

July 14, 2022

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
Attn: Filing Center
201 High Street SE, Suite 100
Salem, Oregon 97301-3398

Re: UI ___—PacifiCorp Application Requesting Approval for an Affiliate Interest Transaction with Huntington-Cleveland Irrigation Company

PacifiCorp d/b/a Pacific Power encloses for filing its Application Requesting Approval of an Affiliate Interest Transaction with Huntington-Cleveland Irrigation Company.

Confidential information in this application is provided in accordance with OAR 860-001-0070.

PacifiCorp respectfully requests that all data requests regarding this matter be addressed to:

By email (preferred): datarequest@pacificorp.com

By regular mail: Data Request Response Center
PacifiCorp
825 N.E. Multnomah St., Ste. 2000
Portland OR 97232-2152

Please direct any informal questions concerning this filing to Jennifer Angell, Regulatory Project Manager, at (503) 331-4414.

Sincerely,



Matthew McVee
Vice President, Regulatory Policy and Operations

Enclosures

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI _____

In the Matter of

PACIFICORP d/b/a PACIFIC POWER

Application for Approval of an Affiliated
Interest Transaction.

APPLICATION OF PACIFICORP

Under ORS 757.495 and in accordance with OAR 860-027-0040, PacifiCorp d/b/a Pacific Power seeks approval from the Public Utility Commission of Oregon (Commission) of an affiliated transaction whereunder PacifiCorp contracts with its affiliate Huntington-Cleveland Irrigation Company (“HCIC) to enter into two lease and management agreements (collectively, the “Agreements”) for shares of water to ensure the continued safe operation of PacifiCorp’s Huntington Thermal Plant ("Huntington Plant") in Emery County, Utah.. PacifiCorp seeks approval of the Agreements as an affiliated interest transaction.

PacifiCorp is required under the Agreements to maintain the confidentiality of the financing terms. The Agreements contain terms and conditions resulting from negotiations between the parties, the disclosure of which could erode PacifiCorp’s bargaining power in the future. PacifiCorp provides here copies of the *Agreement for Lease and Management of Leased Water in the Huntington-Cleveland Irrigation Company* and the *Second Agreement for Additional Lease and Management of Leased Water in the Huntington-Cleveland Irrigation Company* as Confidential Attachment A and Confidential Attachment B, respectively.

I. BACKGROUND

PacifiCorp is a wholly-owned, indirect subsidiary of Berkshire Hathaway Energy Company (BHE). PacifiCorp holds a 34.1 percent voting shareholder interest in HCIC.

“Affiliated interest,” as defined in ORS 757.015(3), includes every corporation five percent or more of whose voting securities are owned by any corporation or person owning five percent of the voting securities of a public utility or in any successive chain of ownership of a public utility. Therefore, PacifiCorp’s ownership interest in HCIC creates an affiliated interest relationship between PacifiCorp and HCIC.

With this Application, PacifiCorp requests Commission authorization to continue to engage in business transactions with HCIC as described herein.

II. COMPLIANCE WITH OAR 860-027-0040 FILING REQUIREMENTS

A. Name and Address

PacifiCorp’s exact name and address of its principal business office are:

PacifiCorp
825 NE Multnomah Street
Portland, OR 97232

B. Communications and Notices

All notices and communications with respect to this Application should be addressed to:

Ajay Kumar
Senior Attorney
PacifiCorp
825 NE Multnomah Street, Suite 2000
Portland, OR 97232
Telephone: (503) 813-5161
Email: ajay.kumar@pacificorp.com

PacifiCorp Oregon Dockets
825 NE Multnomah Street, Suite 2000
Portland, OR 97232
Email: OregonDockets@pacificorp.com

Additionally, PacifiCorp respectfully requests that all information requests regarding this matter be addressed to:

By e-mail (**preferred**) datarequest@pacificorp.com

By regular mail
Data Request Response Center
PacifiCorp
825 NE Multnomah St., Suite 2000
Portland, OR 97232

Informal inquires may also be directed to Jennifer Angell at (503) 331-4414.

C. Relationship Between PacifiCorp and Affiliated Interest

PacifiCorp holds a 34.1 percent voting shareholder interest in HCIC. Therefore, HCIC is an “affiliated interest” of PacifiCorp as set forth in ORS 757.015(3).

D. Voting Securities

PacifiCorp holds a 34.1 percent voting shareholder interest in HCIC.

E. Common Officers and Directors

PacifiCorp and HCIC do not share any officers or directors.

F. Pecuniary Interest

No officer or director of PacifiCorp or HCIC is a party to, or has a pecuniary interest in, the contemplated business transaction between PacifiCorp and HCIC.

G. Description of Goods and Services Provided, Cost(s) Incurred; Market Value; Pricing Methods

Because of a period of extended drought PacifiCorp requires additional water be made available to supplement its owned water rights and shares to safely operate its Huntington Plant. The Huntington-Cleveland Irrigation Company owns water rights and several reservoirs on Huntington Creek and its tributaries that are used to supply irrigation, municipal and industrial water to HCIC shareholders. PacifiCorp owns certain water rights and shares of stock in HCIC for use at the Huntington Plant.

The first agreement between the parties provides for the lease of a further 2,694 acre-feet of 2022 Class A and Class B allocated water. A second agreement secures 68.15 acre-feet more 2022 Class A and Class B allocated water.

As the primary source of useable water for Huntington Plant operations, HCIC is the only entity that can provide the leases to PacifiCorp. Both leases were priced at the market rate.

H. Estimate of Amount PacifiCorp will Pay or Collect Annually

PacifiCorp's estimated cost is to be [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] per acre foot along with understanding that any leased water not put to use by PacifiCorp on February 28, 2023, will revert back to HCIC for use in the 2023 irrigation season.

PacifiCorp requests confidential treatment of this estimate under OAR 860-001-0170 as it contains sensitive pricing and cost information which, if disclosed to the public, could erode the Company's ability to bargain with vendors in the future.

I. Reasons Relied Upon for Providing the Proposed Services, and Benefits to the Public

Entering into the Agreements with HCIC is in the public interest because the allotments of water will sustain the operation of the Huntington Plant during a period of drought. Securing the additional water mitigates the risk of disruption or impairment of PacifiCorp's services to its customers.

J. Description of the Procurement Process

See Section II.G above.

K. Relationship of Cost of Provision of Services and Market Value

As described above, HCIC will make available additional shares of water pursuant to the terms and conditions of the Agreements.

L. Contract Between Affiliated Interest and PacifiCorp

Copies of the Agreements are included with this Application as Confidential Attachment A and Confidential Attachment B.

M. Copy of Board Resolutions

This transaction did not require approval from PacifiCorp's Board of Directors.

III. PRAYER FOR RELIEF

PacifiCorp respectfully requests a Commission order (1) finding the leases of water shares are consistent with the public interest; and (2) approving the leases of water shares as an affiliated interest agreement.

Respectfully submitted this 13th day of July 2022,

By:



Ajay Kumar, OSB #183903
Senior Attorney
Phone: (503) 813-5161
825 NE Multnomah Street, Suite 2000
Portland, OR 97232
Email: ajay.kumar@pacificorp.com

Attorney for PacifiCorp

CONFIDENTIAL

ATTACHMENT A

**Agreement for Lease and Management of Leased Water in the
Huntington-Cleveland Irrigation Company**

**AGREEMENT FOR LEASE AND MANAGEMENT OF LEASED
WATER IN THE HUNTINGTON-CLEVELAND IRRIGATION
COMPANY**

This agreement is entered into this 10TH day of MAY, 2022 by and between PacifiCorp, an Oregon Corporation ("PacifiCorp") and the Huntington-Cleveland Irrigation Company, a Utah non-profit corporation ("Huntington-Cleveland"). Together, PacifiCorp and Huntington-Cleveland are referred to singularly as a "Party" and collectively as the "Parties."

WHEREAS, Huntington-Cleveland owns water rights and several reservoirs on Huntington Creek and its tributaries which it uses to supply irrigation, municipal and industrial water to its shareholders ("Shareholders"); and

WHEREAS, PacifiCorp owns the Huntington Thermal Plant in Emery County, Utah ("Huntington Plant"), together with certain water rights and shares of stock in Huntington-Cleveland ("Shares") for use at the Huntington Plant; and

WHEREAS, PacifiCorp requires water in addition to its owned water rights and Shares to operate the Huntington Plant due to a period of extended drought; and

WHEREAS, Huntington-Cleveland and leasing shareholders intend to lease to PacifiCorp 2,694 acre-feet of their 2022 Class A and Class B allocated water at the lease rate of [REDACTED] per acre foot ("PacifiCorp Lease Pool" or "Lease Pool"). Such leasing shareholders have agreed not to call for their water held in the PacifiCorp Lease Pool; and

WHEREAS, for PacifiCorp to use water made available from the Lease Pool, said water must be stored by PacifiCorp in its Electric Lake Reservoir and/or by Huntington-Cleveland in Huntington-Cleveland's Left Fork Reservoirs for release on PacifiCorp's request from the date of execution of this Agreement until February 28, 2023; and

WHEREAS, Huntington-Cleveland desires to facilitate this lease of water to PacifiCorp from the date of execution of this Agreement until February 28, 2023, consistent with this Agreement; and

WHEREAS, as of the date of execution of this Agreement, Huntington-Cleveland has allocated 1 acre foot of water for every 5.0 Class A Shares (Primary water) in the 2022 irrigation season; and

WHEREAS, as of the date of execution of this Agreement, Emery Water Conservancy District has allocated 1 acre foot of water for every 1.43 Class B Shares (Project water) in the 2022 irrigation season; and

WHEREAS, the Parties desire to enter into this Agreement for the leasing and delivery of the leased water, pursuant to the terms and conditions set forth herein.

NOW THEREFORE, the Parties agree as follows:

1. 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.
2. The term of this Agreement runs from the date of execution through February 28, 2023.
3. Within 30 days of receipt of invoice from Huntington-Cleveland, PacifiCorp shall pay Huntington-Cleveland a lump sum payment of [REDACTED] for the 2,694 acre-feet of leased water. Huntington-Cleveland shall distribute to leasing shareholders their portion of the payment. PacifiCorp has no responsibility or liability for distribution of funds to the leasing shareholders.
4. Within 30 days of receipt of invoice from Huntington-Cleveland, PacifiCorp shall pay Huntington-Cleveland a lump sum payment of [REDACTED] to cover the costs to administer and deliver the leased water.
5. The Parties acknowledge that, at the date of execution of this Agreement, PacifiCorp leases from Huntington-Cleveland a fixed amount defined block of water of 2,694 acre feet, consisting of: 1) Huntington-Cleveland's allocation of 1 acre foot of water for every 5.0 Shares of Class A stock; and 2) Emery Water Conservancy District's allocation of 1 acre foot of water for every 1.43 shares of Class B stock. However, if either of these allocations are adjusted throughout the irrigation season (either increasing or decreasing), then PacifiCorp's volume of leased water shall not change.
6. Huntington-Cleveland has facilitated an internal solicitation process with all its shareholders to create the PacifiCorp Lease Pool utilizing in substantially the same form the shareholder notification letter and the "Request to Add Water to PacifiCorp Lease Pool" attached as Exhibit A.
7. The Parties agree to assign water in the PacifiCorp Lease Pool into PacifiCorp's Electric Lake, and if necessary, Huntington-Cleveland's Left Fork Reservoirs as follows:
 - (a) Any water entitled to Huntington-Cleveland in PacifiCorp's Electric Lake on the date the Agreement is signed will be allocated first to the Lease Pool.
 - (b) To the extent there is not sufficient Huntington-Cleveland water in Electric Lake to make up the full amount in the Lease

Pool, then the remaining amount of water in the Lease Pool will be allocated to one or more of Huntington-Cleveland's Left Fork Reservoirs.

8. The Parties, in coordination with the Huntington River Commissioner, will account for PacifiCorp's use of the Lease Pool water throughout the term of this Agreement in order to determine the balance of Lease Pool water to be delivered to PacifiCorp through February 28, 2023.
9. Throughout the term of this Agreement, PacifiCorp's use of water sources for the Huntington Plant will be in the following priority:
 - (a) PacifiCorp's water under its Shares in Huntington-Cleveland (Huntington Creek direct flow).
 - (b) Huntington-Cleveland water in the PacifiCorp Lease Pool. As available pursuant to naturally available water in Huntington Creek and the normal and regular operation of Huntington-Cleveland's reservoirs to provide storage water to all shareholders.
 - (c) Release of PacifiCorp's own storage water in Electric Lake.
10. If PacifiCorp does not use all of the Lease Pool by February 28, 2023, PacifiCorp's right to use said remaining Lease Pool water shall terminate and any said remaining water shall be accounted for as Huntington-Cleveland's storage water for delivery during the 2023 irrigation season. However, in no event shall PacifiCorp be entitled to any refund of the payments made under this Agreement.
11. In the event that Huntington-Cleveland uses its best efforts to deliver the Lease Pool water but is unable to do so due to circumstances beyond its control, PacifiCorp waives any and all damages, claims, losses, liabilities, costs and expenses against Huntington-Cleveland. As used herein, the term "circumstances beyond its control" means the lack of water in the Huntington Creek drainage, an order by, or under the direction of, the State Engineer of Utah, natural disaster, such as weather, an earthquake, fire, storm, flood, an act of God; a war, insurrection, or labor dispute; an order, requisition or necessity of any governmental authority; or a result of any cause beyond the control and not a result of any negligence of Huntington-Cleveland. If Huntington-Cleveland ceases delivery of the Lease Pool water pursuant to this paragraph, it shall nonetheless have an obligation to use its best efforts to resume delivery of said Lease Pool water as quickly as possible, and to allow PacifiCorp to aid in such restoration of delivery. Notwithstanding the foregoing, Huntington-Cleveland, by reason of this Agreement, shall not

incur additional liability beyond any liability it may have for non-delivery of water to the Shareholders leasing water in the Lease Pool, nor shall it be liable for incidental or consequential damages for non-delivery of the Lease Pool water.

12. Any notice given under this Agreement shall be deemed sufficient if in writing and delivered by hand or deposited in the United States mail, postage prepaid, and addressed as follows, or to such other addressee as either Party may, from time to time, designate in writing:

To Huntington-Cleveland:
Vickie Tucker
HCIC Secretary
P.O. Box 327
Huntington, UT 84528

To PacifiCorp:
To PacifiCorp: Cody Allred
Water Resource Manager
P.O. Box 680
Huntington, UT 84528

with a copy to:
J. Craig Smith
Smith Hartvigsen, PLLC
257 East 200 South, #500
Salt Lake City, UT 84111

with a copy to:
Buffi Morris
Water Rights Administrator
1407 W. North Temple #110
Salt Lake City, UT 84116

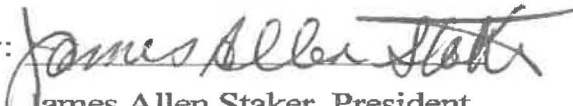
13. This Agreement shall be construed in accordance with the laws of the State of Utah. All legal actions between the Parties, arising under this Agreement, shall be conducted exclusively in the Seventh District Court for the State of Utah located in Emery County, Utah, unless they involve a case with exclusive federal jurisdiction, in which case they shall be conducted exclusively in the Federal District Court for the District of Utah. Each Party hereby waives any objection based on *forum nonconveniens* or any objection to venue of any such action. **To the fullest extent permitted by law, each of the Parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this Agreement. Each Party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.**
14. This Agreement constitutes the entire agreement and understanding of the Parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Agreement must be in writing and executed by the Parties.
15. If either Party to this Agreement is required to initiate or defend litigation to secure performance of this Agreement, the prevailing party in such litigation, in addition to any other relief that may be granted, whether legal or equitable, shall be entitled to reasonable

attorney fees.

16. PacifiCorp, at its sole expense, shall obtain any necessary approvals from the Utah Division of Water Rights and/or the Utah State Engineer to use water as anticipated in this Agreement. Huntington-Cleveland shall reasonably cooperate with PacifiCorp in obtaining any such approvals.
17. PacifiCorp, agrees to and shall indemnify, defend, and hold Huntington-Cleveland and its directors, officers, agents, employees, and representatives harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorney fees and court costs) arising from or as a result of this Agreement or the use of water by PacifiCorp under this Agreement. This indemnification shall not apply to losses, damages, claims, expenses and other liabilities to the extent caused by the negligence of Huntington-Cleveland or its employees, guests, invitees, contractors, or agents.
18. The Parties waive any right to claim consequential damages. Neither Party, nor any shareholder, officer, or director of a Party, shall be liable for any consequential, incidental, or indirect, damages. Any claim of damages shall be limited to the total amount paid by or payable to a Party.
19. Time is of the essence in performing all duties and obligations in this Agreement.
20. Neither this Agreement nor any right or obligation hereunder may be assigned in whole or part without the express written and executed consent of both Parties.

EXECUTED on the date written above.

HUNTINGTON-CLEVELAND IRRIGATION COMPANY

By: 
James Allen Staker, President

Attest:



Vickie Tucker, Secretary

PACIFICORP

By:  BRAD RICHARDS

Its: VICE PRESIDENT, THERMAL GENERATION

Exhibit A

Huntington-Cleveland Notification Letter and
Request to Add Water to PacifiCorp Lease Pool Form

Huntington Cleveland Irrigation Company
P. O. Box 327 – 170 West 400 North
Huntington, UT 84528

March 22, 2022

Allred, Cody
PO Box 680
Huntington, UT 84528

Huntington Cleveland Irrigation Company (HCIC) has been approached by PacifiCorp with a proposal to lease a minimum of 2,500 acre-feet (a/f) of stockholder water for the 2022 water season at the rate of \$ [REDACTED]. This letter is being sent to make you aware of the proposal and to give you the opportunity to participate, should you voluntarily choose to do so.

At this time, this year's water allocation has not been set. However, HCIC's Board of Directors has determined that each shareholder can offer up to 100% of their available 2022 water allotment for lease to PacifiCorp. Both Primary and Project water are eligible to be leased. To make a portion of your water available to PacifiCorp, you must complete the form on the back of this letter and return it to HCIC (a self-addressed envelope is enclosed) by April 6, 2022. All water offered to PacifiCorp will be recorded in a "Lease Pool".

In the event the amount of water offered into the Lease Pool exceeds the amount of water PacifiCorp chooses to lease, water will be leased from shareholders on a pro-rata basis, which means that if more water is offered up than PacifiCorp elects to lease, then each participating shareholders contribution will be less than their submitted percentage. Any un-leased water remaining in the Lease Pool will revert back to each individual shareholder.

Payment for leased water will be issued by HCIC. Your taxpayer social security number (SSN) or employer identification number (EIN) must be provided to facilitate that process.

HCIC by

James A. Staker
Board President

Request to Add Water to PacifiCorp Lease Pool

Allred, Cody

Stockholder(s) Name

I hereby submit the following percentage of my 2022 water allotment to the Lease Pool being maintained by Huntington Cleveland Irrigation Company for lease to PacifiCorp for the 2022 water year.

Percent of Primary (class A) water being offered for lease = %

Percent of Project (class B) water being offered for lease = %

Stockholder(s) Printed Name

Stockholder(s) Signature

Date

Stockholder Telephone

Stockholder Tax Id: _____

Individual SSN

Corporation EIN

Partnership/LLC EIN

CONFIDENTIAL

ATTACHMENT B

**Second Agreement for Additional Lease and Management of Leased Water in the
Huntington-Cleveland Irrigation Company**

**SECOND AGREEMENT FOR ADDITIONAL LEASE AND
MANAGEMENT OF LEASED WATER IN THE HUNTINGTON-
CLEVELAND IRRIGATION COMPANY**

This agreement is entered into this 17 day of JUNE, 2022 by and between PacifiCorp, an Oregon Corporation ("PacifiCorp") and the Huntington-Cleveland Irrigation Company, a Utah non-profit corporation ("Huntington-Cleveland"). Together, PacifiCorp and Huntington-Cleveland are referred to singularly as a "Party" and collectively as the "Parties."

WHEREAS, Huntington-Cleveland owns water rights and several reservoirs on Huntington Creek and its tributaries which it uses to supply irrigation, municipal and industrial water to its shareholders ("Shareholders"); and

WHEREAS, PacifiCorp owns the Huntington Thermal Plant in Emery County, Utah ("Huntington Plant"), together with certain water rights and shares of stock in Huntington-Cleveland ("Shares") for use at the Huntington Plant; and

WHEREAS, PacifiCorp requires water in addition to its owned water rights and Shares to operate the Huntington Plant due to a period of extended drought; and

WHEREAS, Huntington-Cleveland and PacifiCorp entered into an Agreement for Lease and Management of Leased Water in the Huntington-Cleveland Irrigation Company, dated May 10, 2022 for the lease of 2,694 acre-feet of 2022 Class A and Class B allocated water; and

WHEREAS, Huntington-Cleveland and leasing shareholders intend to lease to PacifiCorp an additional 68.15 acre-feet of their 2022 Class A and Class B allocated water at the lease rate of [REDACTED] per acre foot ("PacifiCorp Lease Pool" or "Lease Pool"). Such leasing shareholders have agreed not to call for their water held in the PacifiCorp Lease Pool; and

WHEREAS, for PacifiCorp to use water made available from the Lease Pool, said water must be stored by PacifiCorp in its Electric Lake Reservoir and/or by Huntington-Cleveland in Huntington-Cleveland's Left Fork Reservoirs for release on PacifiCorp's request from the date of execution of this Agreement until February 28, 2023; and

WHEREAS, Huntington-Cleveland desires to facilitate this lease of water to PacifiCorp from the date of execution of this Agreement until February 28, 2023, consistent with this Agreement; and

WHEREAS, as of the date of execution of this Agreement, Huntington-Cleveland has allocated 1 acre foot of water for every 5.0 Class A Shares (Primary water) in the 2022 irrigation season; and

WHEREAS, as of the date of execution of this Agreement, Emery Water Conservancy District has allocated 1 acre foot of water for every 1.43 Class B Shares (Project water) in the 2022 irrigation season; and

WHEREAS, the Parties desire to enter into this Agreement for the leasing and delivery of the leased water, pursuant to the terms and conditions set forth herein.

NOW THEREFORE, the Parties agree as follows:

1. 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.
2. The term of this Agreement runs from the date of execution through February 28, 2023.
3. Within 30 days of receipt of invoice from Huntington-Cleveland, PacifiCorp shall pay Huntington-Cleveland a lump sum payment of [REDACTED] for the 68.15 acre-feet of leased water. Huntington-Cleveland shall distribute to leasing shareholders their portion of the payment. PacifiCorp has no responsibility or liability for distribution of funds to the leasing shareholders.
4. The Parties acknowledge that, at the date of execution of this Agreement, PacifiCorp leases from Huntington-Cleveland a fixed amount defined block of water of 68.15 acre feet, consisting of: 1) Huntington-Cleveland's allocation of 1 acre foot of water for every 5.0 Shares of Class A stock; and 2) Emery Water Conservancy District's allocation of 1 acre foot of water for every 1.43 shares of Class B stock. However, if either of these allocations are adjusted throughout the irrigation season (either increasing or decreasing), then PacifiCorp's volume of leased water shall not change.
5. The Parties agree to assign the 68.15 acre-feet of lease water in the PacifiCorp Lease Pool into PacifiCorp's Electric Lake by storing Huntington-Cleveland's natural flow entitlement that would otherwise be released from Electric Lake following runoff season.
6. The Parties, in coordination with the Huntington River Commissioner, will account for PacifiCorp's use of the Lease Pool water throughout the term of this Agreement in order to determine the balance of Lease Pool water to be delivered to PacifiCorp through February 28, 2023.

7. Throughout the term of this Agreement, PacifiCorp's use of water sources for the Huntington Plant will be in the following priority:
 - (a) PacifiCorp's water under its Shares in Huntington-Cleveland (Huntington Creek direct flow).
 - (b) Huntington-Cleveland water in the PacifiCorp Lease Pool. As available pursuant to naturally available water in Huntington Creek and the normal and regular operation of Huntington-Cleveland's reservoirs to provide storage water to all shareholders.
 - (c) Release of PacifiCorp's own storage water in Electric Lake.
8. If PacifiCorp does not use all of the Lease Pool by February 28, 2023, PacifiCorp's right to use said remaining Lease Pool water shall terminate and any said remaining water shall be accounted for as Huntington-Cleveland's storage water for delivery during the 2023 irrigation season. However, in no event shall PacifiCorp be entitled to any refund of the payments made under this Agreement.
9. In the event that Huntington-Cleveland uses its best efforts to deliver the Lease Pool water but is unable to do so due to circumstances beyond its control, PacifiCorp waives any and all damages, claims, losses, liabilities, costs and expenses against Huntington-Cleveland. As used herein, the term "circumstances beyond its control" means the lack of water in the Huntington Creek drainage, an order by, or under the direction of, the State Engineer of Utah, natural disaster, such as weather, an earthquake, fire, storm, flood, an act of God; a war, insurrection, or labor dispute; an order, requisition or necessity of any governmental authority; or a result of any cause beyond the control and not a result of any negligence of Huntington-Cleveland. If Huntington-Cleveland ceases delivery of the Lease Pool water pursuant to this paragraph, it shall nonetheless have an obligation to use its best efforts to resume delivery of said Lease Pool water as quickly as possible, and to allow PacifiCorp to aid in such restoration of delivery. Notwithstanding the foregoing, Huntington-Cleveland, by reason of this Agreement, shall not incur additional liability beyond any liability it may have for non-delivery of water to the Shareholders leasing water in the Lease Pool, nor shall it be liable for incidental or consequential damages for non-delivery of the Lease Pool water.
10. Any notice given under this Agreement shall be deemed sufficient if in writing and delivered by hand or deposited in the United States mail, postage prepaid, and addressed as follows, or to such other addressee as either Party may, from time to time, designate in writing:

To Huntington-Cleveland:
Vickie Tucker
HCIC Secretary
P.O. Box 327
Huntington, UT 84528

To PacifiCorp:
To PacifiCorp: Cody Allred
Water Resource Manager
P.O. Box 680
Huntington, UT 84528

with a copy to:
J. Craig Smith
Smith Hartvigsen, PLLC
257 East 200 South, #500
Salt Lake City, UT 84111

with a copy to:
Buffi Morris
Water Rights Administrator
1407 W. North Temple #110
Salt Lake City, UT 84116

11. This Agreement shall be construed in accordance with the laws of the State of Utah. All legal actions between the Parties, arising under this Agreement, shall be conducted exclusively in the Seventh District Court for the State of Utah located in Emery County, Utah, unless they involve a case with exclusive federal jurisdiction, in which case they shall be conducted exclusively in the Federal District Court for the District of Utah. Each Party hereby waives any objection based on *forum nonconveniens* or any objection to venue of any such action. **To the fullest extent permitted by law, each of the Parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this Agreement. Each Party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.**
12. This Agreement constitutes the entire agreement and understanding of the Parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Agreement must be in writing and executed by the Parties.
13. If either Party to this Agreement is required to initiate or defend litigation to secure performance of this Agreement, the prevailing party in such litigation, in addition to any other relief that may be granted, whether legal or equitable, shall be entitled to reasonable attorney fees.
14. PacifiCorp, at its sole expense, shall obtain any necessary approvals from the Utah Division of Water Rights and/or the Utah State Engineer to use water as anticipated in this Agreement. Huntington-Cleveland shall reasonably cooperate with PacifiCorp in obtaining any such approvals.
15. PacifiCorp, agrees to and shall indemnify, defend, and hold Huntington-

Cleveland and its directors, officers, agents, employees, and representatives harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorney fees and court costs) arising from or as a result of this Agreement or the use of water by PacifiCorp under this Agreement. This indemnification shall not apply to losses, damages, claims, expenses and other liabilities to the extent caused by the negligence of Huntington-Cleveland or its employees, guests, invitees, contractors, or agents.

16. The Parties waive any right to claim consequential damages. Neither Party, nor any shareholder, officer, or director of a Party, shall be liable for any consequential, incidental, or indirect, damages. Any claim of damages shall be limited to the total amount paid by or payable to a Party.
17. Time is of the essence in performing all duties and obligations in this Agreement.
18. Neither this Agreement nor any right or obligation hereunder may be assigned in whole or part without the express written and executed consent of both Parties.

EXECUTED on the date written above.

HUNTINGTON-CLEVELAND IRRIGATION COMPANY

By: James Allen Staker
James Allen Staker, President

Attest:

Vickie Tucker
Vickie Tucker, Secretary

PACIFICORP

By: [Signature]
Its: MANAGING DIR