



elevation of Bear Lake absorbs those losses. BRWUA members are guaranteed delivery of their water to their head gates and hence suffer no injury. The Stipulated Agreement satisfies BRWUA concerns about mitigation for evaporation, but not necessarily all other water users. The BRWUA Stipulated Agreement fails to mention any injury to Bear Lake. Bear Lake Watch contends that there will be additional inadvertent losses caused by TLCC's proposal that will negatively impact the level of Bear Lake.

- b. PacifiCorp has storage rights in Bear Lake that could be affected by the TLCC application. The TLCC implication by omission that PacifiCorp's rights should be satisfied because of the BRWUA Stipulated Agreement is inappropriate. The present operation for the Bear River system by PacifiCorp is a finely tuned balancing act utilizing twice weekly conference calls during irrigation season and real-time data to adjust storage water demands and natural flow with the irrigation contracts and allocations. Adding the proposed TLCC project will complicate the communication and coordination of contract water deliveries downstream of Oneida resulting in additional "inadvertent losses" thereby affecting PacifiCorp's storage rights in Bear Lake. See discussion of ABSLA above.
  - c. Bear Lake Watch is a signatory of the ABSLA and is recognized by both PacifiCorp and the BRWUA as having rights and interests in Bear Lake. The potential for additional inadvertent losses to Bear Lake's storage capacity resulting from the proposed TLCC project has not been factored into TLCC's application or mitigation.
  - d. Bear Lake Watch is also very involved with the "public interest" aspects of Bear Lake – the varied recreational opportunities, aesthetics, invasive species, noxious weeds, etc. In May 1993, the State of Idaho filed water right 11-7406 for a minimum level in Bear Lake of 5902 ft (UP&L datum) stating the purpose of the minimum flow (level) as "recreation, aesthetics and fish and wildlife habitat". Obviously the State valued those attributes highly – regardless of lake level - but could only file on them below PacifiCorp's storage right. The "inadvertent losses" expose additional acres of exposed shoreline which then start to grow upland plants, grasses, noxious weed and invasive species (Phragmites & Tamarisk). This impact to Bear Lake has also not been factored into TLCC's application or mitigation plans.
2. Bear Lake Watch agrees with the Hearing Officer's conclusions regarding the Public Interest section of the Preliminary Order Denying Application Permit.
- a. IDWR's analysis of public interest matters are not well defined by statute or administrative rule. Bear Lake Watch thought the Hearing Officer repeatedly reigned in "public interest" questions that were straying too far from being "tied to water".
  - b. The State of Idaho appears to have no official method or process by which to vet how "public interest" is affected by large projects, such as TLCC's, from the perspective of the different state agencies. The state's "water resources" constitute more than just the water itself and the IDWR hearing is the only process the state holds to vet the local public interest. The flowing riverine setting belongs to the people of the State of Idaho as evidenced by the multiple state agencies that are set up and paid for by the people. The people of the state obviously cherish these complete natural resources.

- c. The FERC process does not absolve the State of Idaho from their responsibility to protect the interest of its citizens. TLCC's Exceptions imply that the FERC process adequately covers the "public interest" for the Idaho state agencies and therefore everyone should accept the FERC answer. FERC has its own mission and definitions, its own processes and its own standards. Each Idaho agency has theirs. Phrase a question in a different way and you'll get a different answer. Use a different process or set of standards and you'll get a different conclusion. It is erroneous to assume that a Federal solution is the answer to State based questions and concerns where local "public interest" is involved.
- d. If IDWR's past practice when permitting and licensing hydropower is to provide deference to the separate administrative agencies, TLCC should allow each state agency to condition the permit with each agencies "public interest" requirements or concerns.

Bear Lake Watch agrees with the Hearing Officer that the proposed project would change the nature of the public water resource dramatically. The impacts of any action can be mitigated for – at what cost to the applicant and what price to the public is where the negotiations begins. FERC mitigates for every impact. In our opinion, a riverine setting, riverine habitat, riverine recreation and riverine aesthetics cannot be replaced or adequately mitigated for with the reservoir equivalents.

TLCC did not sufficiently address the incremental economic benefits of the project for the state to find that the benefits of the project outweigh the losses to the public. How much more acreage can be irrigated? How much more crop produced? What is the value of the increased amount of crops? How much would that change TLCC's 6% of the total economic output of Franklin County? While TLCC touts the benefits to and the importance of the Agriculture community, they also admit that in many years the value of the "power generation" will take precedence to crop production. Bear Lake Watch agrees with the Hearing Officer that the public interests associated with the Bear River in its current state outweigh the public interests with the proposed project.

## **Conclusion**

For the reasons set forth above, the Director should find that Bear Lake's storage content may be injured by the proposed project. The implication by TLCC that the Stipulated Agreement with BRWUA satisfies all claims against injury and is an approved mitigation solution is an incorrect assumption. Bear Lake Watch also observed that the Hearing Officer maintained a fair balance in the arena of public interest. We also hold to the fact that a federal government's oversight of "energy" projects does not release the State of Idaho from its rights and responsibilities to protect the local public's interest in its resources. Bear Lake Watch feels that these comments help substantiate the Hearing Officer's finding denying the application for permit.

**DATED** this 20<sup>th</sup> day of August, 2012

A handwritten signature in cursive script, reading "Claudia Cottle", is written over a solid horizontal line.

Claudia Cottle

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