2015-006439
Klamath County, Oregon

00171356201500064390240241

06/19/2015 08:14:47 AM Fee: $157.00

After recording return to:

PacifiCorp
825 NE Multnomah Street, Suite 1700
Portland, OR 97232
ATTN: Property Management

Re-recording Memorandum of Agreement and Restrictive Covenant to attach Exhibit A and Exhibit B.

Originally recorded October 23, 2014 at Volume 2014, Document 011149

Grantee: PacifiCorp, an Oregon corporation

Grantor: DHH Oregon Company, LC, an Iowa limited liability company

2014-011149
Klamath County, Oregon
00160604201400111490040049
10/23/2014 01:55:35 PM Fee: $57.00

Recorded & Returned
Richard S. Forsyth
Attorney at Law

After recording, return to:

PacifiCorp
c/o Miller Nash LLP
111 S.W. Fifth Avenue, Suite 3400
Portland, Oregon 97204
ATTN: Joshua M. F. Sasaki

MEMORANDUM OF AGREEMENT AND RESTRICTIVE COVENANT

Grantee: PacifiCorp, an Oregon corporation ("PacifiCorp")

and

Grantor: DHH Oregon Company, LC, an Iowa limited liability company ("DHH")

September 24, 2014

The Tax Account Numbers for the property subject to this instrument are: **3708-00000-01100-000; 3708-00000-01200-000; 3808-00000-00400-000; 3808-00000-00403-000; 3808-004CO-00101-000; 3808-004DO-00101-000; 3808-005DO-01000-000; 3808-00600-00100-000; 3808-00700-00101-000; 3808-00800-00100-000; 3808-00800-00201-000; 3808-009BO-01800-000.**

Related to Prior Recordings: Vol. 158 Pg 183 No. 63953; Vol. 233-400 No. 42140; Recorded District Court of the United States Settlement *In Equity* No. E-8479, dated July 19, 1920 (the "1920 Stipulation")

Property Legal Description: Specific Parcels within Sections 28, 29, 31 – 33, Township 37 South, Range 8 East, Willamette Meridian, and Sections 4 – 9, Township 38 South, Range 8 East, Willamette Meridian, all in Klamath County, Oregon, as more specifically described on **Exhibit A** (the "Property").

1. Settlement Agreement. This Memorandum of Agreement is executed for recording in consideration of the settlement of claims, consideration paid, and the covenants and promises contained in that Settlement and Mutual Release agreement between PacifiCorp and DHH regarding the Property and attached as **Exhibit B** ("Settlement Agreement").

2. Successors and Assigns. The Settlement Agreement is binding on the Property and any owner as a real covenant and equitable servitude and is intended to be binding on DHH's successors, tenants, and assigns. This Agreement is for the sole benefit of the successors or assigns of PacifiCorp. Nothing contained herein shall be construed or deemed to constitute a dedication for any public use or purpose whatsoever.

3. Notices. Any notices or consents required or permitted by this Agreement shall be in writing and shall be deemed to have been given or made when actually received or if sent by

certified mail, postage prepaid, return receipt requested, upon the earlier of actual receipt or five days after mailing, and addressed, as follows, unless such address is changed by written notice hereunder:

If to PacifiCorp:

Property Management
PacifiCorp
825 N.E. Multnomah St., Suite 1700
Portland, OR 97232

If to DHH or Hill Enterprises:
Attn: David Hill
1255 Jordan Creek Parkway
Waukee, IA 50263

4. Counterparts. This Agreement may be executed in any number of the counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the date and year hereinabove written.

DHH OREGON COMPANY, LC

By: Hill Enterprises Company, its Sole Member

By: _____
David Hill, President

PACIFICORP

By: _____
Micheal Dunn, President & CEO of
PacifiCorp Energy, a division of PacifiCorp

State of IOWA, County of Dallas

This instrument was acknowledged before me this 18th day of September, 2014, by David Hill as President of Hill Enterprises Company, the Sole Member of DHH Oregon Company, LC.

Keri E. Paul
Notary Public for the State of Iowa

KERI E. PAUL
Commission Number 109071
My Commission Expires
12-24-14

State of UTAH

County of Salt Lake

This instrument was acknowledged before me on September 24, 2014, by Micheal Dunn, President & CEO of PacifiCorp Energy, a division of PacifiCorp.

Candace Turner

Notary Public -- State of Utah
My commission expires: Dec 19, 2016
(complete line above if notarial stamp does not include expiration date of commission)

Notary Public
CANDACE TURNER
Commission #662367
My Commission Expires
December 19, 2016
State of Utah

EXHIBIT A

Property Legal Description
to Memorandum of Agreement and Restrictive Covenant

Parcel A:

Parcels 1 and 2 of Land Partition 05-11 being a re-plat of portions of Parcel 1 and 2 of LP 60-94 situated in the SW 1/4 of Section 28, the SE 1/4 of Section 29, Sections 31, 32, 33, Township 37 South, Range 8 East of the Willamette Meridian and Sections 4, 5, 6, the NE 1/4 of Section 7, the North 1/2 of Section 8, the NW 1/4 of Section 9, Township 38 south, Range 8 East of the Willamette Meridian, Klamath County, Oregon, being recorded with the County Clerk on June 2, 2011 in Volume 2011-006764.

Parcel B:
A 60 foot wide drainage/irrigation easement: across Parcel 3 of Land Partition 05-11 for the benefit of Parcel 2 of Land Partition 05-11 as created by the plat filed June 2, 2011 in Volume 2011-006764.

EXHIBIT B

Settlement Agreement
to Memorandum of Agreement and Restrictive Covenant
on following 17 pages

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

RECITALS

A. This Agreement is entered into among PacifiCorp, an Oregon corporation, including its unincorporated division/assumed business name PacifiCorp Energy (collectively referred to as "PacifiCorp"); DHH Oregon Company, LC, an Iowa limited liability company ("DHH"); and Hill Enterprises Company, an Iowa corporation ("Hill Enterprises"), the sole member of DHH and the prior owner of the Property (as defined in Recital B). PacifiCorp, Hill Enterprises, and DHH are hereinafter referred to collectively as "the Parties."

B. DHH is the present owner of certain real property along Upper Klamath Lake, legally described at Exhibit A ("the Property"), which includes sections of a dike commonly referred to as Geary Dike or Caledonia Dike ("Geary Dike"). DHH acquired the Property on August 25, 2014, from Hill Enterprises, who acquired the property on December 12, 2013. For purposes of this Agreement, the term "Geary Dike" is limited to the portion of the Geary Dike located on Upper Klamath Lake on or adjacent to the real property owned by DHH as described in Exhibit A.

C. PacifiCorp and its predecessor, The California-Oregon Power Company entered into a stipulation in 1920 in the United States District Court for the District of Oregon (the "1920 Stipulation") that resolved litigation relating to the construction of the Link River Dam. *See Geary Investments Company, et al. v. California-Oregon Power Company*, Case No. E-9479. A copy of the 1920 Stipulation is attached as Exhibit B.

D. After acquiring the Property, Hill Enterprises demanded that PacifiCorp inspect and maintain Geary Dike, but PacifiCorp denied any obligation to do so.

E. On June 5, 2014, PacifiCorp and Hill Enterprises mediated their dispute before the Honorable Michael Hogan. The Parties enter into this Agreement to document the terms of the negotiated settlement.

AGREEMENT

1. In consideration of the payment to DHH by PacifiCorp in the amount of FOUR HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ($450,000.00), DHH and Hill Enterprises hereby release PacifiCorp and its related entities, affiliates, parent companies, subsidiaries, predecessors, successors and insurers, from: (a) any and all past or future obligations to protect, prevent damage to, inspect, maintain, and repair Geary Dike or the Property; and, (b) any and all obligations to protect and hold DHH or Hill Enterprises harmless for damage to Geary Dike or the Property, whether any of the obligations arise out of or from the 1920 Stipulation or from any other activity or source of law.

2. As consideration for this settlement, and except for the rights and obligations set forth in this Agreement, PacifiCorp, Hill Enterprises, and DHH mutually release and discharge all claims, potential claims, counterclaims, liabilities, demands, damages, suits, rights and causes of action of every kind and nature, between them relating to or concerning Geary Dike or the Property, including, but not limited to, all claims relating to or concerning any past or future obligation to protect, prevent damage to, inspect, maintain, or repair Geary Dike, the Property, or any lands protected by Geary Dike.

3. The Parties agree that this mutual release extends to and includes all employees, agents, and principals of PacifiCorp, Hill Enterprises, and DHH and their respective related entities, affiliates, parent companies, subsidiaries, predecessors, successors and insurers. Moreover, the Parties agree that this mutual release extends to

and includes past and present injury and damage, whether known or unknown, and injury and damage that may later develop, whether expected or unexpected, relating to Geary Dike or the Property.

4. DHH agrees to assume any and all of PacifiCorp's and its predecessor's obligations as set forth in the 1920 Stipulation, relating to or concerning Geary Dike or the Property.

5. DHH agrees and acknowledges that PacifiCorp and its related entities, affiliates, parent companies, subsidiaries, predecessors, successors and insurers were and are released from any and all obligations to protect, prevent damage, hold harmless, inspect, repair and maintain relating to or concerning Geary Dike or the Property, whether arising from the 1920 Stipulation or from any other activity or source of law.

6. DHH agrees to indemnify PacifiCorp and its related entities, affiliates, parent companies, subsidiaries, predecessors, successors and insurers from any claims, potential claims, counterclaims, liabilities, demands, damages, suits, rights and causes of action of every kind and nature relating to the Property by Hill Enterprises' past lessees, tenants, and invitees and DHH's present and future lessees, tenants, and invitees.

7. This Agreement represents a compromise of a disputed claim. It is not to be considered an admission of liability or responsibility by any person or entity as to the merits of the underlying dispute.

8. DHH's indemnity, release, and assumption of obligations are all intended to be real covenants and equitable servitudes that will run with the land owned or controlled by DHH or its affiliates and to bind and encumber all successors in title, tenants, or other

property interest holders. DHH further agrees to deliver for recording the Memorandum of Agreement and Restrictive Covenant attached as Exhibit C.

9. PacifiCorp agrees to pay DHH the sum identified in Paragraph 1 above within fifteen (15) business days following the execution of this Agreement. Hill Enterprises hereby acknowledges and agrees that payment of such sum by PacifiCorp to DHH will satisfy PacifiCorp's payment obligation to Hill Enterprises as agreed to in their mediation.

10. All disputes arising from or relating to this Agreement shall be submitted in writing to Judge Michael Hogan for final, binding, and non-appealable resolution.

11. The Recitals set forth above and the attached Exhibits are hereby incorporated in and made a part of this Agreement by this reference.

12. This document contains all the terms of the Agreement. It is being signed voluntarily and without reliance on any other promises or representations.

13. The parties to this Agreement negotiated the terms of the Agreement through counsel and the terms of the Release shall not be construed against any party as the drafting party.

14. This Agreement may be signed in counterparts and signatures may be submitted by facsimile or email communication.

HILL ENTERPRISES COMPANY

Dated: 9-29-14

By: David Hill, President

DHH OREGON COMPANY, LC
By: Hill Enterprises Company, its Sole Member

Dated: 9-29-14

By: David Hill
David Hill, President

Approved as to form

Dated: 9-18-14

Nathan J. Barber
Attorney for Hill Enterprises Company, and DHH Oregon Company, LC

PACIFICORP

Dated: 9-24-2014

By: Micheal Dunn
Micheal Dunn, President & CEO of
PacifiCorp Energy, a division of PacifiCorp

MILLER NASH, LLP

Approved as to form

Dated: SEPT. 25, 2014

Bruce L. Campbell
Attorney for PacifiCorp

EXHIBIT A
Parcel No. and Legal Description

Parcel A:

Parcels 1 and 2 of Land Partition 05-11 being a re-plat of portions of Parcel 1 and 2 of LP 60-94 situated in the SW 1/4 of Section 28, the SE 1/4 of Section 29, Sections 31, 32, 33, Township 37 South, Range 8 East of the Willamette Meridian and Sections 4, 5, 6, the NE 1/4 of Section 7, the North 1/2 of Section 8, the NW 1/4 of Section 9, Township 38 south, Range 8 East of the Willamette Meridian, Klamath County, Oregon, being recorded with the County Clerk on June 2, 2011 in Volume 2011-006764.

Parcel B:
A 60 foot wide drainage/irrigation easement: across Parcel 3 of Land Partition 05-11 for the benefit of Parcel 2 of Land Partition 05-11 as created by the plat filed June 2, 2011 in Volume 2011-006764.

EXHIBIT B

1920 STIPULATION

See attached.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF OREGON.

GEARY INVESTMENT COMPANY, an Oregon corporation, et al., Complainants,	)	In Equity
vs.	)	No. E-8479
CALIFORNIA-OREGON POWER COMPANY, a corporation, Respondent.	)	

WHEREAS the above entitled suit is now pending in the above mentioned Court upon complaint of complainants, respondent having appeared by stipulation and not having answered or otherwise appeared, and having been granted an extension of time, appearance to be made upon notice from complainants; and

WHEREAS the purpose of the above entitled suit is to secure injunction order to restrain respondent from maintaining dam at the head of Link River, as fully set forth in said complaint, and to recover damages for and on account of results alleged to have followed the erection and previous maintenance of said dam; and

WHEREAS the parties propose to stipulate as follows and to have said suit dismissed;

IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN THE PARTIES FOR CONSIDERATION HEREINAFTER EXPRESSED:

I.

That the above entitled suit be dismissed and that the provisions herein contained shall apply to and bind not only the parties hereto but also their heirs, assigns, contractees, grantees and successors in interest, whether they acquired their interest

at the time of the signing of this stipulation or prior or subsequent thereto; that the parties hereto bear their and its respective costs incurred in this suit.

II

That respondent shall have the right immediately or at any time hereafter to replace flash boards and control boards in its said dam, and to construct a permanent dam in Link River, and to maintain same therein, and thus control the storage of water in Upper Klamath Lake as it may deem necessary; provided, however, that the water level shall not be maintained at an elevation exceeding 4143.3 or at a lower level than 4137 - in other words, in accordance with contract entered into by respondent and United States of America.

III.

Respondent, in consideration of this stipulation, agrees to protect the dikes, levees and lands hereinafter described against the rising of the waters of Upper Klamath Lake as herein contemplated, and to protect and hold complainants harmless from all damage to the dikes, levees and lands (including crops thereon) described as Caledonia, Wocus, Little Wocus and Wilson properties on said Upper Klamath Lake resulting from flooding, washing or inundating the same. The word "damage" as used in this stipulation shall be construed to mean only such damage as may arise, either directly or indirectly, from the control of said Lake by respondent.

IV.

Respondent agrees to take prompt and all necessary steps to prevent damage when imminent, and complainants agree to notify respondent promptly of threatened or anticipated damage coming within their observation, so that respondent may take the necessary action to prevent same, but failure so to notify will not release

respondent from obligations assumed under this stipulation, and complainants agree that respondent shall have the right to enter upon the properties herein mentioned for the purpose of repairing or preventing damage.

V.

Any question upon which the parties cannot agree arising between the parties hereto under this stipulation, or the rights or obligations of said parties including claims for damages and liability therefor, shall be adjusted and determined by an arbitration board consisting of three persons, one each to be selected by the parties and a third to be chosen by the aforesaid two arbitrators; that the findings of said board of arbitration shall be final and conclusive upon the parties; that the parties hereby waive all rights of suit or action or judicial review relative to damages alleged to have been suffered or to the findings of said board, and further agree to conform promptly to the findings of said board and to abide thereby, provided that the parties shall have the right to enforce the award of any such arbitration board by proper court procedure in case of failure of any party to comply therewith. Costs of arbitration shall be awarded by the board of arbitration. The arbitration board aforesaid can be demanded at any time by the parties hereto, and each member of said board shall be appointed promptly.

VI.

Respondent quitclaims to complainants all title and interest it may have, will have or might assert in and to sufficient quantity of the waters of Upper Klamath Lake to irrigate properly the irrigable area of the lands herein described, as included in "Exhibit A", hereto attached and made a part hereof.

VII.

Respondent agrees to respect and observe the rights of Klamath Manufacturing Company, its successors and assigns, to the use of a certain canal on Wocus properties, contractually granted to it by a group of complainants, and agrees to save complainants harmless from liability under said contract relative to the use of said canal to the extent of complainants' liability as fixed by said contract.

VIII.

This stipulation shall and hereby does supersede all former stipulations wherein this stipulation conflicts with same; provided, however, that respondent shall not be relieved from any obligations assumed by it in a former stipulation relative to its control of said Lake during the year 1920.

IX.

It is further stipulated and agreed that this stipulation shall bind all parties hereto, unless any of said parties within ten (10) days hereof notify the opposing party of his election not to be bound thereby. In the event that any of the complainants elect not to be bound hereby, then the respondent shall have the election to reject said stipulation as to all of said complainants. It is further stipulated that the respondent shall within the said ten (10) day period, in the event that it elects to be bound by said stipulation, furnish to complainants in care of Arthur M. Geary, 508 Platt Building, Portland, Oregon, a certified copy of a resolution of its Board of Directors electing and agreeing to be bound thereby. In the event that any of complainants elect not to be bound, then within twenty (20) days from date hereof said ~~complainant~~ respondent shall exercise its election as to whether or not said stipulation shall be rejected as to all of

complainants. In the event of the acceptance by all or any of complainants and by the respondent as to all or any of such complainants so accepting, at the expiration of said twenty (20) day period a copy of this stipulation shall be filed in court and said suit dismissed as to such complainants so bound.

James H Wilson
C. U. Gratton
J. H. Freeman
John Davis

Dated: July 19th, 1920.

GRANY INVESTMENT COMPANY,
an Oregon Corporation,
D. M. Stevenson,
RUTH STEVENSON ADDISON,
AGNES STEVENSON KOATSON,
GEORGE M. STEVENSON,
FRANK H. MCCORMACK,
FRANK H. MCCORMACK as Guardian
for Frank H. McCormack, Jr.,
a Minor,
MARY E. MCCORMACK,
AGNES MCCORMACK,
ROBERT D. MCCORMACK,
HELEN MCCORMACK COLTON,
GORDON C. MCCORMACK and
E. J. BOYD,
ROBERT H. ELLIS and
J. C. ELLIOTT KING,

by James H Wilson
Arthur M Geary
Attorneys for Complainants.

Morrison, Dunn & Burbank, R. C. Groesbeck
Ferguson, Fletcher & Muffly and
E. S. Taylor

By R C Groesbeck
Attorneys for Respondent.

EXHIBIT C

COVENANT

See attached.

After recording, return to:

PacifiCorp
c/o Miller Nash LLP
111 S.W. Fifth Avenue, Suite 3400
Portland, Oregon 97204
ATTN: Joshua M. F. Sasaki

MEMORANDUM OF AGREEMENT AND RESTRICTIVE COVENANT

Grantee: PacifiCorp, an Oregon corporation ("PacifiCorp")

and

Grantor: DHH Oregon Company, LC, an Iowa limited liability company ("DHH")

September __, 2014

The Tax Account Numbers for the property subject to this instrument are: **3708-00000-01100-000; 3708-00000-01200-000; 3808-00000-00400-000; 3808-00000-00403-000; 3808-004CO-00101-000; 3808-004DO-00101-000; 3808-005DO-01000-000; 3808-00600-00100-000; 3808-00700-00101-000; 3808-00800-00100-000; 3808-00800-00201-000; 3808-009BO-01800-000.**

Related to Prior Recordings: Vol. 158 Pg 183 No. 63953; Vol. 233-400 No. 42140; Recorded District Court of the United States Settlement *In Equity* No. E-8479, dated July 19, 1920 (the "1920 Stipulation")

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Property Management
PacifiCorp
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Portland, OR 97232

If to DHH or Hill Enterprises:
Attn: David Hill
1255 Jordan Creek Parkway
Waukee, IA 50263

4. Counterparts. This Agreement may be executed in any number of the counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the date and year hereinabove written.

DHH OREGON COMPANY, LC

By: Hill Enterprises Company, its Sole Member

By: _____
David Hill, President

PACIFICORP

By: _____
Micheal Dunn, President & CEO of
PacifiCorp Energy, a division of PacifiCorp

State of IOWA, County of Dallas

This instrument was acknowledged before me this 18th day of September, 2014, by David Hill as President of Hill Enterprises Company, the Sole Member of DHH Oregon Company, LC.

Keri E. Paul

Notary Public for the State of Iowa

KERI E. PAUL
Commission Number 133071
My Commission Expires
12.24.14

State of UTAH

County of Salt Lake

This instrument was acknowledged before me on September 24, 2014, by Micheal Dunn, President & CEO of PacifiCorp Energy, a division of PacifiCorp.

Candace Turner

Notary Public -- State of Utah
My commission expires: Dec 19, 2016
(complete line above if notarial stamp does not include expiration date of commission)

Notary Public
CANDACE TURNER
Commission #662367
My Commission Expires
December 19, 2016
State of Utah