

Memorandum of Agreement

Huntington Creek Wildlife Habitat Replacement Project

This Memorandum of Agreement (the “MOA”) is entered into this _____ day of _____, 2010 by and between the Bureau of Reclamation (“Reclamation”), the Huntington Cleveland Irrigation Company (“HCIC”), a Utah Nonprofit Corporation and Mutual Water Company, and PacifiCorp, an Oregon Corporation (“PacifiCorp”).

Recitals

WHEREAS, Reclamation and HCIC have agreed, by entering into Cooperative Agreements, to construct two (2) Salinity Control Projects in Northern Emery County, Utah under the Colorado River Salinity Control Program, Colorado River Basin Salinity Control Act (US Department of the Interior, Bureau of Reclamation 1974 Colorado River Basin Salinity Control Act, Public Law 93-320). The main salinity control project is being constructed under Cooperative Agreement No. 04-FC-40-2242 and a supplementary salinity control project is being constructed under Cooperative Agreement No. R09AC40R03.

WHEREAS, As a result of entering into the Cooperative Agreements lists above, HCIC is obligated to replace a certain amount of wildlife habitat that will be impaired by the installation of HCIC’s Salinity Control Projects.

WHEREAS, PacifiCorp owns a certain Property in Emery County that can be used by HCIC to fulfill its wildlife habitat replacement obligations listed above. This Property is located in Section(s) 5 and 8, Township 18 South, Range 9 East, S.L.M. with the PacifiCorp Parcel Id Numbers of UTEM-0142 (County Tax Lot U4-0057-0009) and UTEM-0295 (County Tax Lot U4-0054-0012)(“Property.”)

WHEREAS, HCIC and PacifiCorp have prepared a plan (HCIC Habitat Replacement Plan – Huntington Creek Wildlife Habitat Replacement Project) that, if implemented on the PacifiCorp Property described above, the Property will provide the necessary wildlife habitat values. The HCIC Wildlife Habitat Replacement Plan is attached to this Memorandum of Agreement as Exhibit A.

WHEREAS, Reclamation, HCIC and PacifiCorp would like to enter into a cooperative agreement that will allow the use of this Property to meet the habitat replacement requirements associated with the HCIC Salinity Control Projects. This agreement will document the construction, operation and maintenance responsibilities of each party to implement and comply with the HCIC Wildlife Habitat Replacement Plan.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1.0 Reclamation Responsibilities

Reclamation has provided funding and oversight to the HCIC Salinity Control Projects. Its role and responsibilities associated with the HCIC Wildlife Habitat Replacement Project is as follows:

- **Reclamation** shall participate as a member of the Management Team (as such is constituted herein) in order to provide oversight and direction for all management prescriptions and issues as outlined in the HCIC Wildlife Habitat Replacement Plan.

- A Reclamation representative will periodically inspect the HCIC Habitat Replacement Site to make sure the tenant is following all aspects of the habitat replacement plan.

2.0 PacifiCorp Responsibilities

PacifiCorp has provided funding and has participated in the overall implementation of the Main HCIC Salinity Control Project. Its role and responsibilities associated with the HCIC Wildlife Habitat Replacement Project is as follows:

- PacifiCorp shall provide the use of the above referenced fee-owned Property in Emery County for the HCIC Wildlife Habitat Replacement Project as outlined in this agreement and shall allow HCIC access to and use of such Property for Wildlife Habitat Replacement Project purposes.
- PacifiCorp shall participate as a member of the Management Team in order to provide oversight and direction for all management prescriptions and issues as outlined in the HCIC Wildlife Habitat Replacement Plan. The Management Team shall meet at least one (1) time each calendar year to inspect, evaluate and discuss the on-going implementation of the HCIC Wildlife Habitat Replacement Project.
- Subject to approval of the tenant and lease by HCIC (which approval shall not be unreasonably withheld), PacifiCorp shall have the right to lease the subject Property for livestock grazing, as long as the livestock grazing is conducted as directed by the Management Team to meet the objectives of the HCIC Wildlife Habitat Replacement Plan. Any lease will communicate all livestock grazing limitations directly to the tenant as approved and agreed upon by the Management Team. PacifiCorp shall be the only entity that will communicate directly to the tenant, unless permission is given which would allow other members of the Management Team to so communicate. .
- PacifiCorp will periodically inspect the HCIC Habitat Replacement Site to make sure the tenant is following all aspects of the plan, including the grazing prescriptions.
- PacifiCorp may, at its discretion, require the tenant to perform routine maintenance activities identified in the Wildlife Habitat Replacement Plan or other activities identified by the Management Team. This may include, but not be limited to, repairs to fencing, ditches, ponds, and signs.
- PacifiCorp shall instruct its tenant to watch for any unauthorized trespasses and report any activity immediately to a designated PacifiCorp representative.
- PacifiCorp reserves the right to review and approve language that will be installed on signs on all perimeter fences. These signs will identify that the site is the Huntington Creek Wildlife Habitat Site and will include general "No Trespassing without permission" language on each sign.
- PacifiCorp shall arrange and conduct a meeting of the Management Team at least one (1) time each calendar year to inspect, evaluate and discuss the on-going implementation of the HCIC Wildlife Habitat Replacement Project. Other members of the Management Team may call a meeting of the Management Team by giving reasonable notice to the other members. All members of the Management Team must be present for it to act.

3.0 HCIC Responsibilities

The HCIC Wildlife Habitat Replacement Plan identifies several management issues and prescriptions including livestock grazing, noxious/non-native plant species, Russian-olive tree management, vegetation health and diversity, remnant oxbow channels, hydrologic support and site control. HCIC has the general responsibility for implementation of the proposed prescriptions detailed in the Plan. HCIC's specific responsibilities are as follows:

- HCIC shall have full access to and use of the Property and shall be responsible for the implementation of the Wildlife Habitat Replacement Plan.
- HCIC shall be responsible for all ongoing operation and maintenance activities associated with the Wildlife Habitat Replacement Plan.
- HCIC agrees to utilize its best efforts to comply with all aspects of the Wildlife Habitat Replacement Plan and any reasonable future revisions or modification of the Plan.
- HCIC shall participate as a member of the Management Team in order to provide oversight and direction for all management prescriptions and issues as outlined in the HCIC Wildlife Habitat Replacement Plan. The Management Team shall meet at least one (1) time each calendar year to inspect, evaluate and discuss the on-going implementation of the HCIC Wildlife Habitat Replacement Project.
- HCIC shall be responsible for any financial resources required to implement and comply with the Wildlife Habitat Replacement Plan.
- HCIC will provide Reclamation and PacifiCorp with a yearly photo monitoring report for 5 consecutive years, beginning one year after fencing is completed. The report will include photos from established photo points to document plantings success. The annual report will be submitted to Reclamation's Environmental Group representative no later than December 20th of each applicable year

4.0 Agreement Modification and Amendment

This Agreement may be modified or amended in writing by the mutual consent of the parties.

4.1 Termination

The HCIC Wildlife Habitat Site will be managed to meet the goals and objectives of the HCIC Wildlife Habitat Replacement Plan. This MOA shall remain in effect for as long as the HCIC Salinity Project is in operation or fifty (50) years from the execution date of this MOA, whichever is shortest.

In the event the Huntington Creek Habitat Site is not utilized for the purposes anticipated in this Agreement for longer than one (1) year, PacifiCorp shall provide written notification to the management team describing the abandoned condition. If no action is taken by a member of the management team within the ninety (90) day period to remedy and restore the property use to its original purpose of fulfilling HCIC's habitat replacement obligations, PacifiCorp shall have the right to immediately reenter the site and take full possession thereof and exclude Reclamation and HCIC from any attempted renewed use of the Property.

If the enactment or adoption of any law, ordinance, regulation, order, condition, or other governmental requirement relating to the operations of the Huntington Creek Habitat Site makes further performance impractical or frustrates the purpose of this MOA, any party shall have the right to terminate this agreement by giving each member of the management team ninety (90) days prior written notice.

Upon the expiration or termination of this MOA, the Management Team shall surrender any control of the Huntington Creek Habitat Site in similar condition to the condition of the Property at the execution of this MOA, as approved by PacifiCorp, except for any changes to the Property as a

result of executing the Wildlife Habitat Replacement Plan, or that may occur as addressed in section 4.6 entitled "Improvements".

4.2 Successors and Assigns

This MOA shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, legal representatives, and assigns; provided that this provision shall not be construed as permitting assignment, substitution, delegation, or other transfer of rights or obligations except strictly in accordance with the provisions of this MOA.

4.3 Hunting

No Hunting shall be allowed within the Huntington Creek Habitat Site boundary during the term of this Agreement.

4.4 Acceptance of Huntington Creek Habitat Site

Reclamation and HCIC have examined the Huntington Creek Habitat Site and accept it in its present condition, AS-IS and with all faults. PacifiCorp makes no representation or warranty as to the present or future condition of the Huntington Creek Habitat Site and shall not be required to perform, pay for, or be responsible for any work to ready the site for habitat replacement, use or any other work whatsoever throughout the term of this MOA to repair, maintain or improve the Huntington Creek Habitat Site.

4.5 Water Rights

HCIC and Reclamation acknowledges that this MOA gives no right to the use of water from any private water right owned by PacifiCorp and that it is HCIC's responsibility to provide its own water for the Huntington Creek Habitat Site's needs. Any tenant and HCIC shall not allow any irrigation water it calls to be delivered to the Property to run uncontrolled onto or from the Huntington Creek Habitat Site.

4.6 Improvements

All improvements made by HCIC shall immediately become and shall remain the real property of PacifiCorp at the time this MOA terminates or expires unless otherwise specified by PacifiCorp. If HCIC desires to make any changes or improvements to the Property not addressed in the Wildlife Habitat Replacement Plan, HCIC shall provide PacifiCorp with plans for the proposed change or improvement. PacifiCorp shall have the right to conditionally approve, modify, or deny the requested change or improvement at its sole discretion.

4.7 Flammable Materials

HCIC shall not place or store any flammable material, including but not limited to chemical solvents, fuels, rubbish piles, haystacks, or lumber products, on the Huntington Creek Habitat Site without PacifiCorp's prior written consent, excluding from this prohibition, however, motor vehicles fuels and lubricants properly contained in vehicles coming onto the Huntington Creek Habitat Site.

4.8 Storage

HCIC shall not cause or permit any structure, building, automobile, or equipment to be placed, erected, or stored on the Huntington Creek Habitat Site without PacifiCorp's prior written consent nor shall HCIC, under any circumstances place any object or allow any person under its control to come within twenty (20) feet of any power lines on the Huntington Creek Habitat Site. HCIC

understands and acknowledges that electricity can arc between lines and persons or objects within twenty (20) feet of the lines.

4.9 Environmental Regulations

All parties shall strictly comply in all material respects with all federal, state, and local environmental laws, regulations, and ordinances (“Environmental Laws”) and shall not use or store on the Huntington Creek Habitat Site any hazardous or toxic materials without PacifiCorp’s prior written consent. In the event of any spill or release or any hazardous or toxic materials by any of the parties, the responsible party shall immediately report, remedy, and shall immediately notify PacifiCorp thereof. Upon termination of this MOA, HCIC shall deliver the Huntington Creek Habitat Site to PacifiCorp free of any material contamination by hazardous or toxic materials by HCIC. HCIC covenants and agrees to protect, indemnify, and hold PacifiCorp (except insofar as PacifiCorp, as a shareholder of HCIC, may have its own liability or responsibility) harmless from any and all liability, loss, costs, damage, or expense, including attorneys’ fees, resulting from HCIC’s failure to comply with the provisions of this paragraph. The covenants contained within this paragraph shall survive the expiration termination this MOA.

4.10 Compliance with Laws

All parties shall comply with all federal, state, and local laws, rules, and regulations.

4.11 PacifiCorp’s Use of the Huntington Creek Habitat Site

It is understood and agreed upon that PacifiCorp reserves the right to access the Huntington Creek Habitat Site at any time for the purpose of maintaining or repairing its existing power lines and associated equipment and facilities and to place additional poles, lines, and equipment upon the Huntington Creek Habitat Site. It is further understood and agreed upon that, to the extent consistent with the Habitat Replacement Plan, PacifiCorp shall reserve the right to add to, change, or enlarge its power lines and associated facilities and structures on the Huntington Creek Habitat Site, including such equipment and facilities of others, including fiber optic and cable lines. If such changes require HCIC to make changes to any of HCIC’s structures or improvements located upon the Huntington Creek Habitat Site, PacifiCorp shall give HCIC at least ninety (90) days advance written notice and HCIC agrees to make any such changes within a reasonable period of time as designated by PacifiCorp.

4.12 Prohibited Activities

No party shall permit any of their employees, designated agents, contractors and subcontractors to bring any firearm, explosive device, weapon, alcoholic beverage, or illegal drug on the Huntington Creek Habitat Site. HCIC and Reclamation’s employees, designated agents, contractors and subcontractors, shall not allow animals in vehicles or otherwise on to PacifiCorp’s lands that are not used in the livestock industry. HCIC and Reclamation’s employees, designated agents, contractors and subcontractors, shall not place any trash, rubbish, debris or smoking materials on property of Owner. No HCIC and/or Reclamation employee shall hunt, prospect for antlers, fossils or antiquities, consume alcoholic beverages or carry on any illegal activities on the Huntington Creek Habitat Site. HCIC shall provide for adequate sanitization or lavatory facilities for its employees during construction activities which will take longer than two (2) successive days. HCIC and Reclamation employees shall not enter the Huntington Creek Habitat Site other than during daylight hours, except in the case of emergencies. No party shall use any hazardous substances on the Property without first obtaining the appropriate licenses.

4.13 Inspection

PacifiCorp and Reclamation shall have the right to enter into and upon the Huntington Creek Habitat Site at any time for the purpose of inspecting the site to ascertain whether HCIC is in compliance with all federal and state environmental protection laws.

4.14 Indemnification

HCIC shall use the Huntington Creek Habitat Site at its own risk and hereby releases and forever discharges any claims, demands or causes of action it may have against PacifiCorp, its officers, directors, employees, subsidiaries and affiliates, arising out of their use of or activities on or around the Huntington Creek Habitat Site. In addition, HCIC shall protect, indemnify and hold harmless PacifiCorp, its officers, directors, employees, subsidiaries and affiliates (collectively "Indemnitees") from and against any liability, losses, claims, liens, demands, expenses, interest, fines, penalties, claims, judgments, suits, and causes of action of every kind, including the amount of any judgment, penalty, 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 arising out of HCIC's use of the Property. This paragraph 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. For the purposes of this Agreement, this paragraph will not relieve PacifiCorp from any obligation, responsibility or liability as a shareholder of HCIC.

4.15 Insurance

HCIC has obtained liability insurance with the coverages, amounts and insurer as set forth in Exhibit B attached hereto. The insurance coverage as set forth on Exhibit B is acceptable and satisfactory to the Parties. HCIC shall annually provide to PacifiCorp a certificate of insurance evidencing its insurance coverage. The policies required herein, except Workers' Compensation and Employers' Liability, shall include provisions or endorsements naming PacifiCorp, its parent, affiliates, subsidiaries, its officers, directors, agents, employees or servants as additional insured. HCIC's insurance required under this section 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 PacifiCorp if cancelled for nonpayment of premium, or 2) thirty (30) calendar days' prior written notice to PacifiCorp if cancelled for any other reason. In the event HCIC changes its insurance carrier or reduces its insurance coverage, the following requirements shall apply:

Without limiting any liabilities or any other obligations of HCIC, HCIC shall procure and continuously maintain for the duration of this MOA term, 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 HCIC's use or occupancy of the Huntington Creek Habitat Site as follows:

- a. Workers' Compensation. Coverage as required by law. HCIC shall furnish proof thereof satisfactory to PacifiCorp within 14 days prior to commencing any work on the Huntington Creek Habitat Site. 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-venturers, agents, directors, officers,

employees, servants, and insurers, it being the intention of the PacifiCorp and HCIC that the insurance as effected shall protect all parties.

- b. 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.
- c. 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 Huntington Creek Habitat Site, including the following coverages:
 - i. Bodily injury, property damage, and personal injury coverage, including damage to PacifiCorp's Electric Facilities or Improvements as a result of HCIC's, its contractors', subcontractors' or agents' negligence.
 - ii. Contractual liability
 - iii. Huntington Creek Habitat Site and Products/Completed Operations
 - iv. Independent Contractors
- d. 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 HCIC's vehicles whether owned, hired or non-owned, assigned to or used in any way on the Huntington Creek Habitat Site.
- e. HCIC's Insurance Primary. To the extent of HCIC's negligent acts or omissions, all policies required under this MOA shall include provisions that such insurance is primary with respect to the interest of PacifiCorp and that any other insurance maintained by PacifiCorp 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.
- f. 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 PacifiCorp, its parent, divisions, affiliates, subsidiaries companies, or co-venturers, agents, directors, officers, employees, servants, and insurers, it being the intention of the PacifiCorp and HCIC that the insurance as affected shall protect all parties.
- g. Notice Prior to Change or Cancellation. HCIC's insurance required under this section 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 PacifiCorp if cancelled for nonpayment of premium, or 2) thirty (30) calendar days' prior written notice to PacifiCorp if cancelled for any other reason.

4.16 Entire Agreement

Each party to this Agreement acknowledges that this Agreement contains the entire agreement between the parties with regard to the matters set forth herein. There are no other

understandings, representations, inducements, promises, or agreements, oral or otherwise, in relation thereto, between the parties except as herein expressly set forth.

4.17 Shareholder Status of PacifiCorp

PacifiCorp is a shareholder of HCIC. Notwithstanding any provision herein, the rights, duties and obligations of PacifiCorp as a shareholder of HCIC shall not be abrogated, abridged or modified through this Agreement.

5.0 Designated Representatives

Each party to this agreement has respectively designated the following initial Management Team member, with the official notification address, to act on behalf of their respective organization pertaining to the Management Team and timely performance of this MOA:

Bureau of Reclamation
Rafael Lopez
Provo Area Office
302 East 1860 South
Provo, Utah 84606
Phone: (801) 379-1185

Huntington Cleveland Irrigation Company
Allen Staker
Huntington Office
71 North Main Street (P.O. Box 327)
Huntington, Utah 84528
Phone: (435) 687-2505

PacifiCorp
Huntington Plant
Cody Allred
P.O. Box 680
Huntington, Utah 84528
Phone: (435) 687-4306

Designation of new members of the Management Team to replace the initial members shall be in writing to the other parties.

6.0 Signatures

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

Bureau of Reclamation

Huntington Cleveland Irrigation Company

Signature

Signature

Title

Title

Date

Date

PacifiCorp

Signature

Title

Date