfere with Owner’s use of its Property whether now or in the future in order that Owner may construct, maintain, repair, replace or add additional Facilities as Owner reasonably deems necessary, without additional material cost, inconvenience, expense, damage or injury to Owner, or its agents, independent contractors and employees. Operator shall have a utility locating service identify all above and below ground utilities prior to the commencement of the Activities and shall be responsible to coordinate and secure written agreements with any easement holder to insure that all existing rights are maintained.

**3. Non-exclusive Rights.** The rights granted by Owner to Operator are non-exclusive, and Owner reserves the right to use all access roads and all surface and subsurface uses of the Property and the right to grant successive easements therein or across on such terms and conditions as Owner deems necessary or advisable, except that successive easements shall not interfere with or obstruct Operator’s rights of access or damage roads or rights-of-way constructed by Operator or materially increase Operator’s cost to maintain the right-of-way.

**4. Notification.**

**a. Resource Identification Phase.** Operator shall notify Owner prior to initial entry upon the Property for conducting testing to determine the quantity and quality of the sand, gravel and clay resources, including surveying, staking and sampling in order to identify an area of development. Operator shall be responsible to identify and mark all underground utilities and pipelines on the Property.

**b. Planning Phase.** Operator shall contact Owner to request an initial planning conference as soon as the Operator has identified the extent of the potential areas of development.

**c. Permitting Phase.** Prior to the commencement of operations, Operator

shall apply for and obtain all permits required for sand, gravel and clay resource extraction operation with either the federal government or the State of Utah, which may include but not be limited to permits required under the Resource Conservation and Recovery Act (RCRA); the Underground Injection Control (UIC) program of the Safe Drinking Water Act; the National Pollutant Discharge Elimination System (NPDES) (§ 402 Permit) and Dredge and Fill (§ 404 Permit) programs under the Clean Water Act; the Prevention of Significant Deterioration program under the Clean Air Act; and other relevant environmental permits. Prior to the filing of applications for such permits, Operator shall invite Owner along on an on-site inspection of the proposed sites and for review of all permit applications.

In addition, Operator shall provide Owner with the results of: (1) the baseline Phase I environmental site assessment (ESA) of the Property; (2) detail survey plat of areas of development including all potential operations and all underground utilities and pipelines as identified by a utility locating service; and (3) analysis of representative soil samples prior to disturbance by production. Such information shall provide a baseline for post-mining reclamation requirements.

**d. Commencement of Operations Phase.** Operator shall notify Owner forty-eight (48) hours prior to commencing their operations on the Property. Such notice shall reasonably specify the type of activity and detail schedule of operations contemplated. Operator shall not commence any operations until the Plan of Operations (Section 5) is approved in writing by Owner and until all bonding and insurance requirements have been met by Operator.

**5. Plan of Operations.** Prior to the commencement of operations, including: sand, gravel and clay extraction, construction of access roads, processing plants on the Property, Operator shall consult with and receive Owner's written approval, as otherwise described in this Agreement, as to the location of all operations including roads, processing plant, etc. to be placed on the Property. After such consultation and prior to the commencement of operations, Operator shall present to Owner a draft of a **Plan of Operations** which details the scope, timing of development, and standards for: construction of operations; protection of existing water resources; and reclamation, including the location of the operations. Owner and Operator shall timely and jointly review and develop a final version of the **Plan of Operations** (which may be revised from time to time by mutual consent as conditions warrant), and it shall become the document from which orderly development proceeds. The Operator may not proceed with operations on the Property until the Owner has approved the **Plan of Operations**, such approval not to be unreasonably withheld. The **Plan of Operations** shall provide the general framework for Operator's activities on the Property. Owner and Operator shall from time to time revise the **Plan of Operations** to be sure that all of Owner's and Operator's facilities are accurately accounted for and displayed on a current version of the map.

The Plan of Operation shall also include a section of how the Operator shall handle any spill or release of oil, gas or other petroleum products and the standard operating procedures to contain and clean up any such event. This plan shall include providing notice to PacifiCorp (Kyle Singleton – 435-748-6527) within twenty-four (24) hours of said release. Notwithstanding any other provision in this agreement, Operator shall be responsible for all clean up of all oil, gas, or other petroleum products spills to Owner's satisfaction.



**6. Additional Details of Operations.** To the maximum extent possible, Operator will use existing roads on the surface of the Property for its operations. Operator shall maintain existing roads as necessary. If construction of a new road is required, Operator will locate the new road in a manner so as to cause the least interference with Owner's operations and facilities on the Property, to the extent reasonable. If a pipeline or power line is to be installed by Operator, Operator will locate the pipeline or power line in a manner so as to cause the least interference with Owner's operations and facilities on the Property, to the extent reasonable.

**7. Cooperation.** Operator will cooperate with Owner, or Owner's designee, in implementing decisions made by the Owner, in its sole discretion, to construct, modify or remove Facilities, (including, where necessary or required, signing land use permit applications and related documentation) in applying for, complying with or obtaining any land use permits and approvals, building permits, environmental permits, environmental reviews or any other approvals required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of the electric generation or transportation facilities. Operator will not oppose or object to Owner obtaining any such land use permits and approvals, building permits, environmental permits, environmental reviews or any other approvals required. For its part, Owner will cooperate with Operator by providing land-owners consent to the performance of any act or the conduct of any operation where the provisions of applicable law, rule or regulation of any federal, state or local governmental or regulatory agency shall require same. Owner also agrees that it will use the property in a manner that will not interfere with the rights and privileges granted to Operator in this agreement and agreed to in the Plan of Operations.

**8. Protection of and Restrictions on Use of Property.** Operator shall take reasonable steps to prevent fire and to promptly extinguish fire. Operator shall endeavor to use diesel powered vehicles whenever possible to avoid fires resulting from catalytic converters. Operator may not construct open fires on the property. No trash or timber slash will be burned by Operator on the Property. Operator shall promptly and fully compensate Owner for all damages caused by fire arising out of Operator's operations, including, without limitation, any charges incurred by Owner for fire suppression.

Operator shall not permit any of its employees or contractors operating hereunder to bring any firearm, explosive device, weapon, alcoholic beverage, or illegal drug on Owner's property. Operator's employees shall at all times carry identification. Operator's employees will not bring dogs or other animals in vehicles or otherwise on to Owner's lands. Operator shall not place any trash, rubbish or debris on Owner's land. No employee or contractor of Operator shall hunt, prospect for antlers, fossils or antiquities, consume alcoholic beverages or carry on any illegal activities on the Property. Operator shall not establish living quarters for its employees and contractors on the Property.

Absent Owner's consent, Operator's equipment not required for daily operations shall not be stacked or stored on the Property nor shall equipment be maintained on any of the Property except where a containment area has been constructed to contain any potential fuel leaks from a designated fuel tank or vehicle.

**9. Construction Standards.** Operator shall construct all facilities, including roads, crushing and processing facilities so as to cause the least possible interference with Owner's existing and future operations and facilities, to the extent reasonable. Construction shall not begin unless Owner has agreed to the **Plan of Operations**.

**10. Maintenance.** Operator shall at all times keep the road rights-of-way, and other areas used by Operator safe and in good order, free of noxious weeds, litter and debris. Operator shall take all steps necessary to prevent the release or discharge of any toxic or hazardous chemicals or wastes on the Property, including vehicular fuel and lubricants. In the event of an accidental discharge, Operator shall contact PacifiCorp (Kyle Singleton 435-748-6527) within twenty-four (24) hours of discharge and will mitigate any damage using standard procedures acceptable to PacifiCorp for cleanup and restoration of the affected area.

**11. Consolidation.** Whenever possible, Operator will locate their operations, roads and processing plant in the smallest space possible, where practical. Operator will place all roads in common corridors or rights-of-way, if reasonable. The consolidated facilities may not be used for operations connected to the extent possible with lands outside the Property without Owner's written permission.

**12. Damage to Improvements and Livestock.** No improvements, including but not limited to fences gates and cattle guards, shall be cut, damaged or destroyed by Operator without the prior written consent of Owner and the payment of additional damages or the institution of other safeguards to protect the rights and property of the Owner, including but not limited to cost of replacement or repair of such Facilities, including powerlines and water pipelines. Payments shall be due and payable prior to any such damage or within thirty (30) days if Operator fails to seek prior written consent from the Owner.

**13. Damage to PacifiCorp Facilities.** In addition to the other payments provided for in this Agreement, Operator shall pay to Owner all of the costs directly resulting from damage to Owner's water pipeline(s) impaired or required to be taken out of operation by Operator's actions. Owner shall be contacted immediately upon any event that damages the water pipeline(s). Owner shall be responsible to repair the damage and shall send an invoice to Operator for the actual costs associated with the repairs.

**14. Payments by Operator to Owner.**

**a. Payment.** A fair market value will be established for each product type that will be mined and removed from the Property (e.g., sand, gravel, and clay material) on a per-unit basis as shown on Addendum 1. The quantities of materials provided by PacifiCorp will be tracked and used to determine the total value of materials provided. This total value will then be deducted from PacifiCorp's capital contribution described in the Construction Funding and Share Assessment Agreement dated March, 9, 2011.

**15. Payment, Performance and Reclamation Bond.** Prior to commencement of operations, Operator shall provide Owner with a Payment, Performance and Reclamation Bond

(or equivalent security), approved by Owner, in which either Operator or Operator's construction contractor, as principal, and the surety are held and firmly bound to Owner for payment and performance, each in an amount at least equal to one million dollars (\$1,000,000), as security for the faithful performance and payment of all of Operator's obligations under its Plan of Operations, its permits, and its reclamation obligations for the Property. The Payment, Performance and Reclamation Bond shall be executed by a surety included in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies as published in Circular 570 by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department." If the Payment, Performance and Reclamation Bond is signed by an agent, it must be accompanied by a certified copy of the agent's authority to act. The surety company must be authorized to do business in the state of Utah and have an agent for service of process in the state of Utah. If the surety on the Payment, Performance and Reclamation Bond furnished by Operator petitions, either informally or formally, for bankruptcy, becomes insolvent, has its right to do business in the State of Utah terminated, or ceases to meet the requirements of this section, Operator shall within ten (10) days thereafter substitute another Payment, Performance and Reclamation Bond and surety, both of which must be acceptable to Owner. The Payment, Performance and Reclamation Bond shall be maintained in full force and effect until all requirements for reclamation and remediation of the Property have been fulfilled by Operator, and Operator supplies Owner with proof of the payment in full of all costs for reclamation and remediation of the Property. This Payment, Performance and Reclamation Bond shall be in addition to any performance bond required by any local, state or federal agency.

**16. Liability for Damage.** This Agreement does not relieve Operator from liability for damage caused by Operator's negligence or by spills or discharges of any toxic or hazardous chemicals or wastes due to Operator's operations.

**17. Damage to Lands Owned by Other Landowners.** Operator shall be liable for any damage to other lands or the operations of other landowners, including but not limited to, roads, road crossings, bridges, fences, buildings and other improvements, livestock, crops, groundwater, forage, and hay meadows, resulting from Operator's activities on the Property.

**18. Reclamation.** In accordance with the **Plan of Operations**, Operator shall reasonably rehabilitate and restore to its original condition, as near as reasonable, all areas disturbed by Operator's operations, unless otherwise agreed to by Owner. With Owner's prior written permission, Operator may leave all or a portion of the mining operation in place and relinquish all right, title, and interest to Owner. Applicable standards for reclamation shall be included in the **Plan of Operations**.

**19. Termination of Rights.** This Agreement shall become effective when both parties have executed this Agreement ("Effective Date") and shall remain in full force and effect until complete reclamation and restoration of the surface according to the standards prescribed herein and in the **Plan of Operations** and approval of such reclamation by state and/or federal authorities having jurisdiction over such reclamation or five (5) years, whichever is the shortest amount of time. In addition, in the event of default by Operator of any of the terms and conditions of this Agreement, and the failure of Operator to cure such default within the time

specified in this Agreement, Owner may elect to suspend the rights of Operator hereunder until such default is cured, or to terminate this Agreement. Operator shall have a reasonable time thereafter in which to remove its facilities and restore the land as near as possible to its condition prior to Operator's entry thereon.

**20. No Warranty.** Owner makes no warranty of title in entering into this Agreement. Owner further makes no representations or warranties as to the use, condition, or suitability of the Property for Operator's operations on the Property.

**21. Enforcement Costs.** If either party defaults under this Agreement, such party shall pay all costs and expenses, including a reasonable attorney's fee, incurred by the other party in enforcing this Agreement.

**22. Indemnification.** Operator shall use the Property at its own risk and, except for the obligations of Owner herein, hereby releases and forever discharges any claims, demands or causes of action it may have against Owner, its officers, directors, employees, subsidiaries, affiliates and contractors arising out of Operator's use of the Property or conducting its activities. In addition Operator shall protect, indemnify and hold harmless Owner, its officers, directors, employees, subsidiaries, affiliates and contractors (collectively, the "Indemnitees") from and against any losses, claims, liens, demands and cause of action of every kind, including the amount of any judgment, penalty, fine, interest, court cost or legal fee incurred by the Indemnitees or any of them in the defense of same, arising in favor of any party, including governmental agencies or bodies, on account of taxes, claims, liens, debts, personal injuries, death or damages to property, violations of Environmental Laws and Regulations, and all other claims or demands of every character caused by Operator's use of the Property or conduct of its activities. The terms of this Section 22 shall survive the termination of this Agreement. For purposes of this Agreement, "Environmental Laws and Regulations" shall mean all present and future federal, state and local laws and all rules and regulations promulgated thereunder, relating to pollution or protection of the environment applicable to the Property.

Operator shall promptly pay all wages due its workmen and employees and pay for all materials and supplies furnished for its operations hereunder and shall defend and protect Owner from and against all claims and liabilities resulting in its failure to do so. Operator shall indemnify and hold Owner harmless from all mechanic's, materialmen's and laborer's liens against the Property which may arise by reason of Operator's operations hereunder, and in the event any such liens are filed against the Property, Operator will take such steps as may be necessary to obtain the discharge thereof. Operator shall post and keep posted at the entrance to its operations on the Property notice to the public that said operations are being conducted by Operator and that the interests of Owner as landowner shall not be subject to any lien or claim arising therefrom.

**23. Insurance.** Without limiting any liabilities or any other obligations of Operator, Operator shall procure, or require that its contractors procure, and continuously maintain for the duration of this Agreement, with insurers having an A.M. Best's rating of A-VII or better, insurance against claims for injury to persons or damage to property which may arise from or in connection with this Agreement or Operator's use or occupancy of the Premises as follows:

Workers' Compensation. Coverage as required by law. Operator shall furnish proof thereof satisfactory to PacifiCorp within 14 days prior to commencing any work on the Premises. All Workers' Compensation policies shall contain provisions that the insurance companies will have no right of recovery or subrogation against PacifiCorp, its parent, divisions, affiliates, subsidiary companies, co-lessees, co-venturers, agents, directors, officers, employees, servants, and insurers, it being the intention of the PacifiCorp and Operator that the insurance as effected shall protect all parties.

Employers' Liability. Insurance with a minimum single limit of \$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limit.

Commercial General Liability. The most recently approved ISO (Insurance Services Office) policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate (on a per location basis) to protect against and from any and all loss by reason of bodily injury or property damage on or about the Premises, including the following coverages:

- i. Bodily injury, property damage, and personal injury coverage, including damage to Owner's Electric Facilities or Improvements as a result of Operator's, its contractors', subcontractors' or agents' negligence.
- ii. Contractual liability
- iii. Premises and Products/Completed Operations
- iv. Independent Contractors

Automobile Liability. The most recently approved ISO policy, or its equivalent, with a minimum single limit of \$1,000,000 for bodily injury and property damage including sudden and accidental pollution liability, with respect to Operator's vehicles whether owned, hired or non-owned, assigned to or used in any way on the Premises.

Umbrella Liability. Insurance with a minimum limit of \$5,000,000 each occurrence/aggregate where applicable to the excess of the coverages and limits required in Employers' Liability, Commercial General Liability, and Automobile Liability insurance in above. Such insurance policies shall be maintained to cover any liability arising from Operator's use of the Premises and indemnification identified in this Agreement.

- a. Certificate of Insurance. Operator shall annually provide to Owner a certificate of insurance evidencing its insurance coverage. The policies required herein, except Workers' Compensation and Employers' Liability, shall include provisions or endorsements naming Owner, its parent, affiliates, subsidiaries, its officers, directors, agents, employees or servants as additional insured.

b. Operator's Insurance Primary. To the extent of Operator's negligent acts or omissions, all policies required under this Agreement shall be primary with respect to the interest of Owner and that any other insurance maintained by Owner is excess and noncontributory insurance with the insurance required hereunder, and provisions that the policy contain a cross liability or severability of interest clause or endorsement.

c. No Right of Recovery or Subrogation. Unless prohibited by applicable law, all required insurance policies shall contain provisions that the insurer will have no right of recovery or subrogation against the Owner, its parent, divisions, affiliates, subsidiaries companies, co-Operators, or co-venturers, agents, directors, officers, employees, servants, and insurers, it being the intention of the Owner and Operator that the insurance as affected shall protect all parties.

d. Notice Prior to Change or Cancellation. Operator's insurance required under this Section 23 shall contain provisions that such policies cannot be cancelled or their limits of liability reduced without 1) ten (10) calendar days' prior written notice to Owner if cancelled for nonpayment of premium, or 2) thirty (30) calendar days' prior written notice to Owner if cancelled for any other reason.

**24. Compliance with Law.** Operator shall comply with all federal, state, and local laws, including all Environmental Laws and Regulations that are applicable to the Property or conduct of its activities. Operator shall also comply with the terms of all permits, licenses, leases, environmental assessments, conservation recommendations, and any other rules, regulations, actions or orders that are applicable to the Property or the conduct of its activities. Upon request, Operator shall take all reasonable measures to demonstrate to Owner that it has complied with this provision.

**25. Inspection and Right to Cure.** Subject to the rights of Operator described herein, Owner reserves the right to access and use the Property for its own use and to verify Operator's compliance with the terms of this Agreement. If Operator fails to perform any covenant, term, provision, agreement, or condition of this Agreement, Owner shall give Operator written notice of such breach and Operator shall have thirty (30) days from receipt of such notice to remedy such breach. If Operator fails to remedy the breach within the timeframe provided, Owner shall have the option, but not the duty, to cure the breach on Operator's behalf. Any reasonable expense incurred by Owner to perform any such cure shall be reimbursed by Operator promptly after receipt of invoice therefore from Owner, in the same manner as other payments are made hereunder.

**26. Successors and Assigns.** This Agreement is binding upon the Owner and Operator and their respective successors and assigns. Operator may not assign its rights or delegate its duties under this Agreement without the written consent of Owner; provided that Operator may freely assign a security interest in this Agreement to provide for financing of its working capital needs. This Agreement runs with the Property and the estate held by the Operator.

**27. Relinquishment.** By written document delivered to Owner, Operator may relinquish its right to use any portion of the Property. By written amendment signed by Owner and Operator the legal description for the Property may be changed.

**28. Notice.** Notice required under this Agreement may be given to either party by depositing the same in the United States mail postage prepaid, duly addressed to the appropriate contact set out below. Such notice shall be deemed delivered when deposited in the United States Mail.

**29. Construction of Agreement.** This Agreement shall be construed under the laws of the State of Utah and the parties consent to the jurisdiction of the District Court in and for Emery County, Utah for all disputes arising hereunder.

**30. Entire Agreement; Amendment.** This Agreement embodies the entire agreement between the parties hereto concerning the subject matter hereof and supersedes all prior conversations, proposals, negotiations, understandings and agreements, whether written or oral. This Agreement may not be amended, altered, changed, modified or supplemented except by written agreement of the parties.

**31. Severability.** Should any provisions of this Agreement, to any extent, be held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, if the essential provisions of this Agreement for each party remain valid, binding and enforceable.

**32. Notice.** Owner designates the following contact person information for the receipt of notices required under this Agreement and any other communications on matters addressed by this Agreement:

Owner Contact:  
PacifiCorp:  
P.O. Box 569  
Castle Dale, Utah 84513  
Attn: Laren Huntsman, Hunter Plant Manager

Operator designates the following contact person for the receipt of notices required under this Agreement and any other communications on matters addressed by this Agreement:

Operator Contact:  
Cottonwood Creek Consolidated Irrigation Company  
P.O. Box 678  
Orangeville, Utah 84537  
Attn: Stan Mathis, Secretary

**33. Default.** If Operator defaults under this Agreement, Owner shall give Operator written notice of the default. If Operator fails to correct the default within sixty (60) days after the delivery of the notice of default, Owner may, in addition to any other rights and remedies

available to Owner, suspend the right of Operator to enter upon and use the Property until the default is cured or terminate this Agreement. If Owner elects to terminate this Agreement, Operator shall remove all of its property and facilities from the Property and restore and reclaim the Property as required herein.

**34. Memorandum of Agreement.** This Agreement shall not be recorded, but the parties may record with the County Clerk of the county in which the property subject to this Agreement are located a memorandum reciting that the parties have entered into this Agreement which affects the Property.

**35. Representations.** Each party covenants and represents that it has the full right and authority to enter into this Agreement and to carry out the obligations provided for in this Agreement.

**36. Confidentiality.** This Agreement and all of the terms hereof are confidential and shall not be disclosed by either Owner or Operator to any unrelated third party without the prior written consent of Owner and Operator, except as required by law, or any court or administrative order, rule, or proceeding.

**37. No Joint Venture or Partnership.** This Agreement does not constitute or create an agency, joint venture, partnership or similar relationship or status between the Owner and Operator.

**38. Taxes.** Operator shall pay all taxes and assessments of any kind, which shall be levied against the Property by reason of Operator's use, or occupancy thereof, except those being contested in good faith, and shall keep the Property free of any liens that may attach thereto by reason of Operator's use or occupancy thereof.

**39. Time.** Time is of the essence in this Agreement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**OWNER:**  
**PacifiCorp, an Oregon corporation**

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name \_\_\_\_\_

Date: \_\_\_\_\_

**OPERATOR:**  
**Cottonwood Creek Consolidated Irrigation Company**

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



Print Name \_\_\_\_\_

Date: \_\_\_\_\_

## Exhibit A

### Legal Description of Property

#### **Gravel Resource Extraction Area (Portion of PacifiCorp Parcel UTEM-0122)**

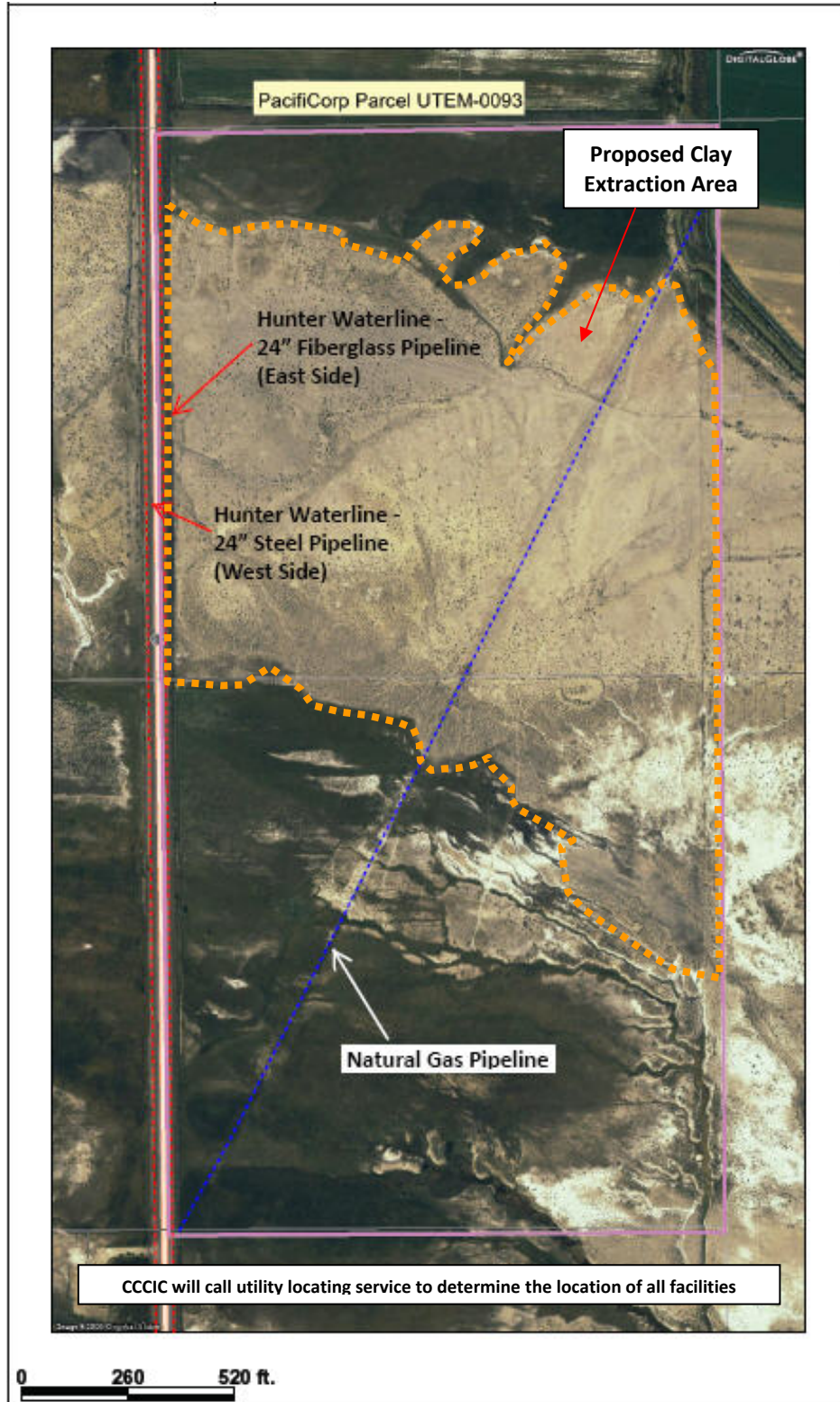
Beginning at the Southeast corner of the southwest quarter of the northeast quarter of Section 23, Township 18 South, Range 7 East, Salt Lake Base and Meridian; thence North, 1328.5 feet along the 40 acre line to the northeast corner of the southwest quarter of the northeast quarter of said section 23; thence North, 463.40 feet along the 40 acre line; thence West, 260.04 feet to the beginning of a circular curve to the right having a radius of 1101.39 feet and a central angle of 77°43'10"; thence northwesterly 1494.73 feet along the arc of said curve (chord bears N 52°10'15" E, 1382.74 feet) to the north quarter corner of said section 23; thence South, 1322.6 feet along the center line of said section 23 to the northwest corner of the southwest quarter of the northeast quarter of said section 23; thence South, 1322.6 feet along the center line of said section 23 to the southwest corner of the southwest quarter of the northeast quarter of said section 23; thence East, 1328.20 feet along the 40 acre line more or less to the point of beginning. Parcel Containing 60.98 acres more or less

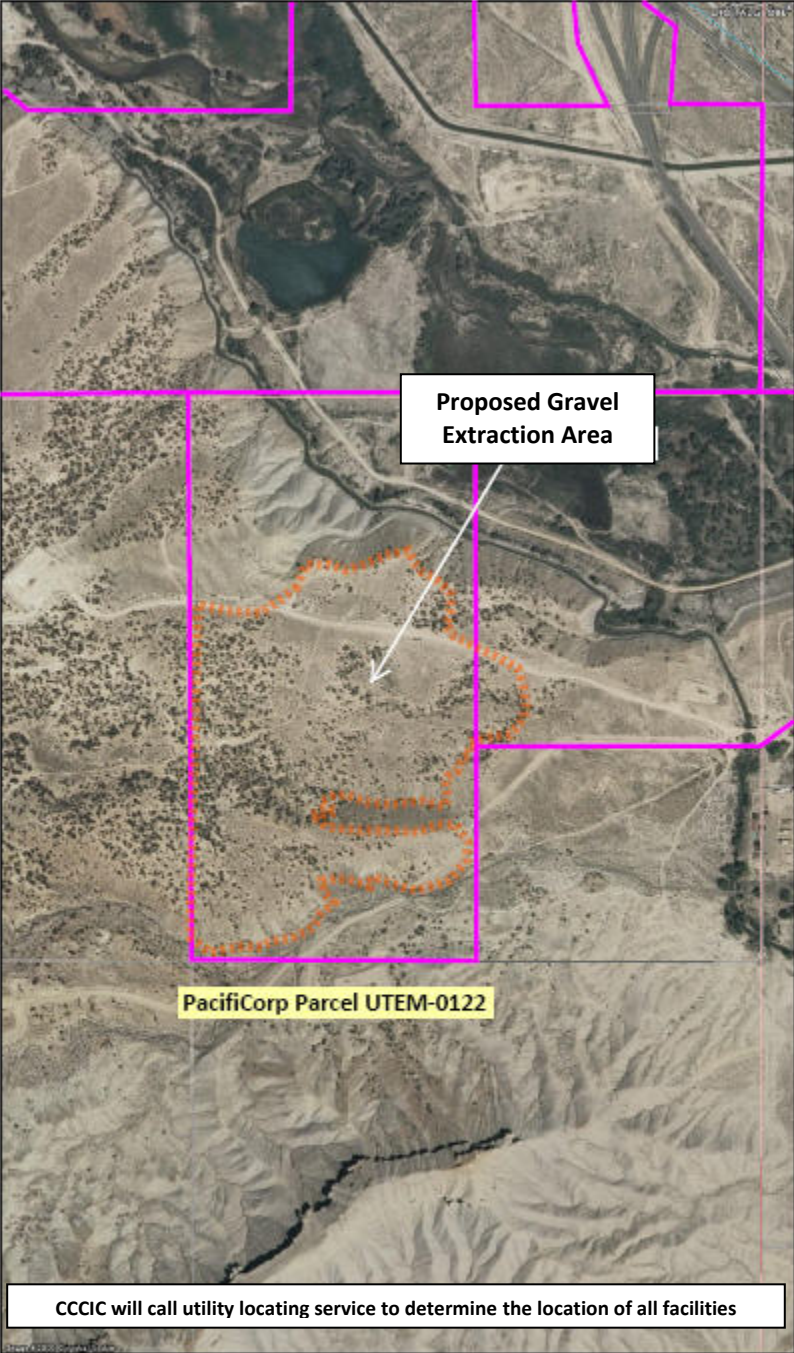
#### **Clay Resource Extraction (PacifiCorp Parcel UTEM-0093)**

The Southwest Quarter of the Northeast Quarter of Section 5, T 19 S, R 8 E S.L.B.& M.  
The Northwest Quarter of the Southeast Quarter of Section 5, T 19 S, R 8 E S.L.B.& M.  
Containing 80.00 acres more or less

# Exhibit B

## Existing and Projected Facilities of Owner





0 550 1100 ft.

## **Addendum 1**

### **Fee Schedule**

The terms and conditions of this Addendum 1 are hereby incorporated in the Agreement to which it is attached as if fully set forth therein:

#### 1. Value of Resource and Quantity of Resource

Estimated Gravel value is 130,000 cubic yards x \$0.40 per cubic yard = \$52,000\*

Estimated Clay value is 52,000 cubic yards x \$0.20 per cubic yard = \$10,400\*

\*Note: The clay and gravel resources will be tested during construction to ensure that they meet the engineering standards for a reservoir in the state of Utah. It is understood that the Operator may need to find another source of either clay or gravel if gravel and clay on Owner's land doesn't meet the minimum standards. The report required to establish the 'Final Value of Resource' shall reflect an accurate accounting of the actual volumes of gravel and clay removed from Owner's land.

#### 2. Method of Measurement

The material will be measured in place by neat lines as shown on the drawings of the embankment.

#### 3. Monthly Accounting

Operator shall provide a monthly report that provides an accurate total of cubic yard volumes of all gravel and clay that were removed from PacifiCorp's land for each month during the term of this agreement. That monthly report shall be sent to the following address:

PacifiCorp:  
P.O. Box 569  
Castle Dale, Utah 84513  
Attn: Laren Huntsman, Hunter Plant Manager

#### 4. Final Value of Resource

After all gravel and clay needed for the construction of the Adobe Wash Reservoir are removed from PacifiCorp land, a final report will be submitted to Laren Huntsman, at the address provided above. The final report shall document the total volume of gravel and clay removed from PacifiCorp land and the value of said material.

**WASHINGTON AFFILIATED INTEREST FILING**


**VERIFICATION**

**VERIFICATION**

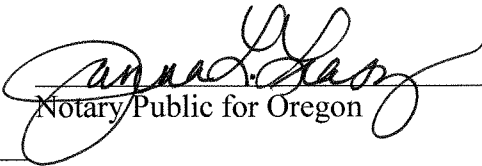
I, Natalie L. Hocken, am an officer of PacifiCorp and am authorized to make this verification on its behalf. Based on my personal knowledge about the attached Non-Exclusive Easement Agreement and Non-exclusive Surface Use and Damages Agreement, I verify that the Non-Exclusive Easement Agreement and Non-exclusive Surface Use and Damages Agreement are true and accurate copies of the original.

I declare upon the penalty of perjury, that the foregoing is true and correct.

Executed on 9/21, 2011 at Portland, Oregon.

  
\_\_\_\_\_  
Natalie Hocken  
Vice President & General Counsel

Subscribed and sworn to me on this 24 day of Sept., 2011.

My Commission expires: 9/28/11   
\_\_\_\_\_  
Notary Public for Oregon

