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**FILED**  
**FEB 14 2022**  
**DIANE SANCHEZ**  
CLERK OF THE DISTRICT COURT

IN THE FIRST JUDICIAL DISTRICT COURT  
IN AND FOR LARAMIE COUNTY, STATE OF WYOMING

PEOPLE OF THE STATE OF  
WYOMING,

Plaintiff,

v.

PACIFICORP,  
An Oregon Corporation,

Defendant.

Docket No. 2022-CV-200-333

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**CONSENT DECREE**

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The People of the State of Wyoming, through the Department of Environmental Quality (Department), Air Quality Division (Division), and the Wyoming Attorney General's Office, filed a Complaint against PacifiCorp under Sections 201 and 901(a) of the Wyoming Environmental Quality Act (Act). The Complaint alleged that PacifiCorp is threatening to violate the Clean Air Act (CAA), the Wyoming Environmental Quality Act (Act), and the Wyoming Air Quality Standards and Regulations (WAQSR) at the Jim Bridger Power Plant (Facility), located in Sweetwater County, Wyoming by continuing to operate Unit 2 after April 30, 2022, (and Unit 1 after December 31, 2022) without meeting emission limits consistent with the installation of

selective catalytic reduction (SCR) in violation of Wyoming's federally approved State Implementation Plan (SIP).

The Department and PacifiCorp (hereinafter referred to as the Parties) agree, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties at arm's length and in good faith under Wyoming Statute § 35-11-901(a)(ii), will avoid or settle certain litigation between the Parties, and is fair, reasonable, and in the public interest.

THEREFORE, the Parties have agreed to the following terms for resolving this litigation prior to trial, and with the consent of the Parties, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

**I. Jurisdiction and Venue**

A. This Court has jurisdiction over the subject matter of this action pursuant to Wyo. Stat. Ann. § 35-11-901(a).

B. This Court has personal jurisdiction over the Parties pursuant to Wyo. Stat. Ann. § 5-1-107(a).

C. Laramie County is the proper venue for this action pursuant to Wyo. Stat. Ann. § 35-11-903(c).

**II. Parties**

A. The Department, through the Division, is the agency of Wyoming state government responsible for administering and enforcing the air quality title of the Act, the WAQSR, and related permits. Wyo. Stat. Ann. §§ 9-2-2013 and 35-11-104, -109, and -110.

B. PacifiCorp is an Oregon corporation authorized to do business in Wyoming.

C. PacifiCorp is a "person" under the Act and the WAQSR. Wyo. Stat. Ann. § 35-11-103(a)(vi); *Rules Wyo. Dep't of Env'tl. Quality, Air Quality*, ch. 1, § 3(a).

### **III. Background**

A. In its Complaint, the Division alleged that PacifiCorp threatened to violate the CAA, the Act, and the WAQSR due to the potential of operating Units 1 and 2 at Jim Bridger without meeting NO<sub>x</sub> emission limits of 0.07 lb/MMBtu (30-day rolling average) consistent with the installation of selective catalytic reduction (SCR) by December 31, 2022, and April 30, 2022, respectively, as required by the existing federally enforceable regional haze state implementation plan (SIP). In relation to the threat of non-compliant operation, and as outlined in the Complaint and official notices from both PacifiCorp and Wyoming to EPA, PacifiCorp has taken extraordinary steps to avoid non-compliance. These steps include consulting for years with EPA and Wyoming on an innovative approach to address regional haze and improve visibility, applying for and receiving an enforceable state permit with State-approved compliance measures that eliminated the SCR requirement, diligent participation in public comment processes and agency inquiries, and actively engaging in on-going negotiations through administrative and court processes aimed to achieve compliant operation. *See, e.g.*, Complaint at ¶¶ 30-64; PacifiCorp, Notice of Intent to Sue, Nov. 19, 2021; Wyoming Notice of Intent to Sue, Nov. 15, 2021.

### **IV. Settlement**

A. No Monetary Penalty. The Department specifically acknowledges that as of the date of this consent decree PacifiCorp has not violated any emission limit or other substantive requirement of the Act, Wyoming's SIP, or Permit No. P0025809 in the operation of Units 1 and 2. In addition, the Department acknowledges PacifiCorp's significant efforts to find innovative solutions to ensure compliant operation of the Jim Bridger plant. In consideration of the

compliance measures and supplemental environmental projects contained in this Consent Decree, the parties agree that no monetary penalty is warranted.

B. Injunctive Relief / Compliance Measures.

1. Background: PacifiCorp's 2021 Integrated Resource Plan showed that converting Units 1 and 2 to natural gas in 2024 was in the best interest of PacifiCorp's customers. PacifiCorp made the business decision to convert both units to natural gas based on this analysis as well as the significant air quality benefits that would result from the conversion. PacifiCorp believes that like the installation of the SCR, conversion of Units 1 and 2 to natural gas would reduce NOx by approximately 3,000 tons from current utilization—and possibly more. Other benefits would include potential reductions of 7,871 tons per year of SO2 and 1,402 ton per year of particulate matter that would not occur with the installation of SCR on Units 1 and 2.

2. Compliance Measures:

i. In light of PacifiCorp's decision to convert Units 1 and 2 to natural gas, the State of Wyoming requires PacifiCorp, within two months of this Consent Decree, to submit a permit application and request a SIP revision applicable to the first regional haze implementation period (as defined under 40 CFR 51.308) reflecting those permit requirements (see (iii) below) that, if approved by the Division and EPA, will make the conversion commitment a federally enforceable requirement that would eliminate any existing noncompliance and ensure future compliance with Wyoming's first regional haze implementation period SIP.



- ii. During the interim period between this Consent Decree and January 1, 2024, PacifiCorp shall comply with the terms of Permit No. P0025809 in the operation of Units 1 and 2.
  - iii. No later than January 1, 2024, PacifiCorp shall meet the following emission limits at both Jim Bridger Units 1 and 2 consistent with the conversion of those units to natural gas and in fulfillment of regional haze reasonable progress and long-term strategy regulations: (1) 0.12 lb/MMBtu, 30-day rolling average, NOx limit; (2) 1,314 tons per year per unit NOx limit; and (3) 41.6% of maximum annual heat input for the unit based on its previous operation with coal, which calculates to 21,900,000 MMBtu/year limit per unit.
3. The Department acknowledges PacifiCorp's business decision, and in light of:
- (a) the threat that PacifiCorp would violate state and federal air requirements;
  - (b) the fact that conversion of Units 1 and 2 to natural gas (with the emissions limits imposed herein) will reduce the long-term visibility impacts caused by Units 1 and 2, and will remove an equivalent amount of NOx—and likely more—than the current SCR requirement; (c) the additional visibility benefits that will result from the significant SO2 and PM reductions that will occur with the conversion of Jim Bridger Units 1 and 2 to natural gas, not to mention the cessation of coal combustion residual production and disposal, which would not occur with the current SIP SCR requirement; and (d) the fact that the proposed conversion and SIP revision will eliminate any existing noncompliance and ensure future compliance with Wyoming's first regional haze implementation

period SIP, the CAA, and the regional haze program, the Department will prioritize processing the permit application and SIP revision request and endeavor to complete those processes within 180 days of receipt in accord with all applicable requirements of law. Additionally, when the Department submits the proposed SIP revision to EPA, the Department will request that EPA propose approval of the proposed plan by parallel processing under 40 CFR part 51, appendix V, section 2.3.

C. Supplemental Environmental Projects. Recognizing that a supplemental environmental project is not a penalty, nor is it accepted in lieu of a penalty, PacifiCorp agrees to complete the following supplemental environmental project, and Wyoming acknowledges that it considered PacifiCorp's commitment to perform the project as a relevant factor when establishing the appropriate settlement penalty. By January 1, 2023, PacifiCorp will prepare and distribute request(s) for proposal (RFP) for the installation of carbon capture utilization and storage (CCUS) technology at Jim Bridger Units 3 and/or 4, either separately or collectively. PacifiCorp shall provide a report to the Department that summarizes responses to the RFP(s) within ten days after the deadline for submission of the RFP(s).

1. The RFP(s) for CCUS relate to the underlying threatened violation because the threat specifically relates to the failure to install retrofit equipment to control air pollutants emitted from the Jim Bridger power plant. PacifiCorp will seek proposals for installation of carbon capture equipment for the purpose of controlling air pollutants emitted from the Jim Bridger power plant. Seeking proposals for CCUS installation aligns with the State's high-level and long-term

air quality control approach by applying the latest technologies to reduce emissions of pollutants into the air.

2. In addition, seeking proposals for installation of CCUS at coal-fired power plants promotes the energy values and policies of the State of Wyoming.

D. This Consent Decree fully resolves, without further litigation, each and every contested and disputed claim between the State of Wyoming and PacifiCorp specifically alleged in the Complaint. The parties are aware of the expense and uncertainty of litigation and prefer to resolve their differences regarding the matters covered by this Consent Decree through negotiation and to bring this matter to a conclusion.

#### **V. Release and Covenant Not to Sue and Dismissal with Prejudice**

A. The Department agrees that compliance with the terms of Section IV of this Consent Decree shall constitute full and complete satisfaction of each and every claim specifically alleged in the Complaint.

B. In consideration of PacifiCorp's performance of the terms specified under Section IV of this Consent Decree and full compliance with the remaining terms of the Consent Decree, the Department and the State of Wyoming hereby fully release and covenant not to sue PacifiCorp and its respective successors, assigns, affiliates, parents, officers, directors, employees, and representatives, as to each and every claim specifically alleged in the Complaint. This covenant not to sue is expressly conditioned upon the complete and satisfactory performance by PacifiCorp of all terms of this Consent Decree.

## **VI. Parties Bound**

A. This Consent Decree shall apply to and be binding upon PacifiCorp, its successors and assigns, and upon the Department and the State of Wyoming.

B. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Consent Decree shall not be construed to create such status. The rights, duties, and obligations contained in this Consent Decree shall operate among the Parties to this Consent Decree.

C. Nothing in this Consent Decree relieves PacifiCorp of its duty to comply with the Act, the WAQSR, the CAA, or any rules, regulations, standards, or permits adopted thereunder.

D. Nothing in this Consent Decree precludes the Department from taking enforcement actions for other or future violations not specifically set forth in this Consent Decree.

## **VII. Terms Not Severable**

A. The terms of this Consent Decree, which embody the comprehensive settlement between the Parties, are not severable.

## **VIII. Reservation of Right**

A. By signing this Consent Decree, PacifiCorp does not admit or acknowledge that it violated or threatened to violate any provision of the Act, the WAQSR, the CAA, or permits or waivers issued under such authorities. By entering into this Consent Decree, PacifiCorp does not admit or deny the validity of any allegation contained in the Complaint.

B. PacifiCorp, the Department, and the State of Wyoming reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, including without limitation seeking injunctive relief and civil penalties.



C. The Department and the State of Wyoming do not waive sovereign immunity by entering into this Consent Decree and retain all defenses available to them as sovereigns under all state and federal law, except that any of the Parties may bring an action to seek interpretation or enforcement of this Consent Decree.

#### **IX. Termination of Consent Decree**

A. The terms and conditions of this Consent Decree shall terminate upon the Department's filing of written notice to the Court confirming the completion of PacifiCorp's obligations under this Consent Decree and the Court's entry of a Termination and Dismissal Order.

#### **X. Attorneys' Fees and Costs of Action**

A. Each party shall bear its own attorneys' fees and costs of this action.


#### **XI. Retention of Jurisdiction**

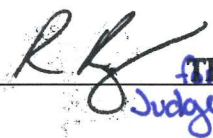
A. This Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree, to enter such orders as are appropriate under the Consent Decree, and to resolve all disputes as may be necessary or appropriate for the construction of or to carry out the terms of this Consent Decree until it is terminated as provided herein.

#### **XII. Authority**

The signatories certify that they are duly authorized to bind their respective Parties to this Consent Decree.

DATED this 14 day of February, 2022.

  
District Court Judge

 **THOMAS CAMPBELL**  
Judge

STATE OF WYOMING COUNTY OF LARAMIE, SS CHEYENNE

I Diane Sanchez, Clerk of the District Court in and for the County of Laramie, Wyoming, do hereby certify that the within and foregoing is a full true and correct copy of the original thereof as the same appears on file or of record in my office and that the same is in full force and effect as of this date.

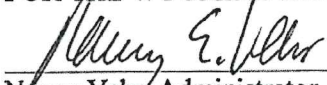
Witness my hand and seal of said court this 14 day of Feb 2022.

DIANE SANCHEZ  
Clerk of District Court

By   
Deputy

**WE HEREBY CONSENT** to the entry of this Consent Decree:

**FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:**


  
\_\_\_\_\_  
Nancy Vehr, Administrator  
Air Quality Division

2/11/22  
Date

  
\_\_\_\_\_  
Todd Parfitt, Director  
Department of Environmental Quality

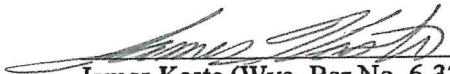
2/11/2022  
Date

**FOR PACIFICORP:**

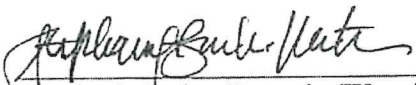
By:   
\_\_\_\_\_  
James Owen  
Vice President, Environment, Fuels and Mining

2/11/22  
Date

**APPROVAL AS TO FORM:**

  
\_\_\_\_\_  
James Kaste (Wyo. Bar No. 6-3244)  
Attorney for Wyoming Department of  
Environmental Quality, Air Quality Division

2/11/22  
Date

  
\_\_\_\_\_  
Stephanie Barber-Renteria (Wyo. Bar No. 7-4917)  
Attorney for PacifiCorp

2/11/22  
Date

### CERTIFICATE OF SERVICE

I hereby certify that on the 14 day of February, 2022, a true copy of the foregoing was mailed, postage prepaid to the following:

Richard J. Garlish -m  
*Vice President and General Counsel*  
PacifiCorp  
1407 West North Temple  
Suite 320  
Salt Lake City, UT 84116

Stephanie Barber-Renteria (Wyo. Bar No. 7-4917) -m  
PacifiCorp  
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James Kaste -HD  
Deputy Attorney General  
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109 State Capitol  
Cheyenne, WY 82002

  
\_\_\_\_\_  
Clerk of District Court