

July 31, 1990

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UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CENTRAL UTAH PROJECT, BONNEVILLE UTAH

AGREEMENT AMONG THE UNITED STATES,
CENTRAL UTAH WATER CONSERVANCY DISTRICT, AND
PACIFICORP ELECTRIC OPERATIONS
FOR
THE EXCHANGE OF WATER AND POWER
AND SETTLEMENT OF OLMSTED CONDEMNATION

Bureau of Reclamation
Upper Colorado Region

1 WITNESSETH, that:

2 WHEREAS, with the July 11, 1987, filing of a Declaration of
3 Taking and subsequent amended filings as more particularly
4 described in Exhibit A attached hereto and incorporated herein by
5 reference the United States under condemnation case United States
6 v. 90.53 Acres of Land, Civil No. 83-C-1179W (D. Utah), acquired
7 from UP&L property consisting of the Olmsted Diversion Dam,
8 intake structure, pipeline and appurtenant facilities from the
9 intake structure to and including the pressure box, which joins
10 the Olmsted Flowline to the penstocks, as part of the Bonneville
11 Unit, Central Utah Project; and

12 WHEREAS, historically, UP&L operated the Olmsted
13 hydroelectric project pursuant to License No. 596, issued by the
14 Federal Energy Regulatory Commission, hereinafter referred to as
15 FERC; and

16 WHEREAS, UP&L's nonconsumptive water rights for 429 cfs
17 noted herein were acquired by the United States on April 20,
18 1989, so that water can be stored in both Jordanelle Reservoir
19 and Deer Creek Reservoir under junior applications to appropriate
20 and under exchange applications based on replacement of water in
21 Utah Lake, without either project being required to by-pass water
22 for the said acquired senior water rights; and

23 WHEREAS, the United States has amended its Declaration of
24 Taking in the above described condemnation case to include the

1 Olmsted Power Plant, penstocks, tailrace, and associated lands
2 and facilities, and all Declarations of Taking are included in
3 Exhibit A hereto; and

4 WHEREAS, as part of the stipulation to be approved by the
5 court in this matter, the United States has agreed as partial
6 settlement in the condemnation case to pay UP&L the amount of
7 \$1.7 million in principal and interest (to be allocated between
8 principal and interest at the date of the payment) in addition to
9 principal and interest in the amount of \$4,669,121.20
10 previously paid; and

11 WHEREAS, the United States and UP&L hereby stipulate
12 that in addition to the money paid and to be paid as partial
13 settlement of the condemnation case, UP&L will receive the
14 energy produced from the operation of the Olmsted Power Plant
15 and/or receive such other compensation as provided under this
16 agreement in exchange for water rights, lands and facilities as
17 full payment and settlement of the above referred to condemnation
18 action; and

19 WHEREAS, the District, as the party responsible for the
20 operation, management of and repayment of the reimbursable
21 costs of the Bonneville Unit, Central Utah Project, desires to
22 enter into this agreement to facilitate the above referenced
23 settlement.

24 NOW THEREFORE, in consideration of the mutual agreement and
25 covenants herein contained and in consideration of the above

1 referenced settlement it is agreed among the parties hereto, as
2 follows:

3 DEFINITIONS

4 1. When used herein, the term:

5 (a) "Secretary" or "Contracting Officer" means the
6 Secretary of the United States Department of the Interior, or his
7 duly authorized representative.

8 (b) "District" means the Central Utah Water Conservancy
9 District.

10 (c) "UP&L" means PacifiCorp Electric Operations, doing
11 business in Utah.

12 (d) "Olmsted Power Plant" means the real property
13 including easements and appurtenances and equipment hydraulically
14 interconnected between and including the pressure box and the
15 point at which the tailrace re-enters the Provo River, and also
16 including the electric generation equipment, but excluding the
17 substation and its equipment, as further described in Exhibit A
18 hereto.

19 (e) "Olmsted Tailrace" means the water conveyance
20 channel from the Olmsted Powerhouse to the Provo River to which
21 tailrace the United States has acquired an easement as further
22 described in Exhibit A.

23 (f) "Olmsted Flowline" means the diversion dam, intake
24 structure, pipeline and appurtenant facilities from the diversion
25 dam and intake structure to the pressure box further described in
26 Exhibit A hereto.

1 (g) "UP&L Retained Property" means all land and
2 appurtenant facilities owned by UP&L in Provo Canyon, Utah, or
3 adjacent to the Olmsted Power Plant not described in Exhibit A.

4 (h) "Project" means the Bonneville Unit of the Central
5 Utah Project that is, or as constructed will be operated and
6 maintained by the District.

7 (i) "Project Water" means water made available by
8 development of the Bonneville Unit of the Central Utah Project.

9 (j) "Non-Project Water" means all water physically
10 available in the Provo River at the Olmsted Diversion Dam not
11 designated as Project Water.

12 (k) "Power Water" means Project or Non-Project Water
13 hereafter available for power generation by UP&L at the Olmsted
14 Power Plant including UP&L Water Rights not acquired by the
15 United States.

16 (l) "UP&L Water Rights" means UP&L owned water
17 available for diversion into the Olmsted Flowline at the Bridal
18 Veil Falls, Lost Creek and Guard Quarters points of diversion in
19 Provo Canyon, Utah, and UP&L's Ontario Drain Tunnel water
20 diverted into the Olmsted Flowline at the diversion dam.

21 (m) "The 429 cfs Water" means water condemned from
22 UP&L by the United States and described as:

23 (1) Provo River Decree, Civil No. 2888, for 229
24 cfs, Priority 1897, finding of fact 87(A), paragraph 33(a), page
25 28 as amended by Change Certificate a-261.

1 (2) Application No. 7550, Certificate No. 1125,
2 for 200 cfs, Priority November 11, 1917, as amended by Change
3 Application a-2637, approved under Certificate a-260.

4 (n) "Project Interference" means the net reduction in
5 Power Water - that is the difference between the reduction in
6 available Power Water as a result of Project operation and the
7 additional stored water made available for power generation by
8 the Project.

9 (o) "Non-Project Interference" means the reduction of
10 Power Water in the Olmsted Flowline as a result of delivery of
11 Non-Project Water through the Olmsted Flowline or the storage of
12 Non-Project Water in Project facilities.

13 (p) "Power Water Interference" means both Non-Project
14 Interference and Project Interference as described above.

15 (q) "Third Party Interference" means other
16 interference by a third party which reduces the amount of Provo
17 River water available at the Olmsted Power Plant for the
18 generation of power.

19 (r) "Pooling Account" means the system established
20 to account for Power Water Interference at the Olmsted Power
21 Plant which may occur from time-to-time to the benefit of the
22 District, United States or UP&L.

23 (s) "Year" means water year, beginning on October 1
24 and ending on September 30.

25 (t) "Uncontrollable Force" means any cause beyond the
26 control of the party affected, including but not restricted to,

1 failure of or threat of failure of facilities, lack of
2 Precipitation or drought, flood, earthquake, storm, fire,
3 lightning, epidemic, war, riot, civil disturbance or
4 disobedience, labor dispute, labor or material shortage or
5 sabotage. Upon the occurrence of an Uncontrollable Force, the
6 party claiming inability to perform will use its best efforts to
7 restore performance as quickly as possible.

8 (u) "Historic Property" means any prehistoric or
9 historic district, site, building, structure, or object included
10 in, or now eligible for inclusion in, the National Register of
11 Historic Places which is also part of the Olmsted Power Plant.
12 This term includes, for the purposes of this agreement,
13 artifacts, records, and remains that are related to and located
14 within such properties. The term eligible for inclusion in the
15 National Register of Historic Places includes both properties
16 formally determined as such by the Secretary of the Interior and
17 all other properties that presently meet National Register of
18 Historic Places criteria as specified in 36 C.F.R. § 60.4.

19 DELIVERY AND MEASUREMENT OF WATER FOR POWER

20 2. (a) Subject to the available carrying capacity and
21 space in the Olmsted Flowline and other provisions of this
22 agreement, the following water will be diverted into the Olmsted
23 Flowline by the District and delivered to UP&L without charge
24 except operation and maintenance costs provided for herein at the
25 pressure box for power generation in the following order:

1 (1) All Project Water available to the District
2 at the Olmsted Diversion Dam on the Provo River in excess of
3 Project needs for Project purposes; excluding the required flow
4 described in Subarticle 3(b) and the required amount of water
5 described in Subarticle 3(c) herein; and

6 (2) All Non-Project Water physically available at
7 the Olmsted Diversion Dam on the Provo River, the diversion of
8 which into the Olmsted Flowline will not interfere with existing
9 downstream rights and uses as determined by the Provo River
10 Commissioner or required flows described in Subarticle 3(b) and
11 the required amount of water described in Subarticle 3(c) herein;
12 and

13 (3) UP&L Water Rights available at each
14 tributary's point of diversion into the Olmsted Flowline or at
15 the Olmsted Diversion Dam. UP&L shall be responsible for all
16 costs incurred in operating and maintaining these diversion
17 facilities for such water, except the Ontario Drain Tunnel water.

18 (b) Water delivered to UP&L for generation shall take
19 priority over all other Non-Project Water deliveries in the
20 Olmsted Flowline, except for up to 9 cfs of water delivered by
21 the District to Orem City at the Alta Ditch and UP&L's Ontario
22 Drain Tunnel water delivered to Orem City through the Alpine
23 Aqueduct Reach 1, unless UP&L is compensated as provided for
24 herein for any power generation loss caused by such Non-Project
25 Water deliveries. No compensation will be paid to UP&L for the
26 Power Water Interference caused by delivery of the above 9 cfs

1 Alta Ditch water and the above Ontario Drain Tunnel water.

2 (c) The District and UP&L will measure diversions into the
3 Olmsted Flowline as well as diversions out of the Olmsted
4 Flowline to the points of use of the parties as follows: The
5 District will measure flows at the rated section of the Olmsted
6 Flowline in the gatehouse. The United States or the District
7 will measure flows in the Provo River at or in the vicinity of
8 the Olmsted Diversion Dam. UP&L will measure its water from
9 Bridal Veil Falls, Lost Creek, and Guard Quarters diversion
10 points into the Olmsted Flowline. The District will accurately
11 measure total flows diverted from the Olmsted Flowline through
12 Alpine Aqueduct Reach I. The District will also be responsible
13 for records of storage and release of water in Jordanelle
14 Reservoir or of storage and release of Project Water in Deer
15 Creek Reservoir until such time as Jordanelle Dam is completed or
16 after completion by exchange. UP&L will measure flows through
17 the Olmsted Power Plant. Discharges at the overflow spillway and
18 use of the Ontario Drain Tunnel water will be calculated by the
19 Provo River Commissioner. All measurement of inflows to the
20 Olmsted Flowline, storage in Jordanelle and Deer Creek
21 Reservoirs, as well as outflows for the various uses will be
22 administered and coordinated by the Provo River Commissioner, who
23 will make the final determination in case of dispute. All
24 parties will have access to all measuring points and devices
25 described in Subarticle 2(c) herein and all measuring devices
26 will be kept in a good state of repair by the owning party.

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2 ADMINISTRATION OF WATER

3 3. (a) The District will maximize the storage in
4 Jordanelle Reservoir, and by exchange, in Deer Creek Reservoir of
5 all available Provo River natural flow water during the entire
6 year for the benefit of the District, which storage it is agreed
7 should result in the Power Water Interference projections shown
8 on Page 4 of Exhibit B hereto, made a part hereof and
9 incorporated herein by reference. It is intended that the
10 Project will operate as though the 429 cfs water has been legally
11 subordinated to the water rights of the project for Jordanelle
12 Reservoir and water rights for the Provo River Project and for
13 this Project in Deer Creek Reservoir. Such storage could
14 substantially restrict the quantity of water deliverable
15 hereunder for power generation, even though there may be adequate
16 capacity in the Olmsted Flowline. Also, the delivery by the
17 District of Project Water and Non-Project Water may at times
18 preempt much of the capacity in the Olmsted Flowline. Decreases
19 in generation caused by Power Water Interference shall be
20 compensated as described in Article 4 hereof.

21 (b) UP&L shall not be compensated for any interference
22 caused by the existing 25 cfs minimum streamflow immediately
23 below the Olmsted Diversion Dam.

24 (c) In the event water, in excess of the existing 25
25 cfs minimum stream flow, is required by legislation or other
26 lawful order on the Provo River below the Olmsted Diversion Dam

1 to assure river flows for fishery or other environmental
2 requirements, neither the United States nor the District will be
3 required to compensate UP&L for Power Water Interference caused
4 by diminished flows from those shown on page 4 of Exhibit B for
5 up to 17,000 acre-feet annually of additional water to assure
6 river flows for fishery or other environmental requirements.

7 (d) Water available for UP&L generation may be
8 diminished without compensation to UP&L because of an
9 Uncontrollable Force, or because of outages for maintenance,
10 repair, or replacement or for fishery and environmental purposes
11 as described in Subarticle 3(c) above or up to 5 percent
12 variation from the Power Water Interference projected in Exhibit
13 D, Column 3, and further described in Article 4 hereof. UP&L,
14 the District, and the United States will exercise their best
15 efforts to deliver as much water as possible to UP&L and at the
16 times contemplated in Exhibit B for generation subject to Project
17 purposes; and UP&L will use its best efforts to generate
18 electricity with water so delivered.

19 (e) UP&L's operation of the Olmsted Power Plant as a
20 part of the settlement agreement is based on projection of
21 historical average water flows as detailed in Column 1 of
22 Exhibit D. The parties understand that during the term of this
23 agreement, the actual quantity of water available for the
24 generation of electric power by UP&L at the Olmsted Power Plant
25 may be less than or greater than the projections shown on Exhibit
26 B because the quantity of water from time to time may vary from

1 historical average flows. The parties also understand that
2 compensation to UP&L will be based on the actual Power Water
3 Interference which causes an actual reduction in generation, not
4 the historical average flow shown in Column 1 of Exhibit D.

5 (f) UP&L will be compensated for Power Water
6 Interference only to the extent the water could have been used
7 for power generation had it been delivered. The United States
8 and the District will not receive a credit for stored water
9 released to UP&L that UP&L cannot use for power generation. Upon
10 reasonable notice to UP&L by the District, the District or the
11 United States will receive credit for releases of stored water in
12 excess of projections on page 4 of Exhibit B against the
13 District's or the United States' liability for Power Water
14 Interference if UP&L can reasonably use such water for
15 generation.

16 (g) Neither the District nor the United States shall
17 be responsible to UP&L for Third Party Interference. The
18 District, UP&L, and the United States shall cooperate in
19 protesting any new appropriation, change or exchange of use
20 application affecting water in the Provo River in order to ensure
21 that the District, UP&L, and the United States are protected with
22 respect to water or contract rights. If a change or an exchange
23 application or a new application to appropriate is filed to
24 permit impoundment or the diversion and use of the water, which
25 if approved and implemented would reduce the water available for
26 the generation of power at the Olmsted Power Plant, the parties

1 will exert their best efforts to have said application denied or,
2 in the alternative, to have the approval conditioned on the third
3 party applicant paying for the loss of power. Any payments made
4 or accrued as the result of Third Party Interference during the
5 term of this agreement shall belong to UP&L.

6 THE POOLING ACCOUNT

7 4. (a) The parties have developed a computer program and
8 spreadsheet to account for annual changes to the Pooling
9 Account. The beginning spreadsheet details and explanation are
10 attached as Exhibit D and incorporated herein by reference. The
11 computer program for the spreadsheet will be used in conjunction
12 with the Provo River Commissioner's annual report. If Power
13 Water Interference is less than that shown in Column 2 of
14 Exhibit D, subject to the 5% variance band described in Exhibit
15 D, credits will accrue to the benefit of the United States or the
16 District in the Pooling Account. If Power Water Interference is
17 greater than that shown in Column 2 of Exhibit D, subject to the
18 5% variance band described in Exhibit D, debits to the District
19 and the United States will accrue to the benefit of UP&L in the
20 Pooling Account. The parties also understand that compensation
21 to UP&L will be based on actual Power Water Interference that
22 causes reduction in generation.

23 (b) On or before November 15 of each calendar year of this
24 agreement, the actual Project Interference and actual Non-Project
25 Interference will be determined in acre-feet for the previous
26 Year ending September 30 and the total Power Water Interference

1 will be entered into the spreadsheet computer program in Column
2 3, of Exhibit D, Actual Power Water Interference. The computer
3 program will then calculate, as further described in Exhibit D,
4 taking into account the 5% variance band described in Exhibit D,
5 any credits or debits arising from the actual Power Water
6 Interference for the benefit of the District, United States, and
7 UP&L and an updated spreadsheet will be produced and distributed
8 by UP&L to the parties. In case of disputes over water usage or
9 calculations of Power Water Interference and credits, the
10 determination of the Provo River Commissioner shall be final and
11 binding upon the parties.

12 (c) Annually, any cash compensation to UP&L, will be
13 due and payable within 60 days after determination of such
14 interference as described above in Subarticle 4(b). If payment is
15 in energy, a mutually agreeable schedule for delivery will be
16 established within the same 60 day period. The District shall
17 provide such compensation as is due for Non-project Interference.
18 The United States shall provide such compensation as is due for
19 Project Interference less accumulated credits, if any, until
20 Jordanelle Reservoir is constructed and becomes operational so as
21 to make available up to 20,000 acre-feet of Project Water
22 annually for use by the District. Thereafter, the District shall
23 provide such compensation as is due for total Power Water
24 Interference and will benefit from any credits due if such
25 interference is less than the projected Power Water Interference

1 shown in Column 2 of Exhibit D, except in the case of termination
2 under Article 6(b).

3 (d) No debit or credit shall accrue in the Pooling
4 Account until this agreement is executed, the settlement of the
5 above referenced condemnation suit is approved by the Court and
6 the Olmsted Power Plant becomes operational.

7 OPERATION, MAINTENANCE AND REPLACEMENT

8 5. (a) Upon the filing of the Fourth Amended
9 Declaration of Taking, attached as a part of Exhibit A, the
10 United States will own the Olmsted Power Plant. However, as a
11 condition of the court-ordered settlement of the condemnation
12 action filed by the United States against UP&L, UP&L will pay all
13 expenses at the Olmsted Power Plant incident to the generation of
14 power and will operate, maintain and repair the Olmsted Power
15 Plant for the United States during the term hereof, pursuant to
16 exclusive authority granted to it by the Department of the
17 Interior, will comply with all Federal, State and local laws and
18 regulations pertinent to the operation pursuant to the exclusive
19 authorizing authority of the Department of the Interior, and will
20 own the electrical generation produced. Replacement of the
21 Olmsted Power Plant or its equipment by UP&L will be governed by
22 Subarticle 6(a).

23 (b) The District, at its expense, will operate,
24 maintain and repair the Olmsted Flowline and will comply with all
25 Federal, State and local laws and regulations pertinent to its
26 operation; provided however, in the event of failure or to

1 prevent an agreed imminent failure of the Olmsted Flowline
2 between the Alpine Diversion Structure and the pressure box due
3 to an Uncontrollable Force, UP&L shall pay one-half the direct
4 labor and material costs, excluding overhead, of repair or
5 replacement to restore operation of the Olmsted Flowline between
6 the Alpine Diversion Structure and the pressure box or elect to
7 cease operation of the Olmsted Power Plant under provisions of
8 Subarticle 6(a).

9 (c) UP&L will pay to the District a percentage of the
10 direct operation and maintenance costs of the trash raking
11 system located at the Olmsted Flowline intake structure in the
12 same ratio that Power Water diverted at the Olmsted Diversion Dam
13 bears to water for other purposes diverted into the Olmsted
14 Flowline.

15 (d) UP&L, at its expense, prior to placing the Olmsted
16 Power Plant and Olmsted Tailrace back into operation will:

17 (1) Develop and implement a Hazardous Waste
18 Management Plan subject to approval by the United States. The
19 plan will be followed during the term of this agreement and will
20 be modified by UP&L to accommodate changes in applicable laws and
21 regulations.

22 (2) Ensure the Olmsted Power Plant is in
23 compliance with all applicable laws, and

24 (3) Remove, from the Olmsted Power Plant all
25 hazardous wastes and solid wastes identified by the United
26 States not required for operation, including any contaminants

1 identified in the hazard waste survey by the United States for
2 the "Contaminant Survey Checklist of Proposed Real Estate
3 Acquisitions."

4 (e) Except as otherwise provided for in this agreement
5 UP&L, at its expense, shall preserve and maintain the Olmsted
6 Power Plant in accordance with the recommended approaches in the
7 Secretary of the Interior's Standards for Rehabilitation and
8 Guidelines for Rehabilitating Historic Buildings (National Park
9 Service, 1983) in order to preserve those qualities that make the
10 Olmsted Power Plant eligible for inclusion on the National
11 Register of Historic Places. No construction, alteration,
12 remodeling or disturbance of the ground surface or facilities of
13 the Olmsted Power Plant shall be undertaken which would affect
14 the integrity, appearance or cultural use of the Olmsted Power
15 Plant without the prior written permission of the United States
16 following consultation with the Utah State Historic Preservation
17 Officer.

18 (f) Prior to operation of the Olmsted Power Plant, UP&L in
19 consultation with the District, and the United States shall
20 develop a coordinated Emergency Action Plan setting forth
21 procedures to be followed in case of accident or failure of the
22 Olmsted Power Plant or the Olmsted Flowline. UP&L will be
23 primarily responsible for the Emergency Action Plan for the
24 Olmsted Power Plant. The District will be primarily responsible
25 for the Emergency Action Plan for the Olmsted Flowline.

1 (g) Not later than April 1 of each year, the District and
2 UP&L in consultation with the United States, will meet together
3 to schedule outages and maintenance and to project generation
4 during the remainder of that Year and will periodically review
5 and revise, if necessary, the Emergency Action Plans for the
6 Olmsted Power Plant and the Olmsted Flowline.

7 (h) UP&L and the District shall coordinate their actions
8 for the operation, maintenance and repair of the Olmsted Power
9 Plant and Olmsted Flowline as appropriate to accomplish the terms
10 of this agreement.

11 (i) The United States shall be permitted access upon
12 reasonable advance notice to the Olmsted Power Plant in order to
13 ascertain if the conditions of this agreement are being
14 observed.

15 TERM OF AGREEMENT AND TERMINATION

16 6. This agreement shall be effective upon execution and
17 will remain in full force and effect for 25 years or until
18 December 31, 2016, whichever is the first to occur, at which time
19 the agreement may be renewed by the mutual written agreement of
20 the United States, the District and UP&L, or terminated. Upon
21 termination, UP&L will surrender to the United States the Olmsted
22 Power Plant, certify current compliance with the Hazardous Waste
23 Management Plan and applicable laws and will be responsible for
24 removing from the Olmsted Power Plant any hazardous items
25 identified in the Hazardous Waste Management Plan or resulting
26 from UP&L's operation of the Olmsted Power Plant pursuant to this

1 agreement. Prior to the end of the 25 year term hereof, this
2 agreement may be terminated by the United States or UP&L as
3 further described in this article.

4 (a) UP&L has the right to cease generation at the
5 Olmsted Power Plant and terminate this agreement for any reason
6 upon reasonable notice to the United States. If UP&L exercises
7 its right under this subarticle, the obligation for further
8 compensation from the United States or the District is
9 terminated. After such termination, and upon surrender of the
10 Olmsted Power Plant in accordance with Article 6 above, UP&L
11 shall have no duty to perform routine maintenance, or make
12 replacements of plant or equipment or return the Olmsted Power
13 Plant to an operable condition if the Olmsted Power Plant is
14 rendered inoperable by accident or any cause.

15 (b) The United States may at anytime terminate this
16 agreement upon 60 days notice to UP&L. It is further agreed that
17 the United States will terminate the agreement upon request of
18 the District. If the termination notice is given at the request
19 of the District, the District will give notice to UP&L and to the
20 United States of its request for termination. The United States
21 shall promptly confirm the receipt of notice from the District
22 and the termination of this agreement, pursuant to that request.
23 However, the 60 day notice period to UP&L shall commence with the
24 service of the request by the District to the United States for
25 termination and the service thereof on UP&L. If the United
26 States terminates this agreement pursuant to this subarticle at

1 any time other than the Year's end, the Power Water Interference
2 for the year of the termination will be calculated on a monthly
3 basis and entered into the spreadsheet computer program prior to
4 payment of the net present value of the generation pursuant to
5 this subarticle. The termination date will be adjusted to the
6 nearest month's end for calculation of the net present value cash
7 out payment due UP&L. Page 2 of Exhibit D shows adjustments to
8 the net present value cash out payable pursuant to termination
9 under this subarticle at any time. Prior to making any
10 substantial capital expenditure at the Olmsted Power Plant, UP&L
11 may consult with the United States and the District regarding
12 possible termination pursuant to Article 6. Upon agreement of
13 all the parties, the 60 day notice may be lengthened to allow
14 UP&L to recoup its capital expenditure.

15 (1) Upon execution of this agreement, the United
16 States will obligate funds from fiscal year 1990 appropriations
17 in the amount of \$5,401,000, as shown on Exhibit D, referred to
18 as the Pooling Account, which represents for settlement purposes
19 only, the maximum net present value at the date of execution of
20 this agreement of the remaining generation at the Olmsted Power
21 Plant during the term hereof. Such obligation of funds is a
22 condition precedent to the validity of this agreement. Said
23 funds will be maintained during the term hereof at an amount
24 sufficient to compensate UP&L for the net present value of the
25 remaining generation as shown on Exhibit D. That obligation may
26 be reduced during the agreement term to reflect water diverted

1 for environmental purposes pursuant to Subarticle 3(c). Upon
2 termination pursuant to this subarticle, compensation due UP&L by
3 the United States will be provided from said funds. Any surplus
4 in the Pooling Account shall be credited against the obligation
5 of the United States and the District in accordance with
6 paragraph (2) below.

7 (2) Upon termination pursuant to this subarticle,
8 if termination occurs prior to Jordanelle Reservoir becoming
9 operational so as to make available up to 20,000 acre-feet of
10 Project Water annually for use by the District, the United
11 States shall provide to UP&L such compensation as is due for
12 prior Project Interference and the net present value of the
13 generation for the remaining period of the agreement and the
14 District shall provide to UP&L such compensation as is due for
15 Non-Project Interference. If termination occurs after Jordanelle
16 becomes operational, the District shall provide to UP&L such
17 compensation as is due for Project Interference after Jordanelle
18 becomes operational and for all prior Non-Project Interference,
19 and the United States shall provide and pay the then net present
20 value for the remaining term of this agreement. In the event any
21 credit to the benefit of the United States or the District has
22 accrued in the Pooling Account as a result of Power Water
23 Interference being less than projected, the credit shall first be
24 credited against Project Interference and then against the
25 obligation of the United States to compensate UP&L the net

1 present value of the generation for the remaining period of the
2 agreement.

3 (3) Whether termination is by the United States
4 or UP&L the District will take over maintenance of the Olmsted
5 Power Plant pursuant to the 1965 Repayment Contract between the
6 District and the United States (Contract No. 14-06400-4286) as
7 amended and will assume UP&L's obligation to maintain the Olmsted
8 Power Plant in such a manner so as to preserve the integrity of
9 the Olmsted Power Plant as a Historic Property listed on the
10 National Historic Register of Historic Places as set forth in
11 Subarticle 5(e) hereof. However, upon termination, if the
12 option under Subarticle 6(c)(1) is exercised, UP&L will under the
13 provisions of Subarticle 6(c)(1) retain maintenance
14 responsibility of the Olmsted Powerhouse.

15 (c) During the term of this agreement, UP&L will have the
16 exclusive right to operate from the Olmsted Powerhouse the
17 existing Olmsted Substation, including that part of the
18 substation presently located upon the land acquired by the
19 United States because part of the substation is integrated into
20 the exterior wall of the Olmsted Powerhouse. The Powerhouse is a
21 part of the Olmsted Power Plant. Upon termination of this
22 agreement by any party or for any reason, the United States must
23 elect either Subarticle 6(c)(1) or 6(c)(2), but it shall have no
24 duty to make the Powerhouse operable if the Powerhouse for any
25 reason has been rendered inoperable.

1 (1) To give UP&L the exclusive right to use and
2 occupy the Olmsted Powerhouse to operate the Olmsted Substation
3 until such time as use of the Powerhouse to operate the
4 Substation is no longer required by UP&L. During such
5 operation, UP&L will continue to maintain the Powerhouse in
6 accordance with provisions of Subarticle 5(e), or

7 (2) To pay UP&L the amount necessary to disassociate
8 operation of the Olmsted Substation from the Powerhouse, plus any
9 amount incurred by UP&L to mitigate damage to the Historic
10 Property caused by said disassociation. Such amount is to be
11 determined by mutual agreement by the parties hereto. If the
12 United States elects to pay UP&L the disassociation costs
13 pursuant to paragraph (2) of this subarticle, the United States
14 shall also grant to UP&L the right to use and maintain in
15 perpetuity for the Olmsted Substation the property between the
16 Powerhouse and that part of the Substation retained by UP&L. If
17 for any reason the United States is unable to proceed under
18 paragraph (1) of this subarticle, or if it so elects and is
19 thereafter unable to perform thereunder, the United States agrees
20 to pay to UP&L the disassociation amount. The United States is
21 excused from its obligations under this subarticle if, prior to
22 the termination of this agreement, UP&L permanently ceases to use
23 the Powerhouse to operate the Olmsted Substation or to use that
24 part of the substation located upon the land acquired by the
25 United States.

1 (d) Any costs incurred by the United States in the Olmsted
2 condemnation action or under the provisions of this agreement
3 shall be considered Project construction costs subject to
4 repayment by the District pursuant to the repayment contract
5 (Contract No. 14-06-400-4286) as amended between the District and
6 the United States. Any costs incurred by the District or
7 payments by the District to UP&L pursuant to the District's
8 obligation under this agreement shall not be considered as
9 Project construction costs nor shall such expenditures be
10 credited against the District's repayment obligation to the
11 United States.

12 SUCCESSORS IN INTEREST

13 7. The benefits of this agreement may not be sold,
14 transferred, voluntarily or by operation of law, or assigned by
15 any party without the express written consent of the other
16 parties. The Provisions of this agreement shall apply to and
17 bind the assigns of the United States and the successors and
18 assigns of the District and UP&L.

19 LIABILITY

20 8. Except as otherwise provided in this agreement,
21 each party is liable for the actions of its own employees and
22 agents to the extent provided by law. The liability of the
23 United States arising from the operation or use of the Olmsted
24 Power Plant is limited to that allowed by the Federal Tort Claim
25 Act, 28 U.S.C. § 2671 et seq. The responsibility of the United

1 States hereunder shall be fully and completely assumed by UP&L
2 for the period that UP&L operates the Olmsted Power Plant.

3 LITIGATION

4 9. (a) As a consequence of the Court settlement
5 stipulation, the United States represents that UP&L may operate
6 the Olmsted Power Plant during the term of this agreement and any
7 extensions thereto pursuant to the exclusive authority
8 granted to it by the Reclamation Laws of the United States as
9 described in Exhibit C hereto, incorporated herein by reference.
10 Upon execution of this agreement, UP&L will forward a copy of
11 Exhibit C to the FERC and the official service list of the
12 Olmsted licensing proceeding at FERC with a notice that the
13 United States has authorized operation to commence on or after
14 September 30, 1990, depending on water availability pursuant to
15 the authority described in Exhibit C.

16 (b) In the event that litigation or threat of litigation
17 over the legal authority to operate the Olmsted Power Plant
18 pursuant to this agreement prevents UP&L from commencing
19 operation of the Olmsted Power Plant by September 30, 1990, or
20 thereafter is successful in stopping UP&L from operating the
21 Olmsted Power Plant, the United States, at its discretion shall
22 either;

23 (1) Provide UP&L amounts of replacement power,
24 delivered during the approximate times UP&L would generate
25 electric power at the Olmsted Power Plant, based on Power Water
26 projected in Exhibit B to be available, equal to the estimated

1 power production specified in Exhibit D, Column 16, as may be
2 modified to reflect environmental requirements described in
3 Subarticle 3(c) hereof for the period of actual generation loss
4 during the remaining term of this agreement, or

5 (2) Provide UP&L the applicable cost payment as
6 set out in Subarticles 6(b) and 6(c) herein, as may be modified
7 to reflect environmental requirements described in Subarticle
8 3(c) hereof for the period of actual generation loss during the
9 remaining term of this agreement.

10 (c) In the event litigation described in Subarticle 9(b)
11 is not resolved in a timely manner or UP&L is prevented from
12 operating the Olmsted Power Plant, the United States shall of its
13 own determination or at the request of the District exercise its
14 right to terminate this agreement under Subarticle 6(b) and 6(c)
15 herein. If such litigation prevents UP&L from commencing
16 operation of the Olmsted Power plant, and the United States
17 and/or the District elects to terminate, the applicable cost
18 payment for termination under Subarticle 6(b) and 6(c) shall be
19 \$5,284,000.

20 OFFICIALS NOT TO BENEFIT

21 10. No Member of or Delegate to Congress or Resident
22 Commissioner or official of the District or UP&L shall be
23 admitted to any share or part of this agreement or to any
24 benefit that may arise herefrom, other than as a water user or
25 landowner in the same manner as other water users or landowners
26 or as a shareholder or customer of UP&L.

1 AMENDMENT

2 11. This agreement may not be amended, altered, or
3 modified except in writing, and any amendment(s) must be signed
4 by all of the parties.

5 ASSIGNMENT LIMITED - SUCCESSORS AND ASSIGNS OBLIGATED

6 12. The provisions of this agreement shall apply to and
7 bind the successors and assigns of the parties hereto, but no
8 assignment or transfer of this agreement or any right or interest
9 therein shall be valid until approved in writing by all parties.

10 ENTIRETY CLAUSE

11 13. This agreement constitutes the entire agreement
12 between the United States and UP&L with respect to the settlement
13 of United States v. 90.53 Acres of Land, Civil No. 83-C1179W (D.
14 Utah).

15 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

16 14. The expenditure or advance of any money or the
17 performance of any obligation of the United States under this
18 agreement shall be contingent upon appropriation or allotment of
19 funds by Congress. No liability shall accrue to the United
20 States in case funds are not appropriated or allotted. However,
21 the failure to obtain such funds or appropriations does not void
22 UP&L's right to seek just compensation for the condemnation in
23 the event the United States is unable to meet its obligations
24 under this agreement. Funds in the amount of \$5,401,000 are
25 presently available from funds appropriated by Congress in the
26 fiscal year 1990 appropriations act and upon execution of this

1 agreement, as a condition precedent to the validity of this
2 agreement, will be obligated and will thereafter throughout the
3 term of this agreement remain obligated by the United States for
4 payment in accordance with the provisions of Article 6(b)(1) or
5 Article 9 hereof.

6 NOTICES

7 15. (a) Any notice authorized or required to be given to
8 the District shall be delivered or mailed postage prepaid to the
9 General Manager, Central Utah Water Conservancy District, 355
10 West 1300 South, Orem, Utah 84058. Any notice authorized or
11 required to be given to UP&L shall be delivered or mailed
12 postage prepaid to PacifiCorp Electric Operations, Senior Vice
13 President, 1407 West North Temple Street, Salt Lake City, Utah
14 84140. Any notice authorized or required to be given to the
15 United States shall be delivered or mailed postage prepaid to the
16 Regional Director, Upper Colorado Region, Bureau of Reclamation,
17 P.O. Box 11568, Salt Lake City, Utah 84147. Notice shall be
18 effective on the date of delivery or mailing.

1 (b) The designation of the addresses or the addresses
2 provided in this article for other notices.

3 IN WITNESS WHEREOF, the parties hereto have signed their
4 names the day and year first above written.

5
6 UNITED STATES OF AMERICA

7
8 By _____
9 Regional Director
10 Upper Colorado Region
11 Bureau of Reclamation
12

13
14 CENTRAL UTAH WATER CONSERVANCY
15 DISTRICT
16

17 ATTEST:

18
19
20
21 _____
22 Secretary
23 (Seal)

24 By _____
25 President

26
27 PACIFICORP ELECTRIC OPERATIONS

28 By _____
29 Vice President
30
31
32
33
34