

AFTER RECORDING RETURN TO:

PACIFICORP  
Attn: Property Department  
825 NE Multnomah, Suite 1700  
Portland, Oregon 97232

Grantor: Jerry R. and Brenda J. Powers  
Grantee: PacifiCorp  
Legal: LOT 3 SCOTT MAYTUBBY SP BK 3/PG 363  
Tax Parcel: 03100300023200

## **Groundwater Well Settlement Agreement, Covenant, and Release**

This Groundwater Well Settlement Agreement, Covenant, and Release (the "**Agreement**"), and all Exhibits attached hereto, is by and between PacifiCorp, an Oregon corporation, dba PacifiCorp Energy ("**PacifiCorp**"), and Jerry R. and Brenda J. Powers, jointly and severally (the "**Well Owner**").

### **Background**

- A. PacifiCorp owns the Condit Hydroelectric Project (the "**Project**") located on the White Salmon River in Skamania and Klickitat counties, Washington. The Project includes a former dam site (Condit Dam) and a former reservoir site (Northwestern Lake). PacifiCorp operates the Project under license issued by the Federal Energy Regulatory Commission ("**FERC**"). FERC has authorized PacifiCorp to decommission and remove the Project.
- B. Well Owner owns that certain real property known as Skamania County, Washington Tax Lot 03100300023200 located near the Project ("**Well Owner's Property**"). Well Owner's Property includes a ground water well (the "**Well**").
- C. On October 26, 2011, PacifiCorp breached Condit Dam and drained Northwestern Lake, all as authorized by FERC order. Following the breach of Condit Dam, a number of wells in Well Owner's neighborhood began losing function. Well Owner was concerned about using Well Owner's Well following dam breach because use of the Well without sufficient water in the Well shaft might damage the Well pump. Therefore, as a precaution, Well Owner had a gage installed in the Well to test the water level before using the Well pump. The gage indicated that the Well had lost approximately one hundred feet (100') of water depth but that the Well still had hundreds of feet of water depth and could be safely used without any diminishment in function or risk to the Well pump or other equipment.
- D. Under the terms and conditions of this Agreement, PacifiCorp is willing to provide certain funding mitigation for impacts to the Well and Well Owner is willing to release PacifiCorp from any claim or liability associated with impacts to the Well.

### **Terms and Conditions**

1. **Mitigation for Impacts to Well.** Subject to all of the terms and conditions of this Agreement and subject to the specific dollar limits contained in this Section 1, the parties agree that

PacifiCorp will reimburse Well Owner for the actual, reasonable cost of the following activities, materials and equipment (collectively the "Work"):

- (A) Reimbursement for Completed Work. PacifiCorp will reimburse Well Owner four hundred fifty eight and 76/100 dollars (\$458.76) for the actual, reasonable costs to install a gage and test the Well all as described in the statement from MK Drilling Co. dated March 29, 2012 (a copy of which is attached hereto as Exhibit 1 and incorporated herein by this reference).
- (B) Reimbursement for Additional Work. In the event the Well begins to fail in 2012, PacifiCorp agrees to reimburse the first three thousand and 00/100 (\$3,000.00) of the actual reasonable cost to deepen the Well one hundred feet (100') for the purpose of restoring reasonable function of the Well, subject to the following limits and conditions:
  - (i) Required Notice. PacifiCorp will provide reimbursement for additional drilling under this Section 1(B) only if Well Owner has provided PacifiCorp with a written statement from a licensed well drilling contractor ("Drilling Contractor") confirming that there is no more than thirty feet (30') of water in the column of the Well. The Well Owner must provide PacifiCorp with this written statement on or before December 31, 2012.
  - (ii) PacifiCorp Approval or Rejection of the Required Notice. PacifiCorp must agree with the drilling contractor's written statement before PacifiCorp will become obligated to make any additional reimbursement under this Section 1(B). PacifiCorp will have up to thirty (30) days from the date it receives the drilling contractor's written statement to conduct its own inquiry (if it so desires) and to provide the Well Owner with a written statement either accepting or rejecting the drilling contractor's findings. PacifiCorp may only reject the drilling contractor's written statement on the basis of some objective evidence that the depth of the water column in the Well is more than thirty feet (30') above the bottom of the well.
  - (iii) PacifiCorp Rejection and Dispute Resolution. If PacifiCorp rejects the drilling contractor's findings, PacifiCorp will have no obligation to pay for additional drilling unless and until the parties have resolved any dispute and PacifiCorp has accepted that the depth of the water column in the Well was thirty feet (30') or less. Both parties will cooperate in good faith to resolve any such dispute. Dispute resolution will be based on objective measurements of the water column in the Well.
- (C) No Further Reimbursement. Except as provided in Section 1(A) and Section 1(B) of this Agreement, PacifiCorp will not be obligated under this or any other agreement to contribute payment of any further costs related to modification or restoration of Well Owner's Well.

(D) The scope of work performed and the costs invoiced by MK Drilling Co., or any other Drilling Contractor, must be reasonable. PacifiCorp has no obligation under this Agreement to pay for any Work which is not reasonable in scope or cost. PacifiCorp has the right to have the scope of the Work and the rates charged independently reviewed by its hydrologist, groundwater well professional, or other relevant expert. Upon reasonable notice to Well Owner, PacifiCorp or its representative may visit the Well before, during and/or after any Work to be paid for in whole or in part by PacifiCorp. PacifiCorp or its representative will be given access to inspect the Well. This may involve making water level measurements and conducting a pumping yield test. MK Drilling Co., or any other Drilling Contractor, hired to perform the Work may be referred to hereinafter as the "Vendor."

2. **Documents to be Provided to PacifiCorp.** Within one (1) year of the date of PacifiCorp's execution of this Agreement, the Well Owner will provide PacifiCorp with: (A) a copy of the Vendor's invoice for any Work for which PacifiCorp owes reimbursement to the Well Owner under Section 1 of this Agreement; and (B) evidence that Well Owner has paid the Vendor the full amount due. These documents must be in a form reasonably acceptable to PacifiCorp. PacifiCorp has no obligation to pay reimbursement under Section 1 for any work, material or equipment that has not been documented (as required by this Section 2) within this one (1) year period.
3. **Payment.** Within sixty (60) days of PacifiCorp's receipt of the documents required by Section 2, PacifiCorp will pay to the Well Owner the reimbursement specified in Section 1. PacifiCorp may, in its sole discretion, elect to: (A) accept a copy of a Vendor's invoice in satisfaction of the document requirements of Section 2; and (B) discharge its obligation to pay the reimbursement specified in Section 1 by making such reimbursement payment directly to the Vendor. Well Owner acknowledges and agrees that such payment by PacifiCorp directly to the Vendors will discharge PacifiCorp's duty to reimburse costs under this Agreement and that PacifiCorp will thereafter owe Well Owner no further compensation under this Agreement.
4. **Responsibility for the Work.** By agreeing to pay the reimbursement specified in Section 1 of this Agreement, PacifiCorp is neither agreeing to be responsible for the Work nor in any way representing or warranting that the Work will satisfactorily restore the function of the Well. PacifiCorp has no responsibility for the Well or the Work beyond making the reimbursement payments required by Section 1. Neither the Well Owner nor the Vendor is an agent or employee of PacifiCorp.
5. **Release; Public Statements.** *PacifiCorp and Well Owner acknowledge and agree that this Agreement is entered into in full settlement and resolution of a dispute regarding whether PacifiCorp has any obligation to Well Owner with regard to impacts to the Well. In consideration of the obligations undertaken by PacifiCorp under this Agreement, Well Owner releases PacifiCorp (and all related parties, including subsidiaries, affiliates, agents, employees, and successors in interest) from all claims, liabilities, and damages of any kind (whether known or unknown) which are related in any way to the impact of the Project decommissioning on the Well, or newly installed well gage. This release does not*



*apply to claims that Well Owner may have against PacifiCorp in connection with enforcement of this Agreement. The terms of this release have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise settlement of any and all claims (disputed or otherwise) arising from the impact of the Project decommissioning on the Well.* If Well Owner makes any public statement regarding the impact of Project decommissioning on the Well, Well Owner will affirmatively state that it has entered into an agreement with PacifiCorp settling all claims for impacts to the Well and that PacifiCorp has agreed to reimburse certain of the costs to modify the Well.

## **6. Representations and Warranties.**

**6.1 Well Owner's Representations and Warranties.** Well Owner represents and warrants to PacifiCorp as follows:

- (A) **Ownership.** Well Owner is the owner of Well Owner's Property, the Well and all associated improvements; no other person has any ownership interest in the Well Owner's Property or the Well.
- (B) **No Liens.** Well Owner has not created any encumbrances on or granted any rights in the Well.
- (C) **No Conflicts.** There are no agreements, court or administrative orders, or other limitations that would prevent Well Owner from entering into this Agreement and engaging in the activities and performing the obligations provided for herein.

**6.2 PacifiCorp's Representations and Warranties.** PacifiCorp represents and warrants to Well Owner as follows:

- (A) **No Conflicts.** There are no agreements, court or administrative orders, or other limitations that would prevent PacifiCorp from entering into this Agreement and engaging in the activities and performing the obligations provided for herein.

**7. Well Owner's Successors in Interest; Recording.** The parties intend that the terms of this Agreement will be binding on the Well Owner's successors in interest to the Well Owner's Property and that the release contained in Section 5 above will be treated as a covenant running with the land. Within ten (10) days of the full execution of this Agreement, PacifiCorp will record this Agreement with the relevant county office maintaining title records on the Well Owner's Property. The Well Owner hereby consents to PacifiCorp's recording (and if necessary re-recording) this Agreement. If there is any technical deficiency that prevents effective recording of this Agreement, the parties will cooperate to cure the deficiency such that this Agreement can be recorded no later than twenty (20) days following full execution of this Agreement. Prior to any transfer of the Well Owner's Property, the Well Owner will provide its successor in interest with actual written notice of this Agreement, the release contained in Section 5, and the fact that the release is binding on Well Owner's successors in interest.

- 8. No Admission of Causation or Liability.** This Agreement is not an admission that PacifiCorp's actions in draining Northwestern Lake caused any impact on Well Owner's Property or the Well. PacifiCorp reserves any and all defenses against all claims.
- 9. Notices.** Any notice or other communication required by this Agreement must be in writing and must be delivered personally or sent by certified or registered mail, or by express courier, postage prepaid, to the following addresses:

If to PacifiCorp:  
PacifiCorp Property Management  
825 NE Multnomah Street, Suite 1700  
Portland, Oregon 97232  
Phone: 503-813-5700

If to Well Owner:  
Jerry R. and Brenda J. Powers  
431 Upper Lakeview Road  
White Salmon, Washington 98672  
Phone: 509-993-3361

A notice is considered as having been given (1) on the day of personal delivery, or (2) two days after the date of mailing.

**9.1 Payment Address.** Payment to Well Owner shall be made to the above address.

**10. Miscellaneous.**

**10.1 Choice of Law.** This Agreement is governed by the internal laws of Washington, without regard to its conflict-of-laws provisions.

**10.2 Entire Agreement; Modifications.** This Agreement (including any Exhibits hereto) constitutes the entire agreement between the parties pertaining to the impact of the Project decommissioning on Well Owner's Well and supersedes all prior and contemporaneous agreements, representations, and undertakings. No supplement, modification, or amendment of this Agreement will be binding unless it is in writing and signed by both parties.

**10.3 Waiver.** No waiver of any term of this Agreement constitutes a waiver of any other provision, whether similar or dissimilar. No waiver of any term constitutes a continuing waiver of that term. No waiver is binding unless signed in writing by the waiving party.

**10.4 Severability.** If any term of this Agreement is for any reason invalid or unenforceable, the rest of this Agreement remains fully valid and enforceable, *except* that if the release of liability in Section 5 of this Agreement is found to be invalid, this Agreement will terminate and Well Owner will repay PacifiCorp any funds PacifiCorp has provided Well Owner or Vendor for the Work. This Section 10.4 will survive termination of this Agreement.

**10.5 Binding Effect; Assignment.** This Agreement binds and inures to the benefit of both the parties and their successors and assigns. But the Agreement cannot be assigned without the prior written consent of the other party.

**10.6 Headings.** The headings in this Agreement are for convenience of reference only and do not constitute a part of it. The headings do not affect its interpretation.

**10.7 Interpretation.** Both parties have had the opportunity to negotiate this Agreement and to seek the advice of legal counsel prior to entering into this Agreement. The provisions of this Agreement shall not be construed against the drafter. Unless the context requires otherwise:

(A) The term “including” contemplates “including but not limited to”.

(B) The phrase “Project decommissioning” contemplates all actions associated with the decommissioning and removal of the Project including breach of the dam, draining of the reservoir, sediment transport, re-contouring and re-vegetation of the former reservoir area, dam removal and any and all projects related to decommissioning including work on Northwestern Lake Bridge and the relocation of the City of White Salmon’s water transmission line.

**10.8 Counterparts.** This Agreement may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument.

**10.9 Waiver of Jury Trial.** *To the fullest extent permitted by law, the parties waive any right to a trial by jury respecting 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 or has not been waived.*

[Signature Page Follows]

Agreed:

PacifiCorp

Mark Sturtevant  
Mark Sturtevant,  
Managing Director, Hydro Resources

Well Owner

Jerry R. Powers  
Jerry R. Powers  
Brenda J. Powers  
Brenda J. Powers

STATE OF OREGON )  
COUNTY OF Multnomah ) :ss.

The foregoing instrument was acknowledged before me this 27 day of November 2012 by Mark Sturtevant representing PacifiCorp.

Arianne Poindexter  
NOTARY PUBLIC





[illegible]