

RESOLUTION NO. 89-180

A RESOLUTION ADOPTING AN AMENDMENT TO IMPACT ALLEVIATION AGREEMENT NO. 47 ENTERED INTO BETWEEN INTERMOUNTAIN POWER AGENCY (IPA) AND DELTA CITY, WHEREBY IPA EXCUSES DELTA CITY FROM ITS OBLIGATION TO REPAY AN OVERPAYMENT FOR IMPACT ALLEVIATION FUNDS RECEIVED FROM IPA IN CONSIDERATION FOR CERTAIN COSTS INCURRED BY DELTA CITY FOR SERVICES AND FACILITIES PROVIDED TO IPA.

The City Council of the City of Delta, Utah, referred to in this resolution as the "City Council," hereby recites the following as the basis for adopting this resolution:

RECITALS

A. Pursuant to § 11-13-23, Utah Code Annotated (1953), as amended, IPA and Delta City have previously entered into Impact Alleviation Agreement No. 47 dated November 3, 1983 (hereinafter referred to as "Agreement"). As amended by Change Orders 001 through 004, said Agreement is currently in full force and effect.

B. The Agreement provides, among other things, for the alleviation of direct impacts to Delta City attributable to the construction of the Intermountain Power Project (IPP) through the use of "Revenues Attributable to the Project (RAP)" as defined in said agreement no. 47, to be paid by IPA to Delta City.

C. The Agreement further provides that RAP received by Delta City are to be applied against IPA's Project Financial Responsibility (PFR) for certain costs and services actually provided by Delta City.

D. Pursuant to the powers granted to IPA under said Agreement, IPA has completed an audit of the RAP and PFR for the fiscal years 1984-85, 1985-86 and 1986-87. These audit reports show that during these periods, RAP totalled \$1,749,988.00 and PFR totalled \$1,626,147.00, for a difference of \$133,841.00 (the "Overpayment").

E. Under said Agreement, Delta City is obligated to repay the full amount of the Overpayment to IPA.

F. Since construction of IPP has been completed, IPA is no longer obligated to make RAP payments to Delta City. Moreover, because IPP is located outside the geographical boundaries of Delta City, IPA is not required to pay ad valorem property taxes to Delta City.

G. Due to the absence of any further revenues from IPA, the general decline in the population and tax base of Delta City and other current economic conditions, Delta City is not in a financial position to repay said Overpayment to IPA.

H. Pursuant to the authority granted to the Los Angeles Department of Water & Power (LADWP) under Sections 8.6 and 8.8 of the IPP Construction Management and Operating Agreement (CM&OA) dated February 1, 1983, by and between IPA and LADWP, under which agreement LADWP has been designated as project manager of IPP, LADWP has recommended that IPA waive Delta City's obligation under said Agreement to repay the amount of said Overpayment, and that the remaining provisions of said Agreement remain in full force and effect.

I. Therefore, Amendment No. 1 was submitted to the IPP Coordinating Committee on January 23, 1989 and to the IPA Board of Directors on January 24, 1989 and was approved by both bodies.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Delta, Utah:

1. Adoption of Amendment No. 1 to Impact Alleviation Agreement No. 47. Impact Alleviation Agreement No. 47 is hereby amended to remove Delta City's obligation to repay IPA the overpayment of impact alleviation funds (RAP) received by Delta City from IPA. A copy of said amendment is attached to this resolution as Exhibit "A" and incorporated herein by reference.

2. Impact Alleviation Agreement No. 47 to Remain in Full Force and Effect. Except as specifically amended by Amendment No. 1 to Impact Alleviation Agreement No. 47, attached hereto as Exhibit "A", the remaining provisions of said Impact Alleviation Agreement No. 47 shall remain in full force and effect.

3. Effective Date. This resolution shall become effective upon adoption.

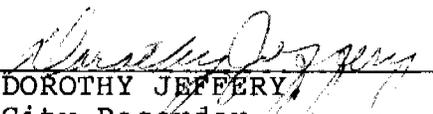
4. Severability. In the event that any provision of this resolution less than the entire resolution is held invalid by a court of competent jurisdiction, this resolution shall be deemed severable and such finding of invalidity shall not affect the remaining portions of this resolution.

5. Repeal of Conflicting Resolutions. To the extent that any resolutions or policies of the City of Delta conflict

with the provisions of this resolution, they are hereby amended to be in accordance with the provisions hereof.

PASSED AND APPROVED this 13 day of March, 1989.


RUTH HANSEN, Mayor

Attest: 
DOROTHY JEFFERY
City Recorder

AMENDMENT NO. 1 TO
IMPACT ALLEVIATION AGREEMENT NO. 47

This Amendment No. 1 to Impact Alleviation Agreement No. 47 ("this Amendment"), dated this ___ day of _____, 1989, is by and between Intermountain Power Agency ("IPA") and Delta City, Utah ("Delta").

RECITALS

A. Pursuant to Section 11-13-23, Utah Code Ann. (1953, as amended), IPA and Delta have previously entered into Impact Alleviation Agreement No. 47, dated November 3, 1983. As amended by Change Orders 001 through 004, this agreement is currently in full force and effect (as so amended, the "Agreement").

B. The Agreement provides, among other things, for the alleviation of direct impacts to Delta attributable to the construction of the Intermountain Power Project ("IPP") through the use of "Revenues Attributable to the Project" ("RAP"), as defined in the Agreement, to be paid by IPA to Delta.

C. The Agreement further provides that RAP received by Delta are to be applied against IPA's "Project Financial Responsibility" ("PFR") for certain costs and services actually provided by Delta.

D. Pursuant to the powers granted to IPA under the Agreement, IPA has completed an audit of the RAP and PFR for the fiscal years 1984-85, 1985-86, and 1986-87. These audit reports show that during these periods, RAP total \$1,749,988 and PFR totaled \$1,626,147, for a difference of \$133,841 (the "Overpayment").

E. Under the Agreement, Delta is obligated to repay the full amount of the Overpayment to IPA.

F. Since construction of IPP has been completed, IPA is no longer obligated to make RAP payments to Delta. Moreover, because IPP is located outside the geographical boundaries of Delta, IPA is not required to pay ad valorem property taxes to Delta.

G. Because of the absence of any further revenues from IPA, the general decline in the population and tax base of Delta, and other current economic conditions, Delta is not in a financial position to repay the Overpayment to IPA.

H. Pursuant to the authority granted to the Los Angeles Department of Water and Power ("LADWP") under Sections 8.6 and 8.8 of the IPP Construction Management and Operating

Agreement ("CM&OA"), dated February 1, 1983, by and between IPA and LADWP, under which agreement LADWP has been designated as Project Manager of IPP, LADWP has recommended that IPA waive Delta's obligation under the Agreement to repay the amount of the Overpayment, but that the remaining provisions of the Agreement remain in full force and effect.

I. Subject to the approval of LADWP's recommendation by the IPP Coordinating Committee and the IPA Board of Directors pursuant to Section 6.23 of the CM&OA, IPA is willing to accept LADWP's recommendation and to waive Delta's obligation to repay the Overpayment.

AGREEMENT

IN CONSIDERATION of the matters set forth in the foregoing Recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, IPA and Delta agree as follows:

1. The Agreement is hereby amended to remove Delta's obligation to repay the amount of the Overpayment to IPA.

2. Except as specifically amended by this Amendment, the remaining provisions of the Agreement remain in full force and effect.

DATED and executed by the undersigned parties to be effective as the date first above written.

INTERMOUNTAIN POWER AGENCY

By: _____
Reece D. Nielsen, Chairman

THIS AMENDMENT was approved by Delta City Council Resolution No. _____, dated _____, 1989, and is hereby accepted and agreed to by Delta City, Utah.

DELTA CITY, UTAH

By: _____
Mayor, Delta City, Utah

ATTEST:

By: _____
Delta City Clerk

RECOMMENDATION OF LADWP

In accordance with the authority granted the Project Manager under the CM&OA and by the IPP Coordinating Committee, and the authority granted to me by the Project Manager, I hereby approve this Amendment and recommend that it be executed by IPA pursuant to IPP Coordinating Committee Resolution No. CC-1989-002, dated January 23, 1989, and IPA Board of Directors Resolution No. IPA-1989-001, dated January 24, 1989.

Dated this ____ day of January, 1989.

JAMES H. ANTHONY
Project Director, IPP

successors in interest. Each party agrees that it will not in any judicial, legislative or public forum of any kind, take a position or assert or represent anything to the contrary with respect to the binding effect of the Summary Judgment.

25. This Settlement Agreement may be pleaded by any party as a full and complete defense to, and may be used as the basis for an injunction against, any conduct or any proceeding, suit, or action which may be instituted, prosecuted, or attempted, in breach of any of the terms of this Settlement Agreement.

26. The parties intend to issue a joint press release announcing the general provisions of this Settlement Agreement in a form satisfactory to and approved by designated representatives of each of the parties hereto.

27. This Settlement Agreement shall inure to the benefit of and be binding upon each of the parties hereto and their respective members, predecessors, successors, assignees, transferees, and any subsidiaries, and each of them, as though they were parties hereto.

28. Each of the parties to this Settlement Agreement hereby affirms and acknowledges that it has read this Settlement Agreement, has had it explained by its counsel, and fully understands it, and that this is a full and final compromise and settlement of all claims, demands, actions, or causes of action raised in the SLC Lawsuit and Appeal.

29. This Settlement Agreement is without prejudice to the rights of the parties in any other litigation that may be outstanding or to any claims other than the claims compromised and settled in this Settlement Agreement.

30. Each of the signatories hereto represents and warrants that he/she has full power and authority on behalf of each of the parties indicated to execute this Settlement Agreement and to bind each such party to all of the terms and provisions hereof. Prior to the execution of this Settlement Agreement, CREDA and UP&L will provide each other with copies of the corporate resolutions from their respective Boards of Directors authorizing their representatives to execute this Settlement Agreement and the agreements associated herewith.

31. Each party shall bear its own costs of the lawsuits mentioned herein and of this settlement.

IN WITNESS WHEREOF, the parties hereto have caused this Settlement Agreement to be duly executed the day and year first written above.

"Western":

By: _____
William H. Clagett, Administrator
For: Western Area Power Administration.

"UP&L":

By:

Frank N. Davis, President

For: Utah Power & Light Company, a division
of PacifiCorp

"Municipalities":

By:

Ruth Hansen, ^{Mayor} for Delta City

For: The following Utah cities and towns:
Alta, Amalga, American Fork, Annabella,
Aurora, Bear River, Brian Head, Castle
Dale, Cedar City, Cedar Fort,
Centerfield, Centerville, Circleville,
Clarkston, Clawson, Clearfield,
Cleveland, Clinton, Coalville, Corinne,
Cornish, Delta, Deweyville, Draper,
Elmo, Elsinore, Elwood, Emery, Enoch,
Eureka, Farmington, Farr West, Fayette,
Ferron, Fielding, Fountain Green,
Francis, Fruit Heights, Garden City,
Garland, Genola, Glenwood, Goshen,
Grantsville, Green River, Gunnison,
Harrisville, Henefer, Highland,
Hinckley, Honeyville, Howell,
Huntington, Huntsville, Hyde Park,
Joseph, Junction, Kamas, Kanarraville,
Kingston, Laketown, Layton, Leamington,
Lewiston, Lynndyl, Mantua, Mapleton,
Marysvale, Mayfield, Mendon, Midvale,
Milford, Millville, Minersville, Moab,
Mona, Moroni, Naples, New Harmony,
Newton, Nibley, North Logan, North
Ogden, North Salt Lake, Oakley, Ogden,
Ophir, Orangeville, Orem, Panguitch,
Paradise, Park City, Perry, Plain City,
Pleasant Grove, Plymouth, Portage,
Providence, Redmond, Richfield,
Richmond, River Heights, Riverton, Roy,
Rush Valley, Salina, Sandy, Santaquin,
Scipio, Sigurd, Smithfield, Snowville,
South Jordan, South Ogden, South Salt
Lake, South Weber, Sterling, Stockton,

Sunnyside, Sunset, Syracuse, Tooele, Toquerville, Tremonton, Trenton, Uintah, Vernal, Virgin, Wales, Wallsburg, Washington Terrace, Wellington, Wellsville, West Jordan, West Point, West Valley City, Willard, Woods Cross; the following Utah counties: Beaver County, Box Elder County, Davis County, Emery County, Grand County, Millard County, Morgan County, Rich County, Salt Lake County, San Juan County, Sevier County, Summit County, Tooele County; the following Wyoming cities and towns: Big Piney, Cokeville, Diamondville, Evanston, Kemmerer, Labarge, Marbleton, Opal, Pinedale; the following Wyoming counties: Lincoln County, Sublette County

By: _____
For: Salt Lake City

By: _____
For: Weber County

By: _____
For: Riverdale

"CREDA":

By: _____
Joe Falbo, President
For: Colorado River Energy Distributors
Association, Inc.

Approved and accepted:
Jones, Waldo, Holbrook & McDonough

By: _____
Donald B. Holbrook

By: _____
William B. Bohling

By: _____
Elizabeth M. Haslam

Attorneys for Utah Power & Light
Company and Municipalities other
than Salt Lake City, Riverdale
and Weber County

Utah Power & Light Company

By: _____
Sidney G. Baucom
Attorney for Utah Power & Light Company

Salt Lake City Corporation

By: _____
Bruce R. Baird
Attorneys for Salt Lake City Corporation

Weber County and City of Riverdale

By: _____
Frank Warner
Attorney for Weber County and the City of
Riverdale

United States of America

By: _____
C. Max Vassanelli
Attorneys for Western Area
Power Administration and
Other Defendants

Kimball, Parr, Crockett & Waddoups

By: _____
Gary A. Dodge
Attorneys for Colorado River Energy
Distributors Association, Inc.

Exhibits "A" through "F" are not attached but will be made available upon request:

Exhibit "A" is a Stipulation and Proposed Order dismissing environmental claims.

Exhibit "B" is a Stipulation and proposed Order dismissing the appeal.

Exhibit "C" is a Stipulation and proposed Order dismissing the remaining claims in the Salt Lake City Lawsuit.

Exhibit "D" is a Contract between Utah Power & Light and Western Area Power Administration for Annual Purchases of Energy

Exhibit "E" is a Contract between Salt River Project Agricultural Improvement and Power District and Western Area Power Administration for Interchange of Energy.

Exhibit "F" is a Contract between Salt River Project Agricultural Improvement and Power District and Utah Power & Light for Energy Exchange.

APPENDIX "B"

APPROVAL OF THE CITY OF Utah
TO SETTLEMENT OF
SLC v. WAPA LAWSUIT

Pursuant to the duly enacted resolution, the City of Utah, Wasatch County, Utah, hereby approves the Settlement Agreement pertaining to Salt Lake City, et al. v. Western Area Power Administration, et al., Civil No. 86C-1000G (D.Utah 1986) and authorizes Utah Power & Light Company to execute the Settlement Agreement on its behalf.

Peter Hansen
Mayor

Countersign and Attest:

Christine Jorgensen
City Recorder

[AFFIX SEAL HERE]

upl 365/emh/sk

Passed and approved this 10th day of April, 1989.

Ruth Hansen
Mayor

Countersign and Attest:

Christy Jorgensen
City Recorder

[AFFIX SEAL HERE]

After the conduct of other business not pertinent to the foregoing, it was moved and carried that the City Council adjourn.

Ruth Hansen
Mayor

Attest:

Christy Jorgensen
City Recorder

[AFFIX SEAL HERE]

STATE OF UTAH

COUNTY OF Miand

I, the undersigned, do hereby certify that I am the duly qualified and acting City Recorder of Alta City, Miand County, Utah (the "City").

I further certify that the above and foregoing constitutes a true and correct copy of the minutes of a regular public meeting of the City Council of the City, including a resolution adopted at said meeting, held on April 10, 1989, as said minutes and resolution are officially of record in my possession.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and affixed the seal of the City, this 11th day of April, 1989.

Shirley Jiggery
City Recorder

[AFFIX SEAL HERE]

upl 349/jwb/ms