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September 23, 2016

**DELIVERY VIA ELECTRONIC FILING**

The Honorable Kimberly D. Bose  
Secretary, Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**Re: PacifiCorp and Klamath River Renewal Corporation  
Klamath Hydroelectric Project No. 2082-\_\_\_\_  
Lower Klamath Project No. \_\_\_\_**

**Joint Application for License Transfer and License Amendment**

Dear Madam Secretary:

Under Section 8 of the Federal Power Act (FPA), 16 U.S.C. § 801, and parts 4 and 9 of the Federal Energy Regulatory Commission (FERC) regulations, PacifiCorp and the Klamath River Renewal Corporation (KRRC) hereby submit this Joint Application for License Transfer and License Amendment.

The filing consists of this cover letter and the enclosed application and attachments. Should you have any questions regarding this filing, please contact the undersigned.

Respectfully submitted,

/s/ Hallie M. Meushaw  
Counsel to PacifiCorp

Attachments

cc: Sarah Kamman, PacifiCorp  
Dustin Till, PacifiCorp  
Mike Carrier, KRRC

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**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

PacifiCorp	)	Project No. P-2082-___
	)	
and	)	Project No. P-___-___
	)	
Klamath River Renewal Corporation	)	

**JOINT APPLICATION FOR APPROVAL OF LICENSE AMENDMENT AND  
LICENSE TRANSFER**

In accordance with Section 8 of the Federal Power Act (FPA) and Parts 4 and 9 of Federal Energy Regulatory Commission (FERC or Commission) regulations, PacifiCorp, licensee for the Klamath Hydroelectric Project, FERC Project No. 2082 (the Project), and the Klamath River Renewal Corporation (KRRC) (together with PacifiCorp, Applicants), submit this Joint Application for Approval of License Amendment and License Transfer (the Application).

**I. EXECUTIVE SUMMARY**

By this Application, Applicants request that the Commission:

1. Designate the four developments on the main stem of the Klamath River (J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate) as a new FERC project to be known as the “Lower Klamath Project”; and
2. Remove the proposed Lower Klamath Project developments from Project No. 2082 and designate it as a separate license issued to the KRRC.<sup>1</sup>

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<sup>1</sup> The KRRC is concurrently filing a separate application to surrender the license for the Lower Klamath Project and remove the project works.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****II. PROPOSED SEQUENCE OF EVENTS**

Applicants respectfully request that the Commission use its discretion to sequence events in this docket, and the related license surrender docket, as described below.

- 1) Concurrently with this filing, the KRRC will separately file an Application for Surrender of License for Major Project and Removal of Project Works (Surrender Application).
- 2) No later than March 1, 2017, the KRRC will submit an informational filing in this proceeding concerning its legal, technical, and financial capacity to fulfill its contractual obligations under the Amended KHSA to: (a) prevent, mitigate, and respond to damages associated with dam removal; and (b) carry the required insurance and bonding required to respond to liability and damages claims associated with dam removal. *See* Amended KHSA Section 7.1.2.C.
- 3) Applicants respectfully request that the Commission, after approving the license transfer, provide the KRRC with additional time beyond the traditional 60 days to accept the license. This additional time is necessary to allow the KRRC, PacifiCorp, and other settlement stakeholders to ensure that contractual conditions precedent to acceptance of license transfer by KRRC have been satisfied.

**III. BACKGROUND**

The Project is located primarily on the Klamath River in Klamath County, Oregon and Siskiyou County, California. The Project includes seven hydroelectric developments (East Side, West Side, Fall Creek, J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate) and one non-generating development (Keno). The original license for the Project was

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issued in 1954 and expired in 2006. Since that time, the Commission has issued PacifiCorp annual licenses to operate the Project.

**A. The KHSA**

On February 25, 2004, PacifiCorp filed an application with the Commission for a new Project license. In parallel with the FERC relicensing process, PacifiCorp engaged in relicensing settlement talks with a wide range of parties to address the difficult resource management issues raised in the relicensing process. After years of settlement negotiations, on February 18, 2010, the Klamath Hydroelectric Settlement Agreement (KHSA) was executed by 48 parties, including PacifiCorp, the states of Oregon and California (the States), the U.S. Department of the Interior (Interior), the U.S. Department of Commerce's National Marine Fisheries Services (NMFS), several Native American tribes, and irrigation, conservation and fishing groups.<sup>2</sup> PacifiCorp filed a copy of the KHSA with the Commission for informational purposes on March 5, 2010.

The KHSA anticipated removal of PacifiCorp's four dams on the main stem of the Klamath River (J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate) beginning in 2020 by a non-PacifiCorp dam removal entity. As originally drafted, the KHSA required federal legislation to fully implement its terms, including protecting PacifiCorp and its customers from liabilities and cost overruns associated with dam removal.

**B. The Amended KHSA**

Congress did not pass the necessary implementing legislation within the requisite time period, and consequently, in January 2016, the KHSA's dispute resolution

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<sup>2</sup> See KHSA (Feb. 18, 2010) (available at <http://216.119.96.156/Klamath/Klamath%20Hydroelectric%20Settlement%20Agreement%202018-10signed.pdf>) (last visited Sept. 21, 2016).

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procedures were triggered. Following a series of dispute resolution meetings, the States, Interior, NMFS, and PacifiCorp proposed limited amendments to the KHSA.<sup>3</sup> The amendments to the KHSA (Amended KHSA) were executed on April 6, 2016, by PacifiCorp, the States,<sup>4</sup> Interior, NMFS, the Yurok Tribe, and the Karuk Tribe. Other signatories to the amendments are: California Department of Fish and Wildlife; California Natural Resources Agency; Oregon Department of Environmental Quality; Oregon Department of Fish and Wildlife; Oregon Water Resources Department; Humboldt County, California; American Rivers; California Trout; Institute for Fisheries Resources; Northern California Council, Federation of Fly Fishers; Pacific Coast Federation of Fishermen's Association; Trout Unlimited; and Sustainable Northwest.<sup>5</sup>

The Amended KHSA sets out a process by which PacifiCorp's J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments will be transferred to the KRRC for ultimate removal under the Commission's license transfer and surrender procedures. The Amended KHSA includes a number of requirements that must be satisfied by the KRRC, PacifiCorp, and others before the KRRC will accept transfer of the Lower Klamath Project, as described in Section IV herein.

On June 16, 2016, the Commission granted PacifiCorp's May 6, 2016 "Motion to Hold Licensing Proceeding in Abeyance on an Expedited Basis." The order provides that the relicensing proceeding for Project No. 2082 will be held in abeyance pending the

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<sup>3</sup> Under the KHSA's dispute resolution provisions, the States, Interior, NMFS, and PacifiCorp are authorized to unilaterally amend the agreement's terms. *See* KHSA Section 8.11.

<sup>4</sup> The state of California signed the Amended KHSA through the California Department of Fish and Wildlife and the California Natural Resources Agency. The state of Oregon signed the KHSA through the Oregon Department of Environmental Quality, the Oregon Department of Fish and Wildlife, and the Oregon Water Resources Department.

<sup>5</sup> A copy of the Amended KHSA is included as Attachment A to this application.

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Commission's determination on the transfer and surrender applications proposed in the Amended KHSA.<sup>6</sup> The abeyance allows for continued implementation of the Amended KHSA. The abeyance applies to the relicensing of Project No. 2082 in its entirety and will continue to apply to the relicensing of all developments currently included within that Project, if and when the Commission approves the proposed division and transfer of the license for the proposed Lower Klamath Project.

**IV. REQUEST FOR AMENDMENT OF LICENSE TO EFFECT DIVISION OF HYDROELECTRIC DEVELOPMENTS INTO SEPARATE LICENSES**

In accordance with 18 C.F.R. § 4.200, PacifiCorp (Transferor) requests a non-capacity-related amendment to the license for the Klamath Project (Project No. 2082) to remove all references to the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments, and to remove these dams and associated lands from the Project boundary. The sole purpose of the amendment is to divide the Project into two licenses, and the only changes to the Project are those necessary to effectuate the division of the Project to implement the Amended KHSA.

Consistent with the Amended KHSA, Applicants ask that the license for the Klamath Project be divided into two licenses with the four hydroelectric developments (including associated lands) identified above designated as a separate project called the Lower Klamath Project, and the remainder of the hydroelectric developments remaining in the Klamath Project. Accordingly, Applicants seek the deletion of all references to the four developments (J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate) and associated lands to be known as the Lower Klamath Project from the original license, removal of the

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<sup>6</sup> See *PacifiCorp*, 155 FERC ¶ 61,271 at ¶ 13 (2016).

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Lower Klamath Project from the Project boundary, and re-designation of the Lower Klamath Project with a new FERC project number.

Included as Attachments B and C, respectively, are a revised Exhibit M for both (1) the Klamath Project (Project No. 2082), and (2) for the portions of the Project to be designated as the Lower Klamath Project. The revised exhibits reflect the division of the Klamath Project as described above and are subject to slight modification pending the final terms of the asset purchase agreement between PacifiCorp and the KRRC.

PacifiCorp has also included as Attachments D and E charts listing the exhibit drawings and maps for the Klamath Project (Project No. 2082) and for the portions of the Project to be designated as the Lower Klamath Project, indicating which development is depicted in each drawing or map. When the KRRC files the documents conveying titles to the Lower Klamath Project from PacifiCorp to the KRRC, it will also file for Commission approval the exhibits for the Lower Klamath Project with the correct project number designation. PacifiCorp will file updated exhibits for the Klamath Project (Project No. 2082) for Commission approval at that time.

PacifiCorp identified a number of license articles that relate in whole or in part to the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments in the current license for the Project, No. 2082. PacifiCorp has revised the license articles for the Project license by removing articles specific to the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments. PacifiCorp has also drafted license articles for the proposed Lower Klamath Project. Drafts of these articles are included as Attachments F and G, respectively.

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Because the Applicants view the division of the Klamath Project hydropower developments into separate licenses as a necessary precondition of the request for approval of transfer of the license, the Applicants request that the effective date of the amendment be made concurrent with the KRRC's acceptance of the new license for the Lower Klamath Project.

**V. REQUEST FOR TRANSFER OF LICENSE**

In accordance with the form set forth in Part 131 of the Commission's Rules and Regulations, 18 C.F.R. § 131.20:

1. PacifiCorp (Transferor), licensee under the license that was issued by the Commission in 1954<sup>7</sup> for the Klamath Hydroelectric Project, No. 2082, located in Klamath County, Oregon and Siskiyou County, California, and
2. The KRRC (Transferee),
3. Hereby jointly and severally apply for the written approval by the Commission of transfer of the license for the Lower Klamath Project, as described above, from the Transferor to the Transferee. As detailed more fully below, the KRRC commits to provide notice to the Commission of the finalization and execution of certain agreements and contracts required by the Amended KHSA. Applicants respectfully request that, if the Commission requires further information demonstrating the legal, technical, and financial capacities of the KRRC to perform its responsibilities as Transferee, the Commission defer action on this application until the KRRC submits such additional information to the Commission on or before March 1, 2017.

In support of these requests, the Applicants state:

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<sup>7</sup> 13 F.P.C. 1 (January 28, 1954), as amended 23 F.P.C. 59 (January 13, 1960).



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4. Transferor is a public utility organized under the laws of the state of Oregon. It provides electrical services to residential, commercial, and industrial customers in the states of California, Idaho, Oregon, Utah, Washington, and Wyoming.

5. Transferee is an independent legal entity, separate and distinct from PacifiCorp as well as the federal agencies, the States and state agencies, Native American tribes, and other signatories to the Amended KHSA. The KRRC was incorporated in March 2016. The KRRC executed the Amended KHSA on August 30, 2016. Pursuant to Section 7.1.8 of the Amended KHSA, the KRRC was created and exists for the express and exclusive purpose, subject to its becoming the licensee for the Lower Klamath Project, of conducting removal of the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments.

6. The KRRC satisfies the requirements of 18 C.F.R. §§ 9.1–9.2 and 4.31(a) for legal qualification. The KRRC is a public benefit corporation organized under the laws of California. Certified copies of the KRRC's articles of incorporation (Attachment H), bylaws (Attachment I), and certificate of good standing (Attachment J) are submitted with, incorporated into, and made part of this application. Consistent with its bylaws, the KRRC has a fully functioning independent board as of July 19, 2016. The current KRRC board members, listed below, have considerable technical, legal, and political experience in water issues, hydroelectric operations, environmental planning, and the Klamath basin:

**Mike Carrier, President:** Mike Carrier became supervisor for the Idaho Fish and Wildlife Office in the Pacific Region of the U.S. Fish and Wildlife Service in 2014. Previously, Carrier was Assistant Regional Director for Fishery Resources and Coordinator of the North Pacific Landscape Conservation Cooperative, forging a major new regional natural resource partnership to address impacts of climate change across a

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large landscape. Carrier served as former Oregon Governor Ted Kulongoski's principal adviser on all natural resource and environment issues from 2004 to 2010. In Oregon, Carrier helped establish the Renewable Energy Opportunities and Eastern Oregon Landscape Conservation Partnership. Earlier in his career, he was Director of the Oregon Parks and Recreation Department for four years.

**Lester Snow, Vice-President:** Lester Snow is the Executive Director of the Water Foundation. Mr. Snow has a distinguished record of innovation, collaboration and results while working on complex natural resource management matters. He has served as Secretary of the California Natural Resources Agency, Director of the California Department of Water Resources, Regional Director of the Bureau of Reclamation, Executive Director of the CALF ED Bay-Delta Program and General Manager of the San Diego County Water Authority. Lester currently serves on the Board of Directors for California Water Services Group and the Water Education Foundation.

**James Root, Secretary:** James Root was owner and chief executive officer of Sabroso Company, an international food processing company dedicated to maintaining sustainable operations. Root has a strong interest in encouraging international trade and he founded the Southern Oregon International Trade Council. Beyond trade, he is internationally recognized for his knowledge of sustainable farming practices and is focused on developing processed-food markets for agricultural communities in Mexico, Ecuador, Chile and Argentina. He was president of the Klamath Basin Rangeland Trust, which merged with Trout Unlimited and chairman of the Crater Lake National Park Trust, and served on the Board of Directors of the National Fish and Wildlife Foundation.

**Theodore Kulongoski:** Governor Ted Kulongoski served as Oregon's 36th governor from 2003 to 2011, becoming the first Oregon Governor to serve in all three branches of state government. He served as the Associate Justice of the Oregon Supreme Court from 1997 to 2001 and Attorney General from 1993 to 1997. He also served in the Oregon State House and Senate. He has served as a Distinguished Fellow of Politics and Policy at Portland State University.

**Wendy Ferris-George:** Mrs. Ferris-George is a former Vice-Chair and Council Member of the Hoopa Valley Tribe. Mrs. Ferris-George has worked for years on the campaign to remove Klamath River dams. Mrs. Ferris-George is an enrolled Hupa Tribal Member and also descends from the Karuk and Yurek Tribes. She has spent her life fishing on the Klamath and Trinity Rivers and is heavily involved with those that depend on the Klamath River for subsistence and economic purposes. Mrs.

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Ferris-George studied Anthropology at SSU and has studied the Klamath Basin for decades.

**Richard Roos-Collins:** Mr. Roos-Collins is an attorney specializing in settlements of complex cases involving multiple parties, interests, and laws in natural resources management. He is a member of the Board of Directors of the Pacific Forest Stewardship Council, which implements Pacific Gas and Electric Company's land conservation commitment. He is General Counsel to the Hydropower Reform Coalition, which represents more than two million people interested in enhancing public benefits of non-federal hydropower dams.

**Tom Jensen:** Mr. Jensen was formerly counsel to the U.S. Senate Committee on Energy and Natural Resources and White House Council on Environmental Quality. Mr. Jensen offers unique experience framing, negotiating, and implementing solutions to complex legal and policy matters. He is regularly called upon to assist with matters involving public lands, protected species, mitigation and conservation banking projects, water law (western and eastern systems) and water resource development, the National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), Endangered Species Act (ESA), Federal Land Policy and Management Act (FLPMA), Antiquities Act, National Park System Organic Act, Refuge System Improvement Act, and the unique portfolio of laws related to marine and aquatic resources. Mr. Jensen has represented licensees and stakeholders in the hydropower licensing process at the Federal Energy Regulatory Commission, including two unusual competitive relicensing efforts.

**Scott Williams:** Mr. Williams has an extensive background in complex civil litigation. Mr. Williams began an affiliation with his current partners in 1997; the firm represents exclusively Indian tribes and tribal organizations throughout the United States. His practices focus on representation in the areas of water rights and natural resources, cultural site protection, and employment relations. With Professor Eric Biber, Mr. Williams teaches Federal Indian Law, and along with his partners, the Advanced Indian Law seminar at Berkeley Law (Boalt Hall).

7. Transfer of the Lower Klamath Project to the KRRC will not adversely impact Project operations. As set forth in the Amended KHSA, and under the terms of an operations and maintenance agreement, PacifiCorp will continue operating and maintaining, and PacifiCorp will continue to assume all financial and legal liabilities for

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operating and maintaining, the Lower Klamath Project in accordance with all License conditions and applicable law pending surrender of the transferred License by the KRRC. *See* Amended KHSA § 7.1.6. PacifiCorp will pay all costs associated with operating the dams and indemnify, defend, and hold harmless the KRRC with respect to those operations. Applicants will include a copy of the executed operations and maintenance agreement as part of its additional information filing on or before March 1, 2017. This arrangement will ensure the continued safe and responsible operation and maintenance of the Lower Klamath Project developments pending facilities removal while also allowing PacifiCorp's customers to continue to receive benefits from the Lower Klamath Project developments until they are removed.

8. In addition, the KRRC will possess the necessary financial qualifications to accept responsibility as licensee for the Lower Klamath Project dams. As stated above, PacifiCorp will continue to be financially responsible for the operations and maintenance of the Lower Klamath Project facilities pending surrender of the transferred License and facilities removal by the KRRC. The original and Amended KHSA establish funding for facilities removal, including funding for the physical removal of the developments, site remediation and restoration, avoiding downstream impacts, mitigating downstream impacts, securing permits required for removal, removal and disposal of sediment, and compliance with environmental laws. The agreements provide up to \$450 million for these purposes, plus additional mechanisms to address costs or liabilities in excess of that amount. In short, the KRRC has, or has arranged for, the financial resources and appropriate capitalization necessary for operation of the Lower Klamath Project and for facilities removal.

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9. First, the KRRC is finalizing contractual arrangements to designate it as the beneficiary of four trust accounts that will total \$200 million. These trust account funds are currently being collected from PacifiCorp's retail customers in California and Oregon via surcharges that have been approved and implemented by the California Public Utilities Commission (CPUC) and Public Utility Commission of Oregon (OPUC).<sup>8</sup>

10. The customer surcharge funds have been and continue to be collected and deposited into four separate interest-bearing trust accounts, two for each state, that are each managed by a trustee selected by the respective public utility commissions. The trust accounts were established specifically for purposes of implementing the KHSA. As of August 31, 2016, the four trust accounts contained a total of \$120,019,563.91.

11. The disbursement of funds by the trustees will proceed according to specific protocols approved by the CPUC and OPUC and implemented through a number of funding agreements that the KRRC will enter into. In accordance with an authorizing order of the OPUC, the KRRC is entering into an initial grant agreement for \$320,000 with the Oregon Department of Fish and Wildlife (ODFW) to cover the KRRC's initial startup costs, and legal and technical costs associated with preparing this Application and the KRRC's license surrender application.<sup>9</sup> The KRRC will provide the Commission

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<sup>8</sup> The collection of Oregon's allocated share of customer surcharges is authorized by Oregon statute. *See* ORS 757.736 (requiring PacifiCorp to file tariffs with the OPUC to collect two surcharges for the purpose of "paying the costs of removing Klamath River dams..." and limiting the surcharge to Oregon's allocated share of the \$250 million in customer funding identified in the KHSA.); *In the Matter of PacifiCorp, d/b/a Pacific Power, Application to Implement the Provisions of Senate Bill 76*, Docket No. UE 219, Order No. 10-364 (Or. Pub. Util. Comm'n, Sept. 16, 2010) (affirming surcharges). *See also Decision Approving a Rate Increase for PacifiCorp Pursuant to the Klamath Hydroelectric Settlement Agreement*, Decision 11-05-002 (Cal. Pub. Utils. Comm'n, Mar. 5, 2011).

<sup>9</sup> ODFW is the agency designated in the Amended KHSA to request a transfer of Oregon trust funds to the KRRC. *See* Amended KHSA § 3.2. On August 30, 2016, the OPUC authorized an

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with the executed funding agreements in its subsequent informational filing on or before March 1, 2017.

12. Regarding the California surcharge funds, PacifiCorp filed a motion with the CPUC to modify a prior CPUC decision to reflect the amendments to the KHSA. Once the CPUC grants that motion, the KRRC will enter into an agreement with the CPUC to facilitate the disbursement of California surcharge funds to the KRRC through a funding agreement with the California Natural Resources Agency (CNRA). The KRRC will provide the Commission with the CPUC order and executed funding agreement in its subsequent informational filing.

13. Third, the KRRC also has the ability to draw up to an additional \$250 million in funding approved as part of a California water bond. In 2014, California voters passed Proposition 1, a water bond that included \$250 million for implementation of the KHSA. This year, the California Governor, through the state budget approved by the California Legislature, included language appropriating those bond funds to the CNRA for the purpose of facilities removal. The CNRA and the KRRC are entering into an agreement to implement the Governor's direction. The disbursement of these bond funds to the KRRC for purposes of facilities removal will not require any further voter approval, legislative or executive action, or budget appropriation. The KRRC will provide documentation of the executed agreement in its subsequent informational filing on or before March 1, 2017.

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initial transfer of \$320,000 in Oregon surcharge funds to cover the KRRC's initial startup costs. *See* Docket No. UE 219, Order No. 16-330 (Or. Pub. Util. Comm'n, Aug. 30, 2016).

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14. In total, the KRRC will have access to up to \$450 million in capital for purposes facilities removal. As detailed in Appendix L of the Amended KHSA, the KRRC will also utilize a series of regular commercial mechanisms to address costs or liabilities exceeding that amount. Preliminary documentation of the funding and other financial resources available to the KRRC for facilities removal is attached hereto as Attachments K.1 through K.8.

15. The Transferee verifies that it has complied with all applicable state laws as required by Section 9(a)(2) of the FPA. If and when the Commission has given its approval to the proposed transfer of the license for the Lower Klamath Project, Transferor will transfer and Transferee will accept, as may be necessary and as part of Transferor's conveyance of the Lower Klamath Project, all obligations set forth in the license, including obligations in the Clean Water Act Section 401 water quality certifications issued by the Oregon Department of Environmental Quality and the California State Water Resources Control Board. PacifiCorp will comply with any applicable property disposition rules of the public utility commissions of the states in which it provides retail electric service.

16. Within six months of the Commission approving transfer of the license, the Transferee will submit to the Commission certified copies of all instruments of conveyance whereby titles to the Lower Klamath Project are conveyed to it.

17. Within six months of the Commission approving transfer of the license, and upon completion of conveyance of the Lower Klamath Project to the Transferee, the Transferor will deliver to the Transferee and the Transferee will accept and permanently retain all license instruments and all maps, plans, specifications, contracts, reports of

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engineers, accounts, books, records, and all other papers and documents relating to the Lower Klamath Project.

18. The Transferor certifies that it has fully complied with the terms and conditions of its Project license, and that it has fully satisfied and discharged all of its liabilities and obligations as of the date of this application, and Transferor obligates itself to pay all annual charges accrued under the Project license to the date of the transfer.

19. Contingent upon final written approval by the Commission of the transfer of the Lower Klamath Project license, the Transferee accepts all the terms and conditions of the license for the Lower Klamath Project and the FPA, and agrees to be bound thereby to the same extent as though it were the original licensee thereunder.

20. The name, title, post-office address and telephone numbers of the person or persons to whom correspondence in regard to this Application should be addressed are as follows:

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Applicants respectfully request waiver of the Commission's Rules of Practice and Procedure—including, without limitation, Rule 2010(k), 18 C.F.R. § 385.2010(k) (2016)—to the extent necessary to allow each of the persons listed above to be included on the official service list for this proceeding.

After the license transfer has become effective, correspondence and communications regarding the Lower Klamath Project should be directed to the individuals listed in paragraph 20(b) above.

**VI. TRANSFER OF THE PROPOSED LOWER KLAMATH PROJECT LICENSE IS IN THE PUBLIC INTEREST**

As stated in Section III above, after years of settlement negotiations following PacifiCorp's 2004 filing of its Project relicensing application with the Commission, the KHSA was executed on February 18, 2010, by 48 parties, including PacifiCorp; the States; Interior; NMFS; several Native American tribes; a number of local counties; and irrigation, conservation and fishing groups. This diverse group of stakeholders worked collaboratively to resolve issues related to relicensing of the Project. PacifiCorp agreed to allow an independent dam removal entity to pursue removal of the Project's J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments, and executed the KHSA based upon the negotiated terms of this collaborative effort. The CPUC and OPUC concurred with PacifiCorp's determination by finding that the terms advance and protect the interests of customers and by authorizing the collection of surcharges from customers in those states to fund the customer contribution to dam removal costs.

The KHSA was amended on April 6, 2016, to provide for the transfer and removal of the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments according to the standard procedures of the FPA as administered by the

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Commission. The KRRC was created to serve as the independent dam removal entity contemplated in the Amended KHSA. The KRRC subsequently executed the Amended KHSA.

Since the execution of the Amended KHSA, PacifiCorp, the KRRC, regulatory agencies, and affected stakeholders have been working diligently to implement the Amended KHSA obligations and advance the settlement process. By approving the transfer of the newly designated Lower Klamath Project license, the Commission will allow the KRRC to pursue the license surrender and facilities removal in 2020.

This is a critical component of the Amended KHSA and is essential to help resolve long-standing and complex conflicts over resources in the Klamath Basin. The Amended KHSA represents an unprecedented level of collaboration among a FERC licensee, federal agencies, two states, Native American tribes, and conservation and recreation groups. Commission action approving this Application is therefore in the public interest.

Applicants respectfully request that the Commission act on this Application by December 31, 2017, to allow timely implementation of the Amended KHSA to continue. Applicants further request that, in approving the transfer of the license for the Lower Klamath Project from PacifiCorp to the KRRC, the Commission grant the KRRC six months from the date of the Commission order approving such transfer to submit proof of acceptance of the transfer. Applicants note that the Amended KHSA includes specific preconditions to the KRRC's acceptance of license transfer,<sup>10</sup> and Applicants anticipate that satisfaction of these preconditions will require more than the standard 60-day time

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<sup>10</sup> See Amended KHSA § 7.1.4.

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period that the Commission typically provides for transferors to formally accept transfer.<sup>11</sup> In providing an extension of the date by which the KRRC is to formally accept transfer, the Commission is requested to recognize in its order that the KRRC is unable to accept the Lower Klamath Project license until certain conditions in the Amended KHSA have been satisfied.

**VII. CONCLUSION**

As demonstrated above, Commission approval of this Application is in the public interest. The KRRC is fully qualified to hold a license for the Lower Klamath Project. In addition, the KRRC agrees to accept all of the terms and conditions of the license, to be bound by the license as if it were the original licensee, and to be responsible for operating, maintaining, and ultimately removing the Lower Klamath Project dams in accordance with the license and regulations and directives of the Commission under the FPA.

Applicants therefore respectfully request Commission approval of this Joint Application for Approval of License Amendment and License Transfer.

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<sup>11</sup> To the extent necessary, Applicants seek waiver of the requirement that acknowledgement of acceptance be filed within 60 days of the issuance of an order approving transfer of the license. 18 C.F.R. § 9.3(b) (2016).

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Respectfully submitted this 23<sup>rd</sup> day of September, 2016

/s/ Hallie Meushaw

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**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****LIST OF ATTACHMENTS**

<b>Attachment No.</b>	<b>Description</b>
<b>Attachment A</b>	Klamath Hydroelectric Settlement Agreement, as amended (Apr. 6, 2016)
<b>Attachment B</b>	Exhibit M – Klamath Hydroelectric Project (Exhibit A in FERC’s current regulations). <b>Contains CEII – DO NOT RELEASE. Public and Non-Public Versions Filed.</b>
<b>Attachment C</b>	Exhibit M – Lower Klamath Project Description (Exhibit A in FERC’s current regulations). <b>Contains CEII – DO NOT RELEASE. Public and Non-Public Versions Filed.</b>
<b>Attachment D</b>	Klamath Hydroelectric Project Exhibit Drawings and Maps List
<b>Attachment E</b>	Lower Klamath Project Exhibit Drawings and Maps List
<b>Attachment F</b>	Proposed Klamath Hydroelectric Project Revised License Articles
<b>Attachment G</b>	Proposed Lower Klamath Project License Articles
<b>Attachment H</b>	Klamath River Renewal Corporation Articles of Incorporation
<b>Attachment I</b>	Klamath River Renewal Corporation Bylaws
<b>Attachment J</b>	Klamath River Renewal Corporation Certificate of Good Standing
<b>Attachment K.1</b>	Order No. 10-364, Docket No. UE 219 (Oregon Pub. Util. Comm’n, Sept. 16, 2010)
<b>Attachment K.2</b>	Order No. 10-390, Docket No. UE 219 (Oregon Pub. Util. Comm’n, Oct. 11, 2010)
<b>Attachment K.3</b>	Order No. 16-218, Docket No. UE 219 (Oregon Pub. Util. Comm’n, June 8, 2016)
<b>Attachment K.4</b>	Decision 11-05-002, Docket No. A.10-03-015 (Cal. Pub. Utils. Comm’n, May 6, 2011)
<b>Attachment K.5</b>	Decision 12-10-028, Docket No. A.10-03-015 (Cal. Pub. Utils. Comm’n, Nov. 1, 2012)
<b>Attachment K.6</b>	California Water Code Section 79730-79738 and California Budget Act of 2016 (excerpts)
<b>Attachment K.7</b>	Funding Memorandum Prepared by Hawkins Delafield & Wood LLP
<b>Attachment K.8</b>	Letter from T. Gibson, General Counsel, California Natural Resources Agency re: Availability of Bond Funding

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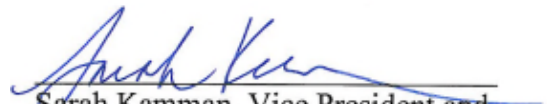
**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

PacifiCorp ) Project No. P-2082  
 )  
 and ) Project No. P-\_\_\_\_-\_\_\_\_  
 )  
 Klamath River Renewal Corporation )

**VERIFICATION**

County of Multnomah )  
State of Oregon )

I, the undersigned, being duly sworn deposes and says: That she is Vice President and General Counsel of PacifiCorp, one of the applicants for approval of partial transfer of license; that she has read the foregoing application and knows the contents thereof; and that the same are true to the best of her knowledge and belief.

  
Sarah Kamman, Vice President and  
General Counsel  
For PacifiCorp

Subscribed and sworn to before me, a notary public of the State of Oregon this 22<sup>nd</sup> day of September 2016.





UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

PacifiCorp ) Project No. P-2082-\_\_\_\_  
)  
and ) Project No. P-\_\_\_\_-\_\_\_\_  
)  
Klamath River Renewal Corporation )

VERIFICATION

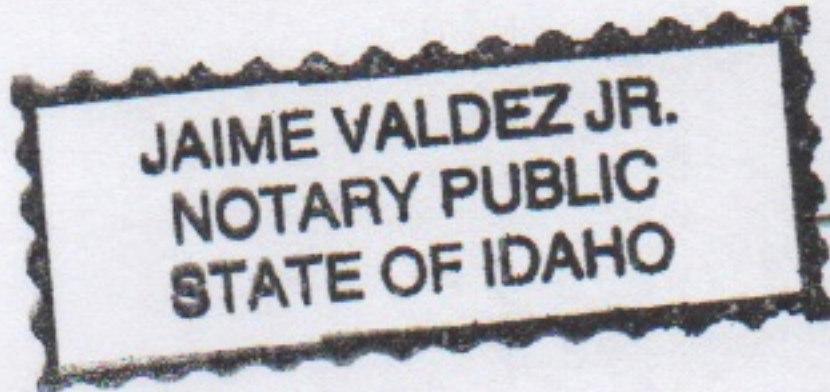
County of ADA )  
State of Idaho )

I, the undersigned, being duly sworn deposes and says: That he is the President of the Klamath River Renewal Corporation, one of the applicants for approval of partial transfer of license; that he has read the foregoing application and knows the contents thereof; and that the same are true to the best of his knowledge and belief.

20160923-5367 FERC PDF (Unofficial) 9/23/2016 1:23:50 PM

Michael Carrier, President  
Michael Carrier, President  
For Klamath River Renewal Corporation

Subscribed and sworn to before me, a notary public of the State of IO this 22<sup>nd</sup> day of September, 2016.



Subscribed and sworn in before me in my Presence, this 22<sup>nd</sup> day of Sept. 2016, a Notary Public in and for the County of ADA State of IO  
(signature) Notary Public  
My Commission expires 8/21/20



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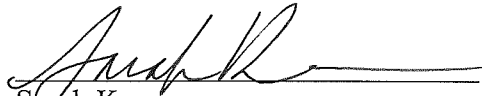
**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

PacifiCorp	)	Project No. P-2082-__
	)	
and	)	Project No. P-__ -__
	)	
Klamath River Renewal Corporation	)	

**PROOF OF CITIZENSHIP**

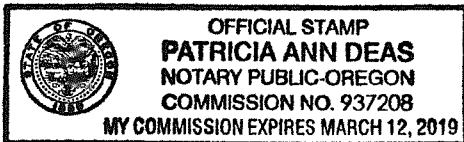
County of Multnomah	)
State of Oregon	)

I, Sarah Kamman, being duly sworn, deposes and says that she is a citizen of the United States of America.

  
 Sarah Kamman  
 Vice President and General Counsel  
 For PacifiCorp

Subscribed and sworn to before me, a notary public of the State of Oregon this 23<sup>rd</sup> day of September 2016.





UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

PacifiCorp ) Project No. P-2082-\_\_\_\_  
 )  
and ) Project No. P-\_\_\_\_-\_\_\_\_  
 )  
Klamath River Renewal Corporation )

PROOF OF CITIZENSHIP

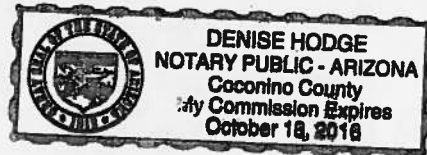
County of Coconino )  
State of Arizona )

I, Michael Carrier, being duly sworn, deposes and says that he is a citizen of the United States of America.

*Michael Carrier*  
Michael Carrier, President  
For Klamath River Renewal Corporation

Subscribed and sworn to before me, a notary public of the State of Arizona this 23rd day of September, 2016.

*Denise Hodge*



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**CERTIFICATE OF SERVICE**

I hereby certify that I have on this day served the foregoing document upon each person designated on the official service list in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Portland, Oregon this 23<sup>rd</sup> day of September, 2016.

/s/ Chris D. Zentz  
Christopher D. Zentz  
TROUTMAN SANDERS LLP  
100 SW Main St., Suite 1000  
Portland, OR 97214

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Joint Application for Approval of License Amendment and License Transfer**

## **Attachment A**

**Klamath Hydroelectric Settlement Agreement, as  
amended (Apr. 6, 2016)**

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# **KLAMATH HYDROELECTRIC SETTLEMENT AGREEMENT**

**February 18, 2010  
as amended April 6, 2016**

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- B. Interim Measures Implementation Committee (Interim Measure 1)
- C. Interim Conservation Plan (ICP) Interim Measures
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- K. List of Authorized Representatives
- L. DRE and Contractor Qualifications, Insurance, Bonding, and Risk Mitigation Requirements

**EXHIBITS**

- 1. Water Rights Agreement between PacifiCorp and the State of Oregon
- 2. Sequence of Performance Chart—KHSA
- 3. Maps
- 4. Estimated Timelines—KHSA as Amended

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The KLAMATH HYDROELECTRIC SETTLEMENT AGREEMENT was made and entered into by and among the following entities:

Ady District Improvement Company;  
American Rivers;  
Bradley S. Luscombe;  
California Department of Fish and Game (“CDFG”);  
California Natural Resources Agency (“CNRA”);  
California Trout;  
Collins Products, LLC;  
Don Johnston & Son;  
Enterprise Irrigation District;  
Humboldt County, California;  
Institute for Fisheries Resources;  
Inter-County Properties Co., which acquired title as Inter-County Title Co.;  
Karuk Tribe;  
Klamath Basin Improvement District;  
Klamath County, Oregon;  
Klamath Drainage District;  
Klamath Irrigation District;  
Klamath Tribes;  
Klamath Water and Power Agency (“KWAPA”);  
Klamath Water Users Association (“KWUA”);  
Malin Irrigation District;  
Midland District Improvement Company;  
Northern California Council, Federation of Fly Fishers;  
Oregon Department of Environmental Quality (“ODEQ”);  
Oregon Department of Fish and Wildlife (“ODFW”);  
Oregon Water Resources Department (“OWRD”);  
Pacific Coast Federation of Fishermen’s Associations;  
PacifiCorp;  
Pioneer District Improvement Company;  
Plevna District Improvement Company;  
Randolph Walthall and Jane Walthall as trustees under declaration of trust dated November 28, 1995 (the “Randolph and Jane Walthall 1995 trust”);  
Reames Golf and Country Club;  
Salmon River Restoration Council;  
Shasta View Irrigation District;  
Sunnyside Irrigation District;  
Trout Unlimited;  
Tulelake Irrigation District;  
United States Department of Commerce’s National Marine Fisheries Service (“NMFS”);  
United States Department of the Interior (“Interior”);  
Upper Klamath Water Users Association (“UKWUA”);  
Van Brimmer Ditch Company;  
Westside Improvement District #4;

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Winema Hunting Lodge, Inc.; and  
Yurok Tribe;

This Klamath Hydroelectric Settlement Agreement, as amended, is entered into by and among the entities who sign the Settlement.

**1. Introduction**

1.1 Recitals

**WHEREAS**, the States, the United States and PacifiCorp entered into the 2008 Agreement in Principle that addressed issues pertaining to the resolution of certain litigation and other controversies in the Klamath Basin, including a path forward for possible Facilities Removal; and

**WHEREAS**, the 2008 AIP provided that the parties to the 2008 AIP would continue good-faith negotiations to reach a final settlement agreement in order to minimize adverse impacts of dam removal on affected communities, local property values and businesses and to specify substantive rights, obligations, procedures, timetables, agency and legislative actions, and other steps for Facilities Removal; and

**WHEREAS**, the other Parties to this Settlement desired to participate in the negotiations of a final settlement agreement in order to ensure that the interests of Indian tribes, environmental organizations, fishermen, water users, and local communities were addressed; and

**WHEREAS**, the Parties view this Settlement as an important part of the resolution of long-standing, complex, and intractable conflicts over resources in the Klamath Basin; and

**WHEREAS**, the 2008 AIP established a “commitment to negotiate” a settlement “based on existing information and the preliminary view of the governmental Parties (the United States, Oregon, and California) that the potential benefits for fisheries, water and other resources of removing the Facilities outweigh the potential costs, risks, liabilities or other adverse consequences of such removal”; and

**WHEREAS**, certain Parties believe that decommissioning and removal of the Facilities will help restore Basin natural resources, including anadromous fish, fisheries and water quality; and

**WHEREAS**, the Parties understand that the Project dams are currently the property of PacifiCorp, and that they are currently operated subject to applicable state and federal law and regulations. The other Parties understand that the decision before PacifiCorp is whether the decommissioning and removal of certain Facilities is appropriate and in the best interests of PacifiCorp and its customers. PacifiCorp asserts that prudent and reasonable long-term utility rates and protection from any liability for damages caused by Facilities Removal are central to its willingness to voluntarily transfer the dams and the low-carbon renewable energy they produce and to concur in the removal of the dams by the DRE; and

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**WHEREAS**, the United States has devoted considerable funds and resources to resource enhancements, management actions, and compensation in the Klamath Basin, and various Parties believe that a broader and integrated approach is appropriate to realize Basin-wide objectives; and

**WHEREAS**, this Settlement contemplates a substantial non-federal contribution in support of said approach; and

**WHEREAS**, the Tribes and the Federal Parties agree that this Settlement advances the trust obligation of the United States to protect Basin Tribes' federally reserved fishing and water rights in the Klamath and Trinity River Basins; and

**WHEREAS**, in 2016, PacifiCorp, the United States, and the States signed the 2016 Agreement in Principle to signify their intent to negotiate an amended KHSA that would facilitate Facilities Removal through the existing authority of FERC under the Federal Power Act; and

**WHEREAS**, all of the Parties agree that this Settlement is in the public interest.

**NOW, THEREFORE**, the Parties agree as follows:

1.2 Purpose of Settlement

The Parties have entered into this Settlement for the purpose of resolving among them the pending FERC relicensing proceeding by establishing a process for potential Facilities Removal and operation of the Project until that time.

1.3 Parties Bound by Settlement

The Parties shall be bound by this Settlement for the term stated in Section 8.1 herein, unless terminated pursuant to Section 8.11.

1.4 Definitions

**“2008 Agreement in Principle”** or **“2008 AIP”** refers to the Agreement in Principle executed on November 13, 2008, by the states of Oregon and California, Interior, and PacifiCorp setting forth a framework for potential Facilities Removal.

**“2016 Agreement in Principle”** or **“2016 AIP”** refers to the Agreement in Principle executed on February 2, 2016, by the states of Oregon and California, Interior, the U.S. Department of Commerce, and PacifiCorp signifying their intent to negotiate an amended KHSA that would achieve Facilities Removal through the existing authority of FERC under the Federal Power Act.

**“Amendment Effective Date”** is defined in Section 8.2.

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**“Applicable Law”** means general law that (1) exists outside of this Settlement, including, but not limited to a Constitution, statute, regulation, court decision, or common law, and (2) applies to obligations or activities of Parties contemplated by this Settlement. The use of this term is not intended to create a contractual obligation to comply with any law that would not otherwise apply.

**“Authorizing Legislation”** refers to the statutes enacted by the Oregon and California Legislatures, respectively, to authorize and implement certain aspects of this Settlement, if necessary.

**“CEQA”** refers to the California Environmental Quality Act, Cal. Pub. Res. Code § 21000 *et seq.*

**“CWA”** refers to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*

**“Coordination Process”** for the Studies Supporting the Secretarial Determination means the process contained in Appendix A by which the United States will obtain input and assistance from the Parties to this Settlement, as governed by Applicable Law, regarding the studies and environmental compliance actions needed to inform and support the Secretarial Determination.

**“Counties”** refers to the counties that sign this Settlement.

**“Dam Removal Entity”** or **“DRE”** is the Klamath River Renewal Corporation, which will be the entity responsible for Facilities Removal under this Settlement.

**“Decommissioning”** means PacifiCorp’s physical removal from a facility of any equipment and personal property that PacifiCorp determines has salvage value, and physical disconnection of the facility from PacifiCorp’s transmission grid.

**“Definite Plan”** means a plan and timetable for Facilities Removal submitted by the DRE or any of its contractors or assigns under Section 7.2.1.

**“Detailed Plan”** means the plan dated July 2012 that includes elements described in Section 7.2.2.

**“Dispute Resolution Procedures”** means the procedures established by Section 8.6.

**“Due Diligence”** means a Party’s taking all reasonable steps to implement its obligations under this Settlement.

**“Effective Date”** is defined in Section 8.2.

**“EPA Act”** refers to the Energy Policy Act of 2005, Section 241, codified at 16 U.S.C. § 823d and amendments to 16 U.S.C. §§ 797(e) and 811.

**“ESA”** refers to the federal Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.*

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“**Facilities**” or “**Facility**” means the following specific hydropower facilities within the jurisdictional boundary of FERC Project No. 2082: Iron Gate Dam, Copco No. 1 Dam, Copco No. 2 Dam, J.C. Boyle Dam, and appurtenant works currently licensed to PacifiCorp.

“**Facilities Removal**” means physical removal of all or part of each of the Facilities to achieve at a minimum a free-flowing condition and volitional fish passage, site remediation and restoration, including previously inundated lands, measures to avoid or minimize adverse downstream impacts, and all associated permitting for such actions.

“**Federal Parties**” refers to Interior, including the component agencies and bureaus of Interior, and the NMFS.

“**FERC**” refers to the Federal Energy Regulatory Commission.

“**Interim Conservation Plan**” or “**ICP**” refers to the plan developed by PacifiCorp through technical discussions with NMFS and the U.S. Fish and Wildlife Service (“USFWS”) regarding voluntary interim measures for the enhancement of coho salmon and suckers listed under the ESA, filed with FERC on November 25, 2008, or such plan as subsequently modified.

“**Interim Measures**” refers to those measures described in Appendices C and D to this Settlement.

“**Interim Period**” refers to the period between the Effective Date and Decommissioning.

“**Keno facility**” means Keno Dam, lands underlying Keno Dam, appurtenant works and PacifiCorp-owned property described as Klamath County Map Tax Lot R-3907-03600-00200-000 located in Klamath County, Oregon.

“**Klamath Hydroelectric Settlement Agreement**” or “**KHSA**” means the Klamath Hydroelectric Settlement Agreement executed February 18, 2010.

“**Meet and Confer**” procedures mean the procedures established by Section 8.7 of this Settlement.

“**NEPA**” refers to the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*

“**Nominal dollars**” means dollars that are not adjusted for inflation at the time they are collected.

“**Non-bypassable surcharge**” means a monetary surcharge authorized by the appropriate state utility commission through a tariff schedule that applies to all retail customers who rely on PacifiCorp’s transmission and distribution system for the delivery of electricity.

“**Notice**” means written notice pursuant to the requirements and procedures of Section 8.5.

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“**Oregon Surcharge Act**” is defined in Section 2.2.

“**PacifiCorp’s Economic Analysis**” means the primary economic analysis prepared by PacifiCorp and relied upon by PacifiCorp to compare the present value revenue requirement impact of the KHSA against the present value revenue requirement of relicensing of the Facilities under defined prescriptions generally based on the FERC Final Environmental Impact Statement dated November 2007, which analysis PacifiCorp filed with the Public Utility Commission of Oregon (“Oregon PUC”) pursuant to Section 4(1) of the Oregon Surcharge Act and with the California Public Utilities Commission (“California PUC”) in accordance with Section 4 of the KHSA. This analysis was used to compare the relative cost of relicensing with the relative cost of the KHSA.

“**Parties**” or “**Party**” means the signatories to this Amended KHSA collectively or a signatory individually.

“**Project**” refers to the Klamath Hydroelectric Project as licensed by FERC under Project No. 2082.

“**Public Agency Party**” means each Tribe, the Federal Parties, the agencies of each of the States, the Counties, and each other Party that is a public agency established under Applicable Law.

“**Regulatory Approval**” means each permit or other approval under a statute or regulation necessary or appropriate to implement any of the obligations or activities of Parties contemplated under this Settlement.

“**Regulatory Obligation**” means each of those obligations or activities of Parties contemplated by this Settlement that are subject to Regulatory Approval and, upon such approval, are enforceable under regulatory authority.

“**Secretarial Determination**” means the determination contemplated in Section 3.3 of the KHSA.

“**Secretary**” refers to the Secretary of the Interior.

“**Services**” means the National Marine Fisheries Service and the U.S. Fish and Wildlife Service.

“**Settlement**” means the entirety of the KHSA and Appendices A through L, as amended and applicable. “Settlement” does not include Exhibits 1 through 4, which are related documents attached for informational purposes.

“**States**” refers to the State of Oregon by and through the Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, and Oregon Water Resources



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Department, and the State of California by and through the California Department of Fish and Wildlife (“CDFW”) and the California Natural Resources Agency.

“**State Cost Cap**” means the collective maximum monetary contribution from the states of California and Oregon as described in Section 4.1.3 of this Settlement.

“**Timely**” or “**Timeliness**” means performance of an obligation by the deadline established in the applicable provision of this Settlement or otherwise in a manner reasonably calculated to achieve the bargained-for benefits of this Settlement.

“**Tribes**” means the Yurok Tribe, the Karuk Tribe, the Hoopa Valley Tribe, and the Klamath Tribes, so long as such tribe is a signatory to the Settlement.

“**Value to Customers**” means potential cost reductions described in Section 7.3.8. These cost reductions would (1) decrease the Customer Contribution defined in Section 4.1.1.C, (2) decrease the costs of ongoing operations, or (3) decrease the costs of replacement power, as compared against the assumptions contained in PacifiCorp’s Economic Analysis.

#### 1.5 Compliance with Legal Responsibilities

In the implementation of this Settlement, Public Agency Parties shall comply with Applicable Law, including but not limited to the Authorizing Legislation, NEPA, ESA, CWA, the Wild and Scenic Rivers Act, and CEQA.

#### 1.6 Reservations

##### 1.6.1 Generally

Nothing in this Settlement is intended or shall be construed to affect or limit the authority or obligation of any Party to fulfill its constitutional, statutory, and regulatory responsibilities or comply with any judicial decision. Nothing in this Settlement shall be interpreted to require the Federal Parties, the States, or any other Party to implement any action which is not authorized by Applicable Law or where sufficient funds have not been appropriated for that purpose by Congress or the States. The Parties expressly reserve all rights not granted, recognized, or relinquished in this Settlement.

##### 1.6.2 Reservations Regarding Federal Appropriations

All actions required of the Federal Parties in implementing this Settlement are subject to appropriations for that purpose by Congress. Nothing in this Settlement shall be interpreted as or constitute a commitment or requirement that any Federal agency obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other Applicable Law. Nothing in this Settlement is intended or shall be construed to commit a federal official to expend federal funds not appropriated

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for that purpose by Congress. Nothing in this Settlement is intended to or shall be construed to require any official of the executive branch to seek or request appropriations from Congress to implement any provision of this Settlement.

#### 1.6.3 Availability of Public Funds

Funding by any Public Agency Party under this Settlement is subject to the requirements of Applicable Law. Nothing in this Settlement is intended or shall be construed to require the obligation, appropriation, or expenditure of any funds by the States or a Public Agency Party except as otherwise permitted by Applicable Law.

#### 1.6.4 Reservations Regarding Legislative Proposals

Nothing in this Settlement shall be deemed to limit the authority of the executive branch of the United States government to make recommendations to Congress on any particular proposed legislation.

#### 1.6.5 Reservations Regarding Regulations

Nothing in this Settlement is intended or shall be construed to deprive any public official of the authority to revise, amend, or promulgate regulations.

#### 1.6.6 No Pre-Decisional Commitment

Nothing in this Settlement is intended or shall be construed to be a pre-decisional commitment of funds or resources by a Public Agency Party. Nothing in this Settlement is intended or shall be construed to predetermine the outcome of any Regulatory Approval or other action by a Public Agency Party necessary under Applicable Law in order to implement this Settlement.

#### 1.6.7 No Waiver of Sovereign Immunity

Nothing in this Settlement is intended or shall be construed as a waiver of sovereign immunity by the United States, the State of Oregon, the State of California, any other Public Agency Party, or the Tribes. This Settlement does not obligate the United States or any Federal Party to affirmatively support this Settlement regarding any state or local legislative, administrative, or judicial action before a state administrative agency or court.

#### 1.6.8 No Argument, Admission, or Precedent

This Settlement shall not be offered for or against a Party as argument, admission, or precedent regarding any issue of fact or law in any mediation, arbitration, litigation, or other administrative or legal proceeding, except that this Settlement may be used in any future proceeding to interpret or enforce the terms of this

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Settlement, consistent with Applicable Law. This Settlement may also be used by any Party in litigation by or against non-Parties to implement or defend this Settlement. This section shall survive any termination of this Settlement.

#### 1.6.9 Protection of Interests

Each Party may, in a manner consistent with this Settlement, protect, defend, and discharge its interests and duties in any administrative, regulatory, legislative or judicial proceeding, including but not limited to the Secretarial Determination, FERC relicensing process, CWA 401 proceedings, or other proceedings related to potential Project relicensing, surrender, or Facilities Removal.

#### 1.7 Trinity River

The Parties intend that this Settlement shall not adversely affect the Trinity River Restoration Program.

To reach that conclusion, the Tribes reaffirm and rely upon their view of the existing fishery restoration goals and principles for the Trinity River Fishery Restoration Program, as follows:

- A. Restoration of the Trinity River fish populations to pre-Trinity Dam construction levels;
- B. Fishery restoration shall be measured not only by returning anadromous fish spawners but also by the ability of dependent tribal and non-tribal fishers to participate fully in the benefits of restoration through meaningful subsistence and commercial harvest opportunities;
- C. An appropriate balance between stocks of natural and hatchery origins shall be maintained to minimize negative interactions upon naturally produced fish by hatchery mitigation releases;
- D. A collaborative working relationship between federal agencies and the above mentioned Tribes;
- E. Portions of federal activities that are associated with fishery restoration programs are Indian Programs for the purposes of the Indian Self-Determination Act; and
- F. The Tribes support full funding implementation of the Trinity River Record of Decision from funding sources outside of this Settlement.

Nothing in this section binds any Party to any particular interpretation of the law or requires any Party to take particular actions, including performance of Interim Measures, or excuses any action otherwise required by Applicable Law or this Settlement.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****1.8 Tribal Water Rights**

This Settlement does not waive or in any way limit any treaty right, federally reserved right, or other right of the Tribes, or any federally recognized tribe, including any water or fishing right.

**1.9 Klamath Basin Agreement**

The States, the Federal Parties, and other entities are concurrently entering into the 2016 Klamath Power and Facilities Agreement. Each Party, other than PacifiCorp, shall support and defend the 2016 Klamath Power and Facilities Agreement, in its current form as of April 6, 2016, and its objectives in each applicable venue or forum in which it participates, including any administrative or judicial action. For purposes of this Section 1.9 only, the terms “support and defend” mean that the Party will advocate for the 2016 Klamath Power and Facilities Agreement or refrain from taking any action or making any statement in opposition to the 2016 Klamath Power and Facilities Agreement. More broadly, the Parties are committed to engage in good faith efforts to develop and enter into a subsequent agreement or agreements pertaining to other water, fisheries, land, agriculture, refuge and economic sustainability issues in the Klamath Basin with the goal to complete such agreement or agreements within the next year.

**2. Implementation of Settlement****2.1 General Duty to Support Implementation**

The Parties shall fully support this Settlement and its implementation. The form, manner, and timing of each Party’s support are reserved to the discretion of each Party. Each Party agrees to refrain from any action that does not support or further cooperative efforts in support of the goals of this Settlement and its effective implementation.

**2.1.1 Legislation**

- A. The Parties understand and agree that federal legislation is not necessary to carry out this Settlement.
- B. Within 60 days of the Amendment Effective Date, the CDFW will provide draft California legislation to the Parties regarding a limited authorization for incidental take of Lost River Suckers, Shortnose Sucker, Golden Eagles, southern Bald Eagles, Greater Sandhill Cranes, or American Peregrine Falcon contingent upon the fulfillment of certain conditions, if such authorization is necessary for implementation of this Settlement. After reasonable opportunity for Parties to provide comments on the draft legislation, the State of California shall Timely recommend the legislation.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****2.1.2 Regulatory Approvals**

Subject to Sections 1.6.1, 2.1, and 7.1.5, each Party shall support the application for and granting of Regulatory Approvals consistent with this Settlement. The preceding sentence shall not apply to the Public Agency Party exercising the regulatory approval or to a Public Agency Party not participating in the proceeding.

**2.1.3 Defense of Settlement**

If an administrative or judicial action is brought against any Party to challenge the validity of this Settlement or its implementation consistent with the Settlement, each other Party shall endeavor to intervene or otherwise participate in such action, subject to its discretion, necessary funding, and Section 1.6. Any such participating Party will defend the Settlement. The form of such defense, including what litigation positions to support or recommend in such action, shall be left to the discretion of each participating Party in the action.

Each Party may comment on the consistency of any plan, other document, or data arising during the implementation of this Settlement and not otherwise set forth in an Appendix or Exhibit to this Settlement. The Parties acknowledge that their comments may conflict due to differing good-faith interpretations of the applicable obligations under this Settlement.

**2.1.4 Obligation to Implement****A. General**

Each Party shall implement each of its obligations under this Settlement in good faith and with Due Diligence. Any obligation identified as an obligation of all of the Parties does not obligate any individual Party to take any action itself or itself make any specific commitment other than to participate in the applicable procedures.

**B. Cooperation Among the Parties**

Each Party shall cooperate in the implementation of this Settlement. A Party shall not act in a manner that results in an action or requirement that is inconsistent with the Settlement unless necessary to comply with statutory, regulatory, or other legal responsibility.

**C. Covenant Not to Sue with Respect to Permitting and Performance of Definite Plan**

- (1) No Party shall directly or indirectly through other entities oppose the DRE's securing all permits and entering all contracts necessary

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for Facilities Removal consistent with the Definite Plan or any Regulatory Approval, provided this clause does not apply to a Public Agency Party exercising a Regulatory Approval;

- (2) After transfer of the Facilities to the DRE, each Party covenants not to sue any other Party for monetary or non-monetary relief for harm arising from removal of any of the Facilities, provided this covenant does not apply to claims against the DRE arising from the negligence, recklessness, or willful misconduct of the DRE or any of its contractors, subcontractors, or assigns, or from the actions or omissions of the DRE or any of its contractors, subcontractors, or assigns inconsistent with the Definite Plan or in violation of a Regulatory Approval. This provision does not apply to rights under the indemnifications established in Section 7.1.3 or the States' agreements with the DRE required in Section 4.12.

#### 2.1.5 Timeliness

Exhibit 4 describes the sequence of performance of specific obligations necessary to achieve the bargained-for benefits of this Settlement. Exhibit 4 is subject to change and modification as needed and is provided for guidance only. The Parties shall undertake to implement this Settlement in a manner consistent with this sequence. If any Party requires more time than permitted by this Settlement to perform an obligation, that Party shall provide Notice to other Parties 30 days before the applicable deadline, unless the applicable provision in this Settlement establishes a different period. The Notice shall explain: (1) the obligation that the Party is attempting to perform; (2) the reason that performance is or may be delayed; and (3) the steps the Party has taken or proposes to take to Timely complete performance.

#### 2.1.6 Force Majeure

##### A. Definition of Force Majeure

The term "Force Majeure" means any event reasonably beyond a Party's control that prevents or materially interferes with the performance of an obligation of that Party, that could not be avoided with the exercise of due care, and that occurs without the fault or negligence of that Party. Force Majeure events may be unforeseen, foreseen, foreseeable, or unforeseeable, including without limitation: natural events; labor or civil disruption; breakdown or failure of Project works not caused by failure to properly design, construct, operate, or maintain; or new regulations or laws that are applicable to the Project (other than the Authorizing Legislation). Force Majeure is presumed not to include normal inclement weather, which presumption can be overcome by a preponderance of the evidence provided by the non-performing Party.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****B. Suspension of Obligation**

During a Force Majeure event, and except as otherwise provided in this Settlement, a Party shall be relieved of any specific obligation directly precluded by the event, as well as those other obligations performance of which is materially impaired, but only for the duration of such event. The non-performing Party bears the burden of proving by a preponderance of the evidence the existence of Force Majeure, including the absence of negligence and fault.

**C. Remedies**

If a Force Majeure event occurs, and except as otherwise provided in this Settlement:

- (1) A Party that believes it is excused from performance pursuant to Section 2.1.6.B shall provide Notice within 10 days of the onset of the event. Such Notice shall describe the occurrence, nature, and expected duration of such event and describe the steps the Party has taken or proposes to be taken to prevent or minimize the interference with the performance of any affected obligation under this Settlement;
- (2) A Party shall thereafter provide periodic Notice to the other Parties of the efforts to address and resolve a Force Majeure event; and
- (3) If any other Party disputes the Party's claim of a Force Majeure event, or the adequacy of the efforts to address and resolve such event, such Party shall initiate the Dispute Resolution Procedures stated in Section 8.6.

**2.2 Ratemaking Legislation and Proceedings**

Each Party shall support implementation of the Oregon Surcharge Act enacted as Senate Bill 76, 2009 Or. Session Laws Chapter 690 in 2009 and authorizing the collection of a customer surcharge for the costs of Facilities Removal, which was codified as ORS 757.732 through 757.744. The Oregon Surcharge Act as codified is attached to this Settlement as Appendix F.

The Parties understand and agree that the costs of Facilities Removal shall be funded as specified in Section 4 of this Settlement. The Parties further understand and agree that funds allocated for Facilities Removal shall be managed and disbursed as specified in Section 4 of this Settlement. In the event that (1) the California Legislature does not adopt legislation by the time of the Secretarial Determination to place a ballot measure before California voters that contains a provision to fund up to \$250,000,000 (in nominal dollars) of the costs of Facilities Removal, or (2) the California voters do not adopt such

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ballot measure by the time of the Secretarial Determination, or (3) the California PUC does not adopt a California Klamath Surcharge, as defined herein and specified in Section 4, or (4) the Oregon PUC does not adopt an Oregon Klamath Surcharge, as defined in the Oregon Surcharge Act and specified herein, the Parties shall Meet and Confer to attempt, in good faith, to identify substitute funding and/or other alternatives to cover the costs of Facilities Removal.

### 2.3 Project Water Rights; Klamath Basin Adjudication

#### 2.3.1 Project Water Rights

PacifiCorp's Oregon water rights will be processed and adjusted in accordance with the principles of Oregon law and the *Water Rights Agreement between PacifiCorp and the State of Oregon* attached to this Settlement as Exhibit 1.

#### 2.3.2 Klamath Basin Adjudication

The Parties support the efforts by PacifiCorp, the Klamath Tribes, Bureau of Indian Affairs, and OWRD to develop a Klamath Basin Adjudication ("KBA") Settlement Agreement of cases 282 and 286 in the KBA.

### 2.4 Lease of State-Owned Beds and Banks

Within 60 days of the Effective Date, PacifiCorp shall apply to the Oregon Department of State Lands in accordance with state law for leases authorizing occupancy of submerged and submersible lands by the J.C. Boyle Dam, J.C. Boyle Powerhouse, and Keno Dam. No Party shall be deemed to have admitted, adjudicated, or otherwise agreed to the State of Oregon's claim to ownership of submerged and submersible lands by virtue of this Settlement.

## 3. **Secretarial Designation and Statement of Support**

### 3.1 Statement of Support

In cooperation with the Secretary of Commerce and other federal agencies as appropriate, the Secretary may make an affirmative statement of support for Facilities Removal if, in the Secretary's judgment, Facilities Removal (1) will advance restoration of the salmonid fisheries of the Klamath Basin, and (2) is in the public interest, which includes but is not limited to consideration of potential impacts on affected local communities and Tribes.

### 3.2 Secretarial Designation

The Secretary, through execution of the Settlement, agrees that Oregon Department of Fish and Wildlife will act as the entity with authority under ORS 757.738(3) to request transfer of funds held in the appropriate trust account established under ORS 757.738, to hold transferred funds, and to disburse transferred funds to the DRE, its assign, or



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successor, in accordance with a funding agreement as specified in Section 4.12.2, in the amounts necessary to pay “the costs of removing the Klamath River dams” as that phrase is used in ORS 757.736(11).

#### **4. Costs**

##### 4.1 Funds for the Purpose of Facilities Removal

The Parties agree to pursue arrangements for the creation of the funding sources described below for the purpose of Facilities Removal.

##### 4.1.1 The Customer Contribution

- A. Within 30 days of the Effective Date, PacifiCorp shall request that the Oregon PUC, pursuant to the Oregon Surcharge Act, establish two non-bypassable customer surcharges, the Oregon J.C. Boyle Dam Surcharge and the Oregon Copco I and II/Iron Gate Dams Surcharge (together, the “Oregon Klamath Surcharges”), for PacifiCorp’s Oregon customers to generate funds for the purpose of Facilities Removal. PacifiCorp shall request that the Oregon PUC set the Oregon Klamath Surcharges so that to the extent practicable the total annual collections of the surcharges remain approximately the same during the collection period.
- B. Within 30 days of the Effective Date, PacifiCorp shall request that the California PUC establish a non-bypassable customer surcharge (the “California Klamath Surcharge”) for PacifiCorp’s California customers to generate funds for the purpose of Facilities Removal. PacifiCorp shall request that the California PUC establish the California Klamath Surcharge so that it will collect an approximately equal amount each year that it is to be collected. PacifiCorp shall request that such surcharge assigns responsibility among the customer classes in an equitable manner. PacifiCorp shall also request that the California PUC set the California Klamath Surcharge so that it at no time exceeds two percent of the revenue requirements set by the California PUC for PacifiCorp as of January 1, 2010.
- C. The Parties agree that the total amount of funds to be collected pursuant to the Oregon Klamath Surcharges and the California Klamath Surcharge shall not exceed \$200,000,000 (in nominal dollars); these funds shall be referred to as the “Customer Contribution.”
- D. PacifiCorp shall request that the Oregon PUC establish a surcharge so that the amount collected under the Oregon Klamath Surcharges is 92% (a maximum of approximately \$184,000,000) of the total

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Customer Contribution, and with 75% of the total Oregon Klamath Surcharges amount collected through the Oregon Copco I and II/Iron Gate Dams Surcharge and 25% collected through the Oregon J.C. Boyle Dam Surcharge.

- E. PacifiCorp shall request that the California PUC establish a surcharge so that the amount collected under the California Klamath Surcharge is 8% (a maximum of approximately \$16,000,000) of the Total Customer Contribution. The trustee of the California Klamath Surcharge shall apply 75% of the total California Klamath Surcharge amount collected to the California Copco I and II/Iron Gate Dams Trust Account and 25% of the total California Klamath Surcharge amount collected to the California J.C. Boyle Dam Trust Account.
- F. PacifiCorp shall collect and remit the surcharges collected pursuant to this section to the trustee(s) described in Section 4.2, below, to be deposited into the appropriate California Klamath Trust Accounts and Oregon Klamath Trust Accounts.
- G. Consistent with Section 2.1 of this Settlement, each non-Federal Party shall support the California Klamath Surcharge and the Oregon Klamath Surcharges in the proceedings conducted by the California PUC and the Oregon PUC, respectively, to the extent the proposed Surcharges are consistent with this Settlement.

#### 4.1.2 The California Bond Funding

- A. The California Legislature has approved a general obligation bond (“Bond Measure”) containing a provision authorizing the issuance of bonds for the amount necessary to fund the difference between the Customer Contribution and the actual cost to complete Facilities Removal, which bond funding in any event shall not exceed \$250,000,000 (in nominal dollars). The bond language is set forth in Appendix G-1. At its sole discretion, the State of California may also consider other appropriate financing mechanisms to assist in funding the difference between the Customer Contribution and the actual cost of complete Facilities Removal, not to exceed \$250,000,000 (in nominal dollars).
- B. Consistent with Applicable Law and Section 2.1, each non-federal Party shall support the Klamath bond language in Appendix G-1; provided that nothing in this Settlement is intended or shall be construed to require a Party to support a Bond Measure that includes authorizations unrelated to the implementation of this Settlement.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**4.1.3 State Cost Cap

The Customer Contribution and the California Bond Funding shall be the total state contribution and shall be referred to together as the “State Cost Cap.”

4.2 Establishment and Management of Trust Accounts and California Bond Funding4.2.1 The Oregon Klamath Trust Accounts

- A. In accordance with the Oregon Surcharge Act, the Oregon PUC will establish two interest-bearing accounts where funds collected by PacifiCorp pursuant to the Oregon Klamath Surcharges shall be deposited until needed for Facilities Removal purposes. The Oregon J.C. Boyle Dam Account shall be established to hold funds collected pursuant to the Oregon J.C. Boyle Dam Surcharge. The Oregon Copco I and II/Iron Gate Dams Account shall be established to hold funds collected pursuant to the Oregon Copco I and II/Iron Gate Dams Surcharge. The Oregon J.C. Boyle Dam Account and the Oregon Copco I and II/Iron Gate Dams Account may be referred to together as the “Oregon Klamath Trust Accounts.”
- B. In accordance with the Oregon Surcharge Act, the Oregon PUC will select a trustee to manage the Oregon Klamath Trust Accounts. The Parties may recommend a trustee for consideration by the Oregon PUC.

4.2.2 The California Klamath Trust Accounts

- A. Upon execution of this Settlement, California shall request, and each non-Federal Party shall support the request, that the California PUC establish two interest-bearing trust accounts where funds collected by PacifiCorp pursuant to the California Klamath Surcharge for the purpose of Facilities Removal shall be deposited until needed for Facilities Removal purposes. The non-Federal Parties shall also request that California and the California PUC establish the trust accounts in a manner that ensures that the surcharge funds will not be taxable revenues to PacifiCorp. The California J.C. Boyle Dam Trust Account shall be established to hold 25% of the funds collected pursuant to the California Klamath Surcharge. The California Copco I and II/Iron Gate Dams Trust Account shall be established to hold 75% of the funds collected pursuant to the California Klamath Surcharge. The California J.C. Boyle Dam Trust Account and the California Copco I and II/Iron Gate Dams Trust Account may be referred to together as the “California Klamath Trust Accounts.”
- B. California shall request, and each non-Federal Party shall support the request, that the California PUC select a trustee to accept surcharge

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funds from PacifiCorp and manage the California Klamath Trust Accounts. The Parties may recommend a trustee for consideration by the California PUC.

#### 4.2.3 The California Bond Funding

In the event that the Bond Measure is placed on the ballot and approved by voters, bond funds available from the Bond Measure shall be managed pursuant to California bond law; however, the State of California agrees that, to the extent permitted by law, the California Bond Funding shall be managed and disbursed in a manner consistent with and complementary to the management and disbursement of the Customer Contribution.

#### 4.2.4 Management of the Trust Accounts

- A. Within six months of the Effective Date, the States in consultation with the Federal Parties shall prepare draft trustee instructions for submission to the respective PUCs. The States shall then request that the California PUC or another designated agency of the State of California, and the Oregon PUC work cooperatively to prepare joint instructions to the trustee(s) of the Oregon Klamath Trust Accounts and California Klamath Trust Accounts, consistent with the draft instructions, as to the following:
- (1) Whether and when to disburse funds from the Oregon Klamath Trust Accounts and California Klamath Trust Accounts to the DRE;
  - (2) The methodology to be used by the trustee(s) to determine which account or accounts to draw funds from for the purpose of disbursing funds to the DRE;
  - (3) A protocol for the trustee(s) to use to ensure that the management of the Customer Contribution is consistent with and complementary to the management of the California Bond Funding;
  - (4) Disbursement of funds under the circumstances described in Section 4.4 below;
  - (5) A protocol for reallocating between Trust Accounts monies that have already been deposited into the Trust Accounts, to be used by the trustees, at the request of the States, for removal of specific facilities; and

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(6) If the trustee is a federal agency, provisions ensuring that Trust Account monies are not used for any other purpose than Facilities Removal consistent with the trustee instructions and do not become part of any federal agency's or bureau's budget.

B. As necessary, the States, in consultation with PacifiCorp and the DRE, will prepare draft trustee instructions revised as appropriate and request that the California PUC or another designated agency of the state of California, and the Oregon PUC work cooperatively to prepare revised joint instructions to the trustee(s) of the Oregon Klamath Trust Accounts and California Klamath Trust Accounts consistent with the draft revised instructions. The States and PacifiCorp will take such other actions as may be reasonably necessary to facilitate the distribution of the Customer Contribution.

#### 4.3 Adjustment to Surcharges

As appropriate, the States shall consult with each other, PacifiCorp, and the Federal Parties regarding adjustments to the California Klamath Surcharge or Oregon Klamath Surcharges necessitated by or appropriate considering the circumstances. Following such consultation, PacifiCorp will request that the California PUC and Oregon PUC adjust the Klamath Surcharges to be consistent with the recommendations developed through the consultation. Any adjustment shall not alter the maximum level of the Customer Contribution or State Cost Cap.

#### 4.4 Disposition of Unnecessary or Unused Funds from the Oregon and/or California Klamath Trust Accounts

4.4.1 If, as described in Section 4(5) of the Oregon Surcharge Act, the Oregon Klamath Surcharges are finally determined to result in rates that are not fair, just, and reasonable, the surcharges shall be refunded to customers in accordance with the Oregon Surcharge Act and the trustee instructions.

4.4.2 In the event that the Oregon PUC finds that the Oregon Klamath Trust Accounts contain funds in excess of actual costs necessary for Facilities Removal, those excess amounts shall be refunded to customers or otherwise used for the benefit of customers as set forth in Section 4(9) of the Oregon Surcharge Act and the trustee instructions.

4.4.3 In the event that, following Facilities Removal, the trustee of the California Klamath Trust Account determines that the California Klamath Trust Account contains funds in excess of actual costs necessary for Facilities Removal, the non-Federal Parties shall request that the California PUC order those excess amounts to be refunded to customers or otherwise used for the benefit of customers.

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- 4.4.4 If, as a result of the termination of this Settlement, or other cause, one or more Project dams will not be removed:
- A. All or part of the Oregon Klamath Surcharges shall be terminated and the Oregon Klamath Trust Accounts disposed as set forth in Section 4(10) of the Oregon Surcharge Act and the trustee instructions; and
  - B. PacifiCorp shall request that the California PUC direct PacifiCorp to terminate all or part of the surcharge, that the California PUC direct the trustee to apply any excess balances in the California Klamath Trust Account to California's allocated share of prudently incurred costs to implement FERC relicensing requirements, and that, if any excess amount remains in the trust accounts after that application, that the California PUC order that the excess amounts be refunded to customers or otherwise be used for the benefit of customers.

4.5 Recovery of Net Investment in Facilities

- 4.5.1 Consistent with Section 3 of the Oregon Surcharge Act, PacifiCorp shall request, and each non-Federal Party shall support the request, that the Oregon PUC allow recovery of PacifiCorp's net investment in the Facilities.
- 4.5.2 PacifiCorp shall request, and each non-Federal Party shall support the request, that the California PUC conduct one or more proceedings to implement the following:
- A. That the California PUC determine a depreciation schedule for each Facility based on the assumption that the Facility will be removed in 2020, and change that depreciation schedule at any time if removal of the Facility will occur in a year other than 2020; and
  - B. That the California PUC use the depreciation schedules adopted consistent with Section 4.5.2.A above to establish rates and tariffs for the recovery of California's allocated share of undepreciated amounts prudently invested by PacifiCorp in the Facilities, with amounts recoverable including but not limited to:
    - (1) Return on investment and return of investment;
    - (2) Capital improvements required by the Federal Parties or any agency of the United States or any agency of the States for the continued operation of the Facility until Facility removal;

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- (3) Amounts spent by PacifiCorp in seeking relicensing of the Project before the Effective Date of this Settlement;
- (4) Amounts spent by PacifiCorp for settlement of issues relating to relicensing or removal of the Facilities; and
- (5) Amounts spent by PacifiCorp for the Decommissioning of the Facilities in anticipation of Facilities Removal.

C. If any amount has not been recovered by PacifiCorp before a Facility is removed, PacifiCorp shall request, and each non-Federal Party shall support the request, that the California PUC allow recovery of that amount by PacifiCorp in PacifiCorp's rates and tariffs.

4.5.3 Rates and tariffs proposed pursuant to this Section 4.5 shall be separate from, and shall not diminish the funds collected by, the Oregon and California Klamath Surcharges.

4.6 Recovery of Costs of Ongoing Operations and Replacement Power

4.6.1 Consistent with Section 6 of the Oregon Surcharge Act, PacifiCorp shall request, and each non-Federal Party shall support the request, that the Oregon PUC allow recovery of other costs incurred by PacifiCorp.

4.6.2 Subject to Section 2.1.2, each non-Federal Party shall support PacifiCorp's request to the California PUC for PacifiCorp to include in rates and tariffs California's allocated share of any costs that are prudently incurred by PacifiCorp from changes in operation of Facilities, including reductions to generation from the Facilities before removal of the Facilities and for replacement power after the dams are removed.

4.6.3 Rates and tariffs proposed pursuant to this Section 4.6 shall be separate from, and shall not diminish the funds collected by, the Oregon and California Klamath Surcharges.

4.7 Treatment of Costs Related to Future Portfolio Standards and Climate Change Legislation

The Parties agree to Meet and Confer at PacifiCorp's request regarding provisions to address potential customer impacts from renewable portfolio standards and climate change emissions requirements.

4.8 Acknowledgment of Independence of Oregon PUC and California PUC

The Parties acknowledge that the Oregon PUC and California PUC each is a separate state agency that is not bound by this Settlement. Nothing in this Settlement expands,

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limits, or otherwise affects any authority of the respective commissions regarding the customer surcharges and trust accounts, recovery of net investment, or recovery of costs of ongoing operations or replacement power. Because the Parties cannot provide assurance that either commission will decide to or be allowed to implement any of the provisions for funding Facilities Removal, failure of a commission to do so is not a breach of this Settlement by any Party.

#### 4.9 Consultation

Before filing the requests to the California PUC and Oregon PUC described in Sections 4.5 and 4.6, above, PacifiCorp shall undertake to consult with the Parties, pursuant to a confidentiality agreement among the Parties or a protective order issued by the relevant PUC, so that the requested rates can be explained and the basis for such rates can be provided. Further, before any request to the California PUC or the Oregon PUC to reduce or increase a surcharge in the event the amount needed for Customer Contribution is determined to be less or more than the level of Customer Contribution specified in Section 7.3.2.A, the States and PacifiCorp shall undertake to consult with all Parties.

#### 4.10 United States Not Responsible for Costs of Facilities Removal

The United States shall not be liable or responsible for costs of Facilities Removal.

#### 4.11 Parties' Costs Related to Facilities Removal

Subject to Section 4.4, the funds accumulated pursuant to Section 4 are solely for use in accomplishing Facilities Removal, including but not limited to development of the Definite Plan, all necessary permitting and environmental compliance actions, and construction/project management for Facilities Removal. Nothing in this section shall be interpreted as a limitation on the State of California's use of California Bond Funding, or funds collected pursuant to the California Klamath Surcharge and deposited into the California Copco 1 and 2 and Iron Gate Dams Trust Account, for environmental review; provided the use of any funds from California Copco 1 and 2 and Iron Gate Dams Trust Account may be offset by California Bond Funds to achieve the target dates set forth in Section 7.3.

#### 4.12 Funding and Grant Agreements

- 4.12.1 On or around June 15, 2016, CNRA will enter into an agreement with the Oregon state agency designated by the Secretary under Section 3.2 pertaining to the use of funds from the Customer Contribution and California Bond Funding.
- 4.12.2 On or around June 15, 2016, the Oregon state agency designated by the Secretary under Section 3.2 will enter into a grant agreement with the DRE. The grant agreement will include conditions not inconsistent with



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the Settlement pertaining to the use of the Oregon Klamath Trust Accounts.

4.12.3 On or around June 15, 2016, CNRA will enter into a funding agreement with the DRE and any other entity as appropriate. The funding agreement will include conditions not inconsistent with the Settlement pertaining to the use of the California Klamath Trust Accounts.

4.12.4 Following appropriation by the California legislature and consistent with the agreement in Section 4.12.1, CNRA will enter into a grant agreement(s) with the DRE. The grant agreement(s) shall include conditions not inconsistent with the Settlement pertaining to the use of the California Bond Funding.

## **5. Local Community Power**

### **5.1 Power Development**

5.1.1 PacifiCorp and the irrigation-related Parties will in good faith cooperate in the investigation or consideration of joint development and ownership of renewable generation resources and the purchase by PacifiCorp of power from renewable energy projects developed by KWAPA or other parties related to the Klamath Reclamation Project or off-project irrigators. PacifiCorp and interested Public Agency Parties will in good faith cooperate in the investigation or consideration of joint development and ownership of potential renewable generation resources and the purchase by PacifiCorp of power from renewable energy projects developed by interested Public Agency Parties. Nothing in this Settlement requires any Party to enter into a specific transaction related to such development, ownership or purchase, but PacifiCorp, interested Public Agency Parties and the irrigation-related Parties desire to take actions in their mutual beneficial interest where opportunities arise.

5.1.2 Pursuant to that certain Memorandum of Understanding dated October 15, 2001 among the Western Governors Association and various federal agencies, the Secretary and the State of California shall seek to designate Siskiyou County as a Western Renewable Energy Zone and the Secretary and the State of Oregon shall seek to designate Klamath County as a Western Renewable Energy Zone. The Federal Parties will work with the Counties and other Parties to explore and identify potential ways to expand transmission capacity for renewable resources within the Counties.

5.2 [Section deleted]

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Interior, KWAPA, KWUA and UKWUA agree that federal power can contribute to meeting power cost targets for irrigation in the Upper Klamath Basin. To that end, and consistent with applicable standards of service and the Pacific Northwest Power Planning and Conservation Act, 16 U.S.C. § 839 *et seq.*, Interior will acquire power from the Bonneville Power Administration (“Bonneville”) to serve all “eligible loads” located within Bonneville’s authorized geographic area. Interior and Bonneville will engage in an open and transparent process that will provide for public review and comment on any proposed agreement. For purposes of the acquisition of federal power, Interior defines Klamath eligible loads to include both on and off-project loads. Such acquisitions are subject to Bonneville’s then effective marketing policies, contracts, and applicable priority firm power rate.

For an additional, standard transmission charge, Bonneville will deliver power to PacifiCorp at the Captain Jack or Malin substations or other points as may be mutually agreed to by Bonneville and PacifiCorp (“Points of Delivery”) and PacifiCorp will deliver the energy to eligible loads under applicable tariffs.

Interior, KWAPA, KWUA, UKWUA and PacifiCorp agree to continue to work in good faith to identify and implement a mutually agreeable approach for delivering acquired federal power to eligible loads. PacifiCorp agrees to receive any federal power at the Points of Delivery and to deliver such power to the eligible loads pursuant and subject to the following terms and conditions:

- 5.3.1 The terms and conditions related to accessing PacifiCorp’s transmission system, to the extent that it is necessary, will be consistent with PacifiCorp’s Open Access Transmission Tariff (“OATT”).
- 5.3.2 The terms and conditions related to accessing PacifiCorp’s distribution system will remain subject to the jurisdiction of the California Public Utilities Commission for distribution facilities located in California and the Oregon Public Utility Commission for distribution facilities located in Oregon. In California and Oregon, the respective PUCs have approved unbundled delivery service tariffs for PacifiCorp to implement direct access legislation. The Parties agree that these unbundled delivery service tariffs can enable the delivery of federal power. For power acquired by Interior from Bonneville, PacifiCorp will charge an unbundled distribution rate that is based on the Oregon Commission-approved tariff applicable to the delivery of Bonneville power to eligible loads in Oregon.

To the extent that PacifiCorp’s existing tariffs require revision in order to allow PacifiCorp to implement the mutually agreeable approach, PacifiCorp shall request such revision by the Commission having jurisdiction.

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The Parties understand and agree that PacifiCorp shall recover its costs incurred in providing the delivery services required under the mutually agreeable approach and that such services will not be subsidized by PacifiCorp's other retail customers. PacifiCorp, Interior, KWUA, KWAPA, and UKWUA agree to work cooperatively to identify and analyze, as necessary, PacifiCorp's costs for delivery services as part of identification of any such mutually agreeable approach. The Parties further agree that the costs of providing delivery services will be recovered pursuant to a tariff or tariffs established by the respective PUC based on cost-of-service principles and a finding by the PUC that the rates charged under the tariff[s] are fair, just, reasonable and sufficient.

- 5.3.3 PacifiCorp agrees to work in good faith to develop mutually agreeable revisions to existing provisions of state or federal law, if necessary to implement the mutually agreeable approach.
- 5.3.4 PacifiCorp agrees to work in good faith with Bonneville, Interior, KWAPA, KWUA and UKWUA and other Parties as the case may be, to resolve, on a mutually agreeable basis, any technical and administrative issues (such as billing and metering) that may arise with respect to PacifiCorp's delivery of power to the eligible loads.
- 5.3.5 It is the Parties' intent that this Agreement will not require PacifiCorp to modify its existing transmission or distribution facilities. PacifiCorp may elect to do so at the sole cost and expense of the Party or entity requesting such modification.
- 5.3.6 At such time as the eligible loads are prepared to and technically able to receive federal power, PacifiCorp, Interior, KWAPA, KWUA and UKWUA agree to work cooperatively with each other to transition the eligible loads from full retail service on a mutually agreeable basis. The Parties acknowledge that for any eligible load that has received federal power pursuant to this section, PacifiCorp will no longer have the obligation to plan for or meet the generation requirements for these loads in the future, provided, however, that PacifiCorp agrees to work cooperatively to provide generation services to eligible loads in a manner that is cost-neutral to other PacifiCorp customers in the event that a contract for federal power is no longer available. Interior, KWAPA, KWUA and UKWUA agree to provide notice to PacifiCorp as soon as practicable after becoming aware that federal power will no longer be available to serve any eligible loads.
- 5.3.7 Interior, in consultation with KWAPA, KWUA and UKWUA, shall Timely develop a preliminary identification of the eligible loads for purposes of Section 5.3. Interior, in consultation with KWAPA, KWUA and UKWUA, shall provide notification to PacifiCorp identifying the final

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eligible loads for purposes of Section 5.3, not later than 120 days before delivery of federal power to any such eligible loads is to begin. The mutually agreeable approach will address the manner by which Interior provides notification to PacifiCorp of any changes to eligible loads.

- 5.3.8 Interior agrees to work cooperatively to assign or delegate or transition functions of Interior to KWAPA or another appropriate entity subject to the terms of this Section.
- 5.3.9 If Interior or KWAPA or UKWUA are able to acquire power from any entity other than Bonneville for eligible loads in either Oregon or California, PacifiCorp, KWAPA, UKWUA, Interior, and KWUA, as applicable, will work cooperatively to agree on a method for transmission and delivery.
- 5.3.10 Upon termination of this Settlement, PacifiCorp agrees to provide service under the terms of its approved delivery tariff until or unless the respective PUC determines that the applicable tariff should no longer be in place. It is the intention of PacifiCorp, Interior, KWUA, KWAPA, and UKWUA that the general principles of cooperation expressed in Section 5 continue beyond the term of this Settlement.

#### 5.4 Irrigator Rates

In consultation with Klamath Basin irrigators, PacifiCorp will continue to explore alternative rate structures and programs, such as time-of-use rates or demand control programs.

## 6. **Interim Operations**

### 6.1 General

Interim Measures under this Settlement consist of: (1) Interim Measures included as part of PacifiCorp's Interim Conservation Plan ("ICP Interim Measures") (Appendix C); and (2) Interim Measures not included in the Interim Conservation Plan ("Non-ICP Measures") (Appendix D). In addition, PacifiCorp's Interim Conservation Plan includes certain measures for protection of listed sucker species not included as part of this Settlement.

#### 6.1.1 PacifiCorp Performance

PacifiCorp shall perform the Interim Measures in accordance with the terms and schedule set forth in Appendices C and D as long as this Settlement is in effect during the Interim Period. However, if this Settlement terminates, PacifiCorp shall continue performance of the Iron Gate Turbine Venting until the time FERC issues an order in the relicensing proceeding. PacifiCorp shall have no obligation

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under this Settlement to perform any other of the Interim Measures if this Settlement terminates, but may implement certain ICP and Non-ICP Interim Measures for ESA or CWA purposes or for any other reason. PacifiCorp reserves its right to initiate termination pursuant to Section 8.11.1.C, if the Services fail to provide incidental take authorization in a Timely way.

#### 6.1.2 Duty to Support

Subject to the reservations in Sections 1.6, 6.2, and 6.3.4, each Party shall support the Interim Measures set forth in Appendices C and D, and will not advocate additional or alternative measures for the protection of environmental resources affected by the Project during the Interim Period.

#### 6.1.3 Permitting

A. PacifiCorp or the DRE (as applicable) shall comply with all federal, state, and local laws and obtain all federal, state, and local permits related to Interim Measures, to the extent such laws and permits are applicable.

#### B. FERC Enforcement and Jurisdiction

(1) The Parties agree that enforcement of the terms of the current license, as extended through annual licenses, shall be exclusively through FERC. If the annual license is amended to incorporate any of the Interim Measures, a Party may seek compliance pursuant to any remedies it may have under Applicable Law.

(2) Subject to the reservations in Section 6.3.4, PacifiCorp will implement Interim Measures and the Klamath River TMDLs, subject to any necessary FERC or other Regulatory Approvals.

#### 6.1.4 Interim Power Operations

Consistent with the operation and maintenance agreement contemplated in Section 7.1.6, PacifiCorp shall continue to operate the Facilities for the benefit of customers and retain all rights to the power from the Facilities until each Facility is transferred and Decommissioned, including all rights to any power generated during the time between transfer of the Facility to the DRE and Decommissioning of the Facility by PacifiCorp.

#### 6.1.5 Adjustment for Inflation

For any funding obligation under a Non-ICP Interim Measure in Appendix D expressly made subject to adjustment for inflation, the following formula shall be applied at the time of payment:

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$$AD = D \times (CPI-U_t) / (CPI-U_o)$$

WHERE:

AD = Adjusted dollar amount payable.

D = Dollar amount prescribed in the Interim Measure.

CPI-U<sub>t</sub> = the value of the published version of the Consumer Price Index-Urban for the month of September in the year prior to the date a dollar amount is payable. (The CPI-U is published monthly by the Bureau of Labor Statistics of the federal Department of Labor. If that index ceases to be published, any reasonably equivalent index published by the Bureau of Economic Analysis may be substituted by written agreement of the Parties.)

CPI-U<sub>o</sub> = the value of the Consumer Price Index-Urban for the month and year corresponding to the Effective Date of this Settlement.

## 6.2 Interim Conservation Plan

### 6.2.1 Application by PacifiCorp

PacifiCorp shall apply to the Services pursuant to ESA Section 10 and applicable implementing regulations to incorporate the Interim Conservation Plan measures, including both Appendix C (ICP Interim Measures) and the Interim Conservation Plan measures for protection of listed sucker species not included in Appendix C, into an incidental take permit. PacifiCorp also may apply in the future to FERC to incorporate some or all of the Interim Conservation Plan measures as an amendment to the current annual license for the Project.

### 6.2.2 Applicable Actions by the Services under the ESA

The Services shall review PacifiCorp's application to incorporate the Interim Conservation Plan measures into an incidental take permit pursuant to ESA Section 10 and applicable implementing regulations. Subject to Section 2.1.2, each Party shall support PacifiCorp's request for a license amendment or incidental take permit to incorporate the Interim Conservation Plan measures. Provided, however, the Services reserve their right to reassess these interim measures, as applicable, in: (1) developing a biological opinion pursuant to ESA Section 7 or reviewing an application for an incidental take permit pursuant to ESA Section 10 and applicable implementing regulations; (2) reinitiating consultation on any final biological opinion pursuant to applicable implementing regulations; or (3) revoking any final incidental take permit pursuant to the ESA, applicable implementing regulations, or the terms of the permit. Provided further, other Parties reserve any applicable right to oppose any such actions by the Services.

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### 6.2.3 Potential Modifications of Measures

The Services shall provide the Parties Notice upon issuance of any final biological opinion or incidental take permit issued by the Services pursuant to the ESA regarding the ICP Interim Measures (Appendix C). If the terms of any such final biological opinion or incidental take permit include revisions to the ICP Interim Measures, those measures in the Settlement shall be deemed modified to conform to the provisions of the biological opinion or incidental take permit if PacifiCorp agrees to such modifications. If PacifiCorp does not agree to such modifications, PacifiCorp reserves the right to withdraw its application for license amendment or refuse to accept an incidental take permit regarding the ICP Interim Measures.

## 6.3 TMDLs

### 6.3.1 PacifiCorp Implementation

Subject to the provisions of this Section 6.3.1, PacifiCorp agrees to implement load allocations and targets assigned the Project under the States' respective Klamath River TMDLs, in accordance with OAR chapter 340, Division 42, and California Water Code Division 7, Chapter 4, Article 3. It is the expectation of the Parties that the implementation of the commitments in this Settlement, coupled with Facilities Removal by the DRE, will meet each State's applicable TMDL requirements. PacifiCorp's commitment to develop and carry out TMDL implementation plans in accordance with this Settlement is not an endorsement by any Party of the TMDLs or load allocations therein.

### 6.3.2 TMDL Implementation Plans

- A. No later than 60 days after ODEQ's and the North Coast Regional Water Quality Control Board's (NCRWQCB's) approval, respectively, of a TMDL for the Klamath River, PacifiCorp shall submit to ODEQ and NCRWQCB, as applicable, proposed TMDL implementation plans for agency approval. The TMDL implementation plans shall be developed in consultation with ODEQ and NCRWQCB.
- B. To the extent consistent with this Settlement, PacifiCorp shall prepare the TMDL implementation plans in accordance with OAR 340-042-0080(3) and California Water Code section 13242, respectively. The plans shall include a timeline for implementing management strategies and shall incorporate water quality-related measures in the Non-ICP Interim Measures set forth in Appendix D. Facilities Removal by the DRE shall be the final measure in the timeline. At PacifiCorp's discretion, the proposed plans may further include other planned activities and management strategies developed individually or cooperatively with other sources or designated management agencies. ODEQ and NCRWQCB may authorize PacifiCorp's use of offsite

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pollutant reduction measures, subject to an iterative evaluation and approval process; provided, any ODEQ authorization of such offsite measures conducted in Oregon solely to facilitate attainment of load allocations in California waters shall not create an ODEQ obligation to administer or enforce the measures.

### 6.3.3 Keno Load Allocation

Subject to Section 6.3.4, in addition to other Project facilities and affected waters, PacifiCorp's TMDL implementation plan under Section 6.3.2 shall include water quality-related measures in the Non-ICP Interim Measures set forth in Appendix D that are relevant to the Keno facility and affected waters for which the Project is assigned a load allocation. PacifiCorp shall implement Keno load allocations in accordance with the approved TMDL implementation plan under Section 6.3 up until the time of transfer of title to the Keno facility to Interior. Upon transfer of title to the Keno facility as set forth in Section 7.5 of this Settlement, the load allocations shall no longer be PacifiCorp's responsibility. Funding, if necessary, for post-transfer Keno load allocation implementation requirements will be provided by other non-PacifiCorp sources.

### 6.3.4 TMDL Reservations

- A. PacifiCorp's TMDL implementation obligations under this Settlement are limited to the water quality-related measures in the Interim Measures set forth in Appendices C and D and any additional or different measures agreed to by PacifiCorp and incorporated into an approved TMDL implementation plan. If a TMDL implementation plan for PacifiCorp as finally approved, or a final discharge permit or other regulatory decision intended to implement a TMDL or water quality standard or regulation, requires measures that have not been agreed to by PacifiCorp and that are materially inconsistent with the Interim Measures, PacifiCorp may initiate termination under Section 8.11.1.C.
- B. PacifiCorp reserves the right to seek modification of a TMDL implementation plan in the event this Settlement terminates. The States reserve their authorities under the CWA and state law to revise or require submission of new TMDL implementation plans in the event this Settlement terminates or an implementation plan measure or Facilities Removal does not occur in accordance with the timeline in the approved implementation plans. Other Parties reserve whatever rights they may have under existing law to challenge the TMDLs or TMDL implementation plans in the event this Settlement terminates.
- C. To the extent it possesses rights outside of this Settlement, no Party waives any right to contest: a Klamath River TMDL; specific TMDL



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load allocation; decision on a PacifiCorp TMDL implementation plan; or final discharge permit or other regulatory decision intended to implement a TMDL or water quality standard or regulation, if materially inconsistent with this Settlement.

#### 6.4 Other Project Works

##### 6.4.1 East Side/West Side Facilities

- A. PacifiCorp will apply to FERC for an order approving partial surrender of the Project license for the purpose of decommissioning the East Side/West Side generating facilities unless PacifiCorp, in consultation with the state of Oregon, the Federal Parties, and the Tribes, agrees to an alternative disposition of these facilities. PacifiCorp will file the application consistent with applicable FERC regulations, and after consultation with the Parties. Notwithstanding Section 2.1.2, the Parties reserve their rights to submit comments and otherwise participate in the FERC proceeding regarding the conditions under which decommissioning should occur. PacifiCorp reserves the right to withdraw its surrender application for these facilities if any FERC order or other Regulatory Approval in connection with the surrender application would impose unreasonable conditions on that surrender.
- B. Upon FERC approval, and in coordination with Reclamation and pursuant to Section 7.5.2, PacifiCorp shall decommission the East Side/West Side facilities in accordance with the FERC order approving the decommissioning, with the costs of such decommissioning to be recovered by PacifiCorp through standard ratemaking proceedings.
- C. Upon completion of decommissioning and subject to FERC's and state requirements, PacifiCorp and Interior shall discuss possible transfer of the following lands to Interior: Klamath County Map Tax Lots R-3809-00000-05800-000, R-3809-00000-05900-000, and R-3809-00000-05700-000, or any other mutually-agreeable lands associated with the East Side and West Side Facilities on terms and conditions acceptable to PacifiCorp and Interior.

##### 6.4.2 Fall Creek Hydroelectric Facility

PacifiCorp will continue to operate the Fall Creek hydroelectric facility under FERC's jurisdiction unless and until such time as it transfers the facility to another entity or the facility is otherwise disposed of in compliance with Applicable Law.

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- 6.5.1 Within 30 days of the Amendment Effective Date, PacifiCorp will file the Settlement with FERC and an expedited motion asking FERC to hold PacifiCorp's Project relicensing proceeding in abeyance. Each Party agrees to refrain from any action that does not support PacifiCorp's request to abate the FERC relicensing docket for the Project. The motion will specify that the abeyance should remain in effect while the DRE's surrender application is pending and until after FERC takes action on the DRE's surrender application as provided in Section 7.1.7.A.
- 6.5.2 Within 15 days after FERC issues an abeyance order for the Project relicensing proceeding, PacifiCorp will withdraw its CWA Section 401 certification applications currently pending before the California State Water Resources Control Board and ODEQ.
- 6.5.3 If FERC denies PacifiCorp's motion to abate or fails to rule on the motion before July 1, 2016, PacifiCorp will ask the California State Water Resources Control Board and the ODEQ to abate permitting and environmental review for PacifiCorp's FERC Project No. 2082 licensing activities, including but not limited to water quality certifications under Section 401 of the CWA and review under CEQA, during the Interim Period. If FERC does not hold the Project relicensing proceeding in abeyance, PacifiCorp will withdraw and re-file its relicensing applications for Section 401 certifications as necessary to avoid the certifications being deemed waived under the CWA during the Interim Period.
- 6.5.4 If no abeyance of relicensing proceedings is approved by FERC or, as applicable, the California State Water Resources Control Board or the ODEQ, or an abeyance is ordered then later lifted, then the Parties are excused from their duty to support this Settlement to the extent necessary to maintain their rights and arguments in the Project relicensing proceedings, and any Party may initiate the Meet and Confer procedures described in Section 8.7.

**7. DRE, Transfer, Surrender, and Facilities Removal**

This section describes the measures, schedule, and regulatory compliance during transfer, surrender, and removal of Facilities under this Settlement.

**7.1 DRE****7.1.1 Execution of Settlement**

The Parties expect that the DRE will become a Party by executing the Settlement on or around July 1, 2016, as provided in Section 9.4.

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- A. The Parties agree that the DRE must possess the legal, technical, and financial capacity to:
- (1) Accept and expend non-federal funds consistent with Section 4.2.4;
  - (2) Accept transfer of the FERC license and title for the Facilities from PacifiCorp;
  - (3) Seek and obtain necessary permits and other authorizations to implement Facilities Removal;
  - (4) Enter into appropriate contracts and grant agreements for effectuating Facilities Removal;
  - (5) Perform, directly or by oversight, Facilities Removal;
  - (6) Prevent, mitigate, and respond to damages the DRE or any of its contractors, subcontractors, or assigns cause during the course of Facilities Removal, and, consistent with Applicable Law, respond to and defend associated liability claims against the DRE or any of its contractors, subcontractors, or assigns, including costs thereof and any judgments or awards resulting therefrom;
  - (7) Carry the required insurance and bonding set forth in Appendix L to respond to liability and damages claims associated with Facilities Removal against the DRE or any of its contractors, subcontractors, or assigns;
  - (8) Meet the deadlines set forth in Exhibit 4; and
  - (9) Perform such other tasks as are reasonable and necessary for Facilities Removal.
- B. Before the DRE and PacifiCorp file the joint application to transfer the license for the Facilities, the DRE will Timely demonstrate to the reasonable satisfaction of the States and PacifiCorp that it possesses the legal, technical, and financial capacity to accomplish the tasks in Sections 7.1.2.A(1) through (5), (8), and (9). PacifiCorp and the States will consult if the DRE fails to make the demonstration required in this subsection.
- C. Within six months of the DRE's execution of the Settlement, the DRE will include in an informational filing in the FERC license transfer

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proceeding proof that it possesses the legal, technical, and financial capacity to accomplish the tasks in Sections 7.1.2.A(6) and (7). This filing will include documentation that the DRE meets the requirements of Parts II, III, and IV of Appendix L and is capable of fulfilling its obligations under Section 7.1.3. The DRE will not provide the filing if either of the States or PacifiCorp objects to the filing after a reasonable opportunity to review before submission to FERC. The six-month deadline may be changed by agreement of the DRE, the States, and PacifiCorp. The Parties will Meet and Confer if the DRE fails to provide the informational filing to FERC.

### 7.1.3 Liability Protection

- A. By executing this Settlement, the DRE agrees, on its behalf and on behalf of the DRE's employees, contractors, subcontractors, and authorized agents or assigns to indemnify, hold harmless, and defend PacifiCorp, the state of California, and the state of Oregon for, from, and against any and all claims, actions, proceedings, damages, liabilities, monetary or non-monetary harms or expense arising from, relating to, or triggered by Facilities Removal, including but not limited to:
- (1) Harm, injury, or damage to persons, real property, tangible property, natural resources, biota, or the environment;
  - (2) Harm, injury, or damage caused by the release, migration, movement, or exacerbation of any material, object, or substance, including without limitation hazardous substances; and
  - (3) Breaches or violations of any Applicable Law, Regulatory Approval, authorization, agreement, license, permit, or other legal requirement of any kind.
- B. If the DRE partially assigns its responsibilities under this Settlement, the DRE and its assign will be jointly and severally obligated under this section.

### 7.1.4 License Transfer Conditions and Timing

Before the FERC license transfer to the DRE will become effective, the DRE must demonstrate to PacifiCorp's and the States' reasonable satisfaction that the DRE has met the obligations in Appendix L and the following conditions:

- A. The DRE has provided Notices required under Section 7.2.1.B;
- B. The DRE has met the requirements of Section 7.1.3 and Appendix L;

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- C. PacifiCorp and the States agree that the DRE has made sufficient and Timely progress in obtaining necessary permits and approvals to effectuate Facilities Removal;
- D. The DRE, the States, and PacifiCorp are assured that sufficient funding is available to carry out Facilities Removal;
- E. The DRE, the States, and PacifiCorp are each assured that their respective risks associated with Facilities Removal have been sufficiently mitigated consistent with Appendix L;
- F. The DRE, the States, and PacifiCorp agree that no order of a court or FERC is in effect that would prevent Facilities Removal;
- G. The DRE and PacifiCorp have executed documents conveying the property and rights necessary to carry out Facilities Removal; and
- H. The DRE accepts license transfer under the conditions specified by FERC in its order approving transfer.

**7.1.5 FERC Application for Transfer**

- A. On or around July 1, 2016, PacifiCorp and the DRE will jointly file an application to remove the Facilities from the Project license, redesignate the Facilities with a new project number, and transfer the redesignated FERC license for the Facilities to the DRE.
- B. The application for transfer may include proposals to decommission the East Side and West Side facilities, subject to Section 6.4.1 of this Settlement; remove the Keno facilities from the Project license under Section 7.5 of this Settlement; and transfer the Fall Creek development to a third party for purposes of relicensing.
- C. PacifiCorp and the DRE will file the joint application for transfer at FERC concurrent with the DRE's application for surrender and removal of the Facilities, retaining the 2020 target date for Facilities Removal.
- D. The joint application for transfer will request that FERC incorporate the conditions in Section 7.1.4 into the transfer order and require that transfer will not become effective until the DRE, or PacifiCorp and the DRE jointly (as appropriate), file notice with FERC when those conditions have been satisfied.

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On or around July 1, 2016, the DRE and PacifiCorp will enter into an operation and maintenance agreement allowing PacifiCorp to continue operating the Facilities for the benefit of its customers following transfer of the FERC Facilities license to the DRE. The conditions of operation under this agreement will be consistent with interim operations described in Section 6 and Appendices B, C, and D, and will include requirements that PacifiCorp pay all costs associated with operating the Facilities and indemnify, defend, and hold harmless the DRE with respect to those operations. The DRE and PacifiCorp will obtain the concurrence of the States for any such agreement.

**7.1.7 FERC Application for Surrender**

- A. Concurrently with the joint application for license transfer, the DRE will file an application with FERC to surrender the FERC license for the Facilities for the purpose of Facilities Removal, which will include a copy of this Settlement and the Detailed Plan. The DRE will request that FERC defer acting on the application until the conditions in Section 7.1.4 are satisfied. The DRE will take any action necessary to obtain necessary FERC authorization to carry out Facilities Removal in accordance with this Settlement. PacifiCorp will provide technical support to the DRE and to FERC in processing the surrender application, but will not be a co-applicant or co-licensee on the surrender application unless otherwise mutually agreed upon with the DRE.
- B. Concurrently with the joint application for license transfer and the DRE's application to FERC for surrender, the DRE will file applications seeking state water quality 401 certifications for Facilities Removal with the California State Water Resources Control Board and the ODEQ.

**7.1.8 Performance of Facilities Removal**

The DRE will perform Facilities Removal in accordance with the Definite Plan, as approved and as may be modified by the FERC surrender order and other applicable Regulatory Approvals. The DRE will complete final design and cost estimates before initiating Facilities Removal.

**7.1.9 Other Regulatory Approvals for Facilities Removal**

The DRE will take any action necessary to obtain other Regulatory Approvals necessary to effectuate Facilities Removal in accordance with this Settlement, except that PacifiCorp will file and support applications to obtain the necessary

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state commission approvals for the transfer of assets to the DRE in accordance with this Settlement.

#### 7.1.10 Assignment

The DRE may assign to another entity any of its responsibilities under this Settlement, including the DRE responsibilities described in this section. This assignment is subject to any necessary Regulatory Approvals. The DRE may not assign its responsibilities under this Settlement without the prior written consent of the States and PacifiCorp.

### 7.2 Definite Plan and Detailed Plan

#### 7.2.1 Development and Use of Definite Plan

The DRE will develop a Definite Plan for Facilities Removal that, once completed, may be included as a part of any applications for permits or other authorizations. The Definite Plan must be consistent with this Settlement.

##### A. Elements of Definite Plan

The Definite Plan may be based on all elements of the Detailed Plan described in Section 7.2.2 and will be consistent with FERC requirements for surrender. Such elements shall be in the form required for physical performance, such as engineering specifications for a construction activity, and shall also include consideration of prudent cost overrun management tools such as performance bonds. The Definite Plan shall also include:

- (1) A detailed estimate of the actual or foreseeable costs associated with: the physical performance of Facilities Removal consistent with the Detailed Plan; each of the tasks associated with the performance of the DRE's obligations as stated in Section 7.1; seeking and securing permits and other authorizations; and insurance, performance bond, or similar measures, as set forth in Appendix L to this Settlement;
- (2) The DRE's analysis demonstrating that the total cost of Facilities Removal is likely to be less than the State Cost Cap, which is the total of Customer Contribution and California Bond Funding as specified in Section 4;
- (3) Appropriate procedures consistent with state law to provide for cost-effective expenditures within the cost estimates stated in (1);
- (4) Accounting procedures that will result in the earliest practicable disclosure of any actual or foreseeable overrun of cost of any task relative to the detailed estimate stated in (1); and

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- (5) Appropriate mechanisms to modify or suspend performance of any task subject to such overrun. Upon receipt of Notice from the DRE of any actual or foreseeable cost overrun pursuant to (2), the Parties shall use the Meet and Confer procedures to modify the task (to the extent permitted by the FERC surrender order, an applicable permit, or other authorization) or to modify this Settlement as appropriate to permit Facilities Removal to proceed.

**B. Notice of Completion**

The DRE shall provide Notice to the Parties upon completion of the Definite Plan.

**C. Use of Definite Plan**

The DRE must incorporate the Definite Plan, once completed, into any FERC application to surrender the Facilities license. After FERC issues an order on the FERC Facilities license surrender application, the Parties will review the consistency of the Definite Plan, FERC's surrender order, and this Settlement. If either of the States or the DRE finds that the FERC surrender order is materially inconsistent (as defined in Section 8.11.2) with the Definite Plan or this Settlement, either the DRE or the States may initiate Meet and Confer proceedings.

**7.2.2 Detailed Plan for Facilities Removal**

The Secretary developed the Detailed Plan, which may serve as a basis for the Definite Plan described in Section 7.2.1.A. The Detailed Plan includes A through F below; G is addressed in Appendix L and will be fully developed in the Definite Plan; H will be addressed during solicitation and selection of engineering and construction contract(s) for development of a Definite Plan and for Facilities Removal.

- A. The physical methods to be undertaken to effect Facilities Removal, including but not limited to a timetable for Facilities Removal, which is removal of all or part of each Facility as necessary to effect a free-flowing condition and volitional fish passage as defined in Section 1.4;
- B. As necessary and appropriate, plans for management, removal, and/or disposal of sediment, debris, and other materials;
- C. A plan for site remediation and restoration;
- D. A plan for measures to avoid or minimize adverse downstream impacts;



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- E. A plan for compliance with all Applicable Laws, including anticipated permits and permit conditions;
- F. A detailed statement of the estimated costs of Facilities Removal;
- G. A statement of measures to reduce risks of cost overruns, delays, or other impediments to Facilities Removal; and
- H. The qualifications, management, and oversight of a non-federal DRE.

### 7.2.3 Assessment and Mitigation of Potential Impacts to the City of Yreka

The Parties understand that actions related to this Settlement may affect the City of Yreka. In recognition of this potential, the Parties agree to the following provisions, which shall remain in effect so long as this Settlement remains in effect.

- A. The Parties collectively and each Party individually shall agree not to oppose the City of Yreka's continued use of California State Water Right Permit 15379, which provides for the diversion of up to 15 cfs for municipal uses by the City of Yreka.
- B. As part of implementation of this Settlement, an engineering assessment to study the potential risks to the City of Yreka's water supply facilities as a result of implementation of Facilities Removal shall be funded and conducted by the Secretary. Actions identified in the engineering assessment necessary to assure continued use of the existing, or equivalent replacement, water supply facilities by the City of Yreka shall be funded from the California Bond Measure and implemented. Actions that may be required as a result of the engineering assessment and in consultation with the City of Yreka include, but are not limited to:
  - (1) Relocation, replacement, and/or burial of the existing 24-inch diameter water line and transmission facilities from the City of Yreka's Fall Creek diversion;
  - (2) Assessment, mitigation, and/or funding to address potential damage to the City of Yreka's facilities located along the Klamath River, including mitigation of potential impacts that may occur as a result of a dam breach. Such assessment, mitigation, and/or funding shall include consideration of the cathodic protection field located near the north bank of the Iron Gate crossing and the facilities that house the City's diversion and pump station; and

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(3) Assessment, mitigation, and/or funding to address any impacts resulting from implementation of the Settlement, on the ability of the City to divert water consistent with its Water Right Permit 15379.

C. As part of implementation of this Settlement, an assessment of the potential need for fish screens on the City of Yreka's Fall Creek diversion facilities was completed in the Detailed Plan and it identified the need for fish screens on Dam A and Dam B. As a result of implementation of this Settlement, in order to meet regulatory requirements and screening criteria, construction of the required fish screens, including, but not limited to, necessary costs to preserve City facilities with additional species protection, shall be funded through the California Bond Measure pursuant to Section 4.2.3, or through other appropriate sources.

### 7.3 Schedule for Facilities Removal

7.3.1 The Parties agree that the target date to begin Facilities Removal is January 1, 2020. The Parties agree that preparatory work for Facilities Removal may be undertaken by the DRE before January 1, 2020, consistent with the Definite Plan, applicable permits, and Section 6 of this Settlement; provided such preparatory work shall not have any negative impact on PacifiCorp's generation operations at the Facilities. The Parties further agree to a target date of December 31, 2020 for completion of Facilities Removal at least to a degree sufficient to enable a free-flowing Klamath River allowing volitional fish passage.

7.3.2 The Parties acknowledge and agree that the schedule to accomplish Facilities Removal will be determined by the DRE in accordance with Section 7.3.4. The Parties intend to implement this Settlement based on the following approach to achieve the target dates for Decommissioning and Facilities Removal set forth in Section 7.3.1:

- A. Collect \$172 million of the total Customer Contribution by December 31, 2019, consistent with Section 4;
- B. Earn approximately \$28 million in interest on the Klamath Trust Accounts to provide Value to Customers, which results in a total of \$200 million in the accounts available for Facilities Removal costs as illustrated in Appendix H to this Settlement;
- C. Implement Decommissioning and Facilities Removal in a manner that permits PacifiCorp to generate sufficient electricity at the Facilities to achieve the economic results included in PacifiCorp's Economic Analysis; and

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D. Implement the ICP and Non-ICP Interim Measures set forth in Appendices C and D to this Settlement.

- 7.3.3 The Parties agree that PacifiCorp may continuously operate the Facilities subject to the ICP and Non-ICP Interim Measures identified in Appendices C and D to this Settlement and generate electricity at the Facilities through December 31, 2019. Based upon PacifiCorp's representation of its Economic Analysis, the Parties agree that the following additional Value to Customers, in addition to the \$28 million in interest described in Section 7.3.2.B, is necessary to achieve the corresponding date for commencement of Facility Decommissioning:

Date of Facilities Decommissioning	Required Additional Value to Customers
January 1, 2020	\$27 million
July 1, 2020	\$13 million
December 31, 2020	\$0

If Decommissioning begins on December 31, 2020, no additional funding is required. The Parties acknowledge that, in order to complete Facilities Removal to the degree described in the last sentence of Section 7.3.1 by December 31, 2020, Decommissioning will need to begin prior to that date. As described in the table above, Decommissioning may begin on July 1, 2020 if \$13 million in additional Value to Customers is identified, or on January 1, 2020, if \$27 million in additional Value to Customers is identified.

- 7.3.4 Within 90 days of the DRE's execution of the Settlement, or at such additional time as may be necessary, the Parties shall Meet and Confer to: (1) review progress in implementing the Settlement based upon the approach described in Section 7.3.2; (2) review the DRE's schedule to procure contractor(s) to prepare a Definite Plan based on the Detailed Plan and to provide required liability protection and risk mitigation in accordance with Appendix L; and (3) identify the Value to Customers necessary to implement the schedule, the mechanisms as described in Section 7.3.8 that will be used, and the estimated cost reduction from each mechanism through December 2019. The Parties will subsequently Meet and Confer if the estimated additional Value to Customers has not been timely secured, a Regulatory Approval is inconsistent with that schedule, or the Definite Plan or final designs are inconsistent with the schedule.

If the Parties determine that the identified Value to Customers is less than the amount required to achieve the schedule, then the Parties at that time will consider additional actions to address the funding deficiency, including but not limited to extending the schedule and securing additional funding to protect PacifiCorp customers. The Parties may thereafter Meet

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and Confer if additional Value to Customers is secured in excess of what was previously estimated.

- 7.3.5 PacifiCorp, in its sole and absolute discretion, may determine that Facilities Removal may begin earlier than January 1, 2020.
- 7.3.6 If the Parties determine that the schedule for Facilities Removal must extend beyond December 31, 2020, then the Parties shall also consider whether (1) modification of Interim Measures is necessary to appropriately balance costs to customers and protection of natural resources, and (2) continuation of the collection of the customer surcharges up to the maximum Customer Contribution is warranted.
- 7.3.7 The Parties agree that if Decommissioning and Facilities Removal occurs in a staged manner, J.C. Boyle is intended to be the last Facility decommissioned. If, however, the Definite Plan or FERC's surrender order directs a different sequence for Decommissioning and Facilities Removal, then the Parties shall Meet and Confer to identify adjustments necessary to implement Facilities Removal in a manner that is consistent with PacifiCorp's Economic Analysis.
- 7.3.8 The Parties have identified the following potential mechanisms for creating Value to Customers:

A. Interest on the Klamath Trust Accounts

The Parties acknowledge above that the surcharges from the Customer Contributions will be placed in interest-bearing accounts and that the interest that accrues in the accounts may be used to reduce the amount collected through the surcharges so that the total Customer Contribution, including accrued interest through December 31, 2019, totals \$200,000,000. The Parties further acknowledge that it is not possible to precisely estimate the amount of interest that will accrue in the Klamath Trust Accounts. To the extent the interest in the accounts exceeds \$28,000,000, the additional earnings may be used as a Value to Customers unless the funds are required for Facilities Removal. Nothing in this paragraph will limit the Customer Contribution to less than \$200,000,000.

B. Third-Party Funding

The Parties agree to work jointly to identify potential partnerships to supplement funds generated pursuant to this Settlement. Such third-party funds may be employed to acquire generation facilities that can be used to replace the output of the Facilities, to fund aspects of Facilities Removal, or for other purposes to achieve the benefits of this Settlement.

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The Parties acknowledge that other mechanisms for Value to Customers may be identified, provided that they create sufficiently quantifiable benefits for customers.

7.3.9 PacifiCorp's Economic Analysis that will be used to implement this section was filed by PacifiCorp with the Oregon PUC pursuant to Section 4(1) of the Oregon Surcharge Act and with the California PUC in accordance with Section 4 of this Settlement. The Parties may seek to intervene in these state proceedings before the Commissions, and may request to view PacifiCorp's Economic Analysis consistent with the limitations imposed by Section 4(6) of the Oregon Surcharge Act, applicable PUC protective orders, and general PUC discovery practices and legal requirements. PacifiCorp shall not oppose either request. PacifiCorp reserves the right to request that the PUCs restrict Parties' access to commercially sensitive material, other than PacifiCorp's Economic Analysis, consistent with Section 4(6) of the Oregon Surcharge Act, applicable PUC protective orders, and general PUC discovery practices and legal requirements.

**7.4 Transfer, Decommissioning, and Facilities Removal****7.4.1 DRE Notice**

The DRE will notify the Parties and FERC when the necessary permits and approvals have been obtained for removal of a Facility or Facilities, all contracts necessary for removal have been finalized, and Facility Removal is ready to commence.

**7.4.2 Decommissioning and Transfer**

PacifiCorp will transfer ownership of each Facility, including the underlying land for each Facility in accordance with Section 7.6.4 (except for the Keno Development, which shall be disposed in accordance with Section 7.5). Once the DRE fulfills all of the conditions and obligations in Section 7.1.4, Appendix L, and the FERC license transfer order, and PacifiCorp concurs, PacifiCorp will transfer ownership of the Facilities to the DRE. PacifiCorp will continue to operate and maintain the Facilities in accordance with Section 7.1.6 until the DRE is ready to begin removal of a Facility and requests that PacifiCorp discontinue operation of that Facility.

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Resolution of issues surrounding Keno facility are an important part of achieving the overall goals of this Settlement. Accordingly, the Secretary, in consultation with affected Parties, shall study issues specific to the Keno facility, with specific focus on addressing water quality, fish passage, transfer of title to the Keno facility from PacifiCorp to Interior, future operations and maintenance, and landowner agreements. The study of the Keno facility will be designed with the goals of addressing these issues and maintaining the benefits the dam currently provides.

7.5.2 Keno Facility Determination

In 2012, the Bureau of Reclamation and PacifiCorp entered into an agreement in principle for transfer of title to the Keno facility from PacifiCorp to Interior. Within 60 days of the Amendment Effective Date, Interior and PacifiCorp shall commence negotiations on Keno transfer informed by the analyses described in Section 7.5.1. Every six months or as necessary after the Amendment Effective Date, and subject to Section 8.17, Interior and PacifiCorp shall report to the Parties on the status of Keno negotiations, including as appropriate, drafts of a proposed Keno transfer agreement, a summary of negotiations and issues in dispute, and supporting documents. Interior and PacifiCorp shall use their best efforts to complete a final Keno transfer agreement within 180 days of the Amendment Effective Date. The Secretary will accept transfer of title to the Keno facility when the DRE notifies the Parties and FERC pursuant to Section 7.4.1 that J.C. Boyle Facility Removal is ready to commence.

The transfer of title to the Keno facility shall be subject to completion of any necessary improvements to the Keno facility to meet Department of the Interior Directives and Standards criteria for dam safety identified by Interior through its Safety of Dams inspection of the Keno facility. To facilitate this inspection, PacifiCorp agrees to grant access to the federal government and its contractors for study and assessment of the Keno facility. The terms and conditions of the transfer of title to the Keno facility, including coordination of operations between Link River dam, Keno dam, and any remaining facilities operated by PacifiCorp, ingress and egress agreements and easements required for operation and maintenance of the Klamath Reclamation Project, including but not necessarily limited to Lake Ewauna, Link River Dam, and Keno Dam will be negotiated between Interior and PacifiCorp prior to transfer. Costs associated with any improvements necessary to meet Department of Interior's Directives and Standards criteria for dam safety shall be funded by other non-PacifiCorp sources.

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### 7.5.3 PacifiCorp Operations Prior to Transfer

Prior to and until transfer of title to the Keno Facility, PacifiCorp shall operate Keno in compliance with Contract #14-06-200-3579A, subject to any Applicable Law including the CWA and the provisions of Section 6.3 of this Settlement.

### 7.5.4 Operations After Transfer

Following transfer of title to the Keno facility from PacifiCorp to Interior, Interior shall operate Keno in compliance with Applicable Law and to provide water levels upstream of Keno Dam for diversion and canal maintenance consistent with Contract #14-06-200-3579A executed on January 4, 1968, between Reclamation and PacifiCorp (then COPCO) and historic practice.

### 7.5.5 Landowner Agreements

Based on the analysis under Section 7.5.1, the Secretary, upon acquisition of the Keno facility, will execute new agreements with landowners who currently have agreements in the Lake Ewauna to Keno reach, as the Secretary determines are necessary to avoid adverse impacts to the landowners resulting from the transfer, consistent with Applicable Law, operational requirements, and hydrologic conditions.

## 7.6 Dispositions of PacifiCorp Interests in Lands and other Rights

### 7.6.1 Lands Owned by PacifiCorp

PacifiCorp is the fee owner of approximately 11,000 acres of real property located in Klamath County, Oregon and Siskiyou County, California that are not directly associated with the Klamath Hydroelectric Project, and generally not included within the existing FERC project boundary. This property is more particularly described on Page 3 of the PacifiCorp Land Maps, attached as Exhibit 3, and referenced as Parcel A. This Settlement shall have no effect as to disposition of Parcel A lands, which shall continue to be subject to applicable taxes unless and until disposed of by PacifiCorp subject to applicable PUC approval requirements.

PacifiCorp is the fee owner of approximately 8,000 acres of real property located in Klamath County, Oregon and Siskiyou County, California that is associated with the Klamath Hydroelectric Project and/or included within the FERC project boundary. This property is more particularly described on Page 3 of the PacifiCorp Land Maps, Exhibit 3, and referenced as Parcel B. It is the intent of the Parties that Parcel B property be disposed in accordance with Section 7.6.4, except for the Keno Development which shall be disposed in accordance with Section 7.5. In addition to Exhibit 3, PacifiCorp owns significant electric transmission and distribution facilities which will remain under its ownership and subject to applicable taxes.

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### 7.6.2 Potential Non-Project Land Exchanges

Interior and PacifiCorp have identified in Parcel A the potential for the exchange of certain non-Project PacifiCorp-owned lands in the Klamath Basin. Should an exchange of these lands to a state or Federal entity take place, the terms of the exchange agreement shall be revenue-neutral to County governments.

### 7.6.3 BLM Easements and Rights of Way

The Parties agree that before Facilities Removal, the FERC license for the Facilities shall control the ingress and egress to the Facilities within the FERC project boundary. Access by PacifiCorp outside of the project boundary to BLM-administered lands may require a separate Right Of Way agreement.

The Parties agree that the DRE's obligations for operation, maintenance, remediation and restoration costs of BLM-administered, transportation-related structures affected by Facilities Removal will be addressed as part of the Definite Plan.

A proposed disposition of PacifiCorp's easements and right-of-ways across BLM-administered lands within the FERC Project boundary will be included as a part of the DRE's Definite Plan for Facility Removal. To the extent necessary, reciprocal Right Of Way agreements may be executed across PacifiCorp-owned lands and BLM-administered lands to provide continued access for public and BLM administration needs. During the implementation of the Definite Plan, the DRE will be required to obtain authorization for any access across PacifiCorp and BLM-administered lands necessary for every phase of action.

### 7.6.4 PacifiCorp Klamath Hydroelectric Project Lands

- A. It is the intent of the Parties that ownership of PacifiCorp lands associated with the Klamath Hydroelectric Project and/or included within the FERC Project boundary, identified as Parcel B in Exhibit 3, shall be transferred to the DRE before Facilities Removal begins. It is the intent of the Parties that, once the DRE has completed Facilities Removal and all surrender conditions have been satisfied, ownership of these lands will be transferred to the respective States, as applicable, or to a designated third-party transferee, upon Notice by the relevant State that it has completed to its satisfaction a final property (land and facilities) inspection in accordance with Applicable Law and in accordance with the indemnification(s) provided in Section 7.1.3 and Appendix L. It is also the intent of the Parties that transferred lands shall thereafter be managed for public interest purposes such as fish and wildlife habitat restoration and enhancement, public education, and public recreational access.



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- B. Each State shall undertake inspection and preliminary due diligence regarding the nature and condition of Parcel B lands located within its state boundaries, in anticipation of transfer of those lands from the DRE to the relevant State. PacifiCorp and the DRE shall provide each State all cooperation and access to the lands and pertinent records necessary to the inspection and due diligence. The DRE, each State, and PacifiCorp shall identify and provide to the Parties, for each specific property in Parcel B: (1) the proposed transferee for the property; and (2) the proposed terms of transfer for the property. The States, the DRE, and PacifiCorp shall consult with the Parties and other stakeholders before identifying the proposed transfer of a specific Parcel B property. Following such evaluation, the State of Oregon and the State of California may, each in its sole and absolute discretion, elect not to accept the transfer of all or any portion of Parcel B lands; provided, if a State, the DRE, or PacifiCorp believes that the proposed transfer for a property (or lack thereof) will not achieve the intent set forth in Section 7.6.4.A, those Parties shall Meet and Confer in accordance with Section 8.7.
- C. Without predetermining the final terms of transfer for a specific property, proposed terms of transfer may include but are not limited to: (1) final property inspection; (2) specification of structures and improvements to remain on the property after Decommissioning and Facilities Removal; (3) liability protection for the State, or designated third party transferee, and the DRE, for any harm arising from post-transfer Decommissioning or power operations at the property; (4) liability protection for the State, or designated third party transferee, for any harm arising from post-transfer Facilities Removal by the DRE at the property; (5) easements or other property interests necessary for access to and continued operation of PacifiCorp transmission and distribution system assets that will remain on the property; and (6) notice or acknowledgement of the State's claim of ownership to beds and banks of the Klamath River. The DRE shall be a party to the transfer document as necessary and appropriate. The consideration required for transfer of a property to a State or third party transferee under this section shall be limited to the liability protections and other benefits conferred upon PacifiCorp and the DRE under this Settlement. Transfer of Parcel B lands shall be subject to applicable regulatory approvals and the reservations set forth in Section 1.6.
- D. PacifiCorp shall convey Parcel B lands to the DRE, after the DRE provides Notice to the Parties and FERC that all necessary permits and approvals have been obtained for Facility Removal, and all contracts necessary for Facility Removal have been finalized. PacifiCorp shall convey all right, title, and interest in a subset of the Parcel B lands

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designated on Exhibit 3 as lands associated with each Facility to the State or third party transferee subject to the DRE's possessory interest, consistent with the terms of this Settlement, including the Facilities, underlying lands, and appurtenances as further described through surveys and land descriptions. The DRE shall hold the underlying land for each Facility in trust for the benefit of the State or third party transferee. This public trust possessory interest in the DRE shall be controlled by the terms of the Settlement, the Definite Plan, and the transfer document. At the conclusion of Facilities Removal, the DRE will release the underlying land to the State or third party transferee. Upon transfer of ownership of all Facilities, PacifiCorp shall convey to the State or third party transferee all right, title, and interest in all Parcel B lands not already transferred to the DRE in trust, as further described through surveys and land descriptions, without restriction of possessory interest for the DRE. If transfer of a specific property for any reason is not consummated in a manner achieving the intent set forth in Section 7.6.4.A, PacifiCorp, the applicable State, and the DRE shall Meet and Confer in accordance with Section 8.7.

- E. Notwithstanding any provision hereof, in the event either State accepts title to any portion of Parcel B lands, the State of Oregon and the State of California retain the right to transfer their ownership to any third party for any purpose.

#### 7.6.5 PacifiCorp Water Rights

- A. PacifiCorp shall assign its revised hydroelectric water rights to the OWRD for conversion to an instream water right pursuant to ORS 543A.305, and OWRD shall take actions to effect such conversion, in accordance with the process and conditions set forth in *Water Right Agreement between PacifiCorp and Oregon* (Exhibit 1). Nothing in this Section 7.6.5 or Exhibit 1 is intended in any way to affect, diminish, impair, or determine any federally-reserved or state law-based water right that the United States or any other person or entity may have in the Klamath River.
- B. Except as provided in this paragraph, within 90 days of completion of Facilities Removal at the Copco No. 1, Copco No. 2 and Iron Gate Facilities, respectively, PacifiCorp shall submit a Revocation Request to the California State Water Resources Control Board for License No. 9457 (Application No. 17527), and shall notify the State Water Resources Control Board of its intent to abandon its hydroelectric appropriative water rights at the Copco No. 1 and Copco No. 2 Facilities, as applicable, as identified in Statement of Water Diversion and Use Nos. 15374, 15375, and 15376. Should ongoing operations of the Iron Gate Hatchery or other hatchery facilities necessitate

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continued use of water under License No. 9457 (Application No. 17527) beyond 90 days after completion of Facilities Removal, PacifiCorp shall consult with the Department of Fish and Wildlife and the State Water Resources Control Board and shall take actions directed by such Department and Board as are necessary to ensure a sufficient water supply to the Iron Gate Hatchery or other hatchery facilities under License No. 9457.

#### 7.6.6 PacifiCorp Hatchery Facilities

The PacifiCorp Hatchery Facilities within the State of California shall be transferred to the State of California at the time of transfer to the DRE of the Iron Gate Hydro Development or such other time agreed by the Parties, and thereafter operated by the California Department of Fish and Wildlife with funding from PacifiCorp as follows:

##### A. Hatchery Funding

PacifiCorp will fund 100 percent of hatchery operations and maintenance necessary to fulfill annual mitigation objectives developed by the California Department of Fish and Wildlife in consultation with the National Marine Fisheries Service. This includes funding the Iron Gate Hatchery facility as well as funding of other hatcheries necessary to meet ongoing mitigation objectives following Facilities Removal. Hatchery operations include development and implementation of a Hatchery Genetics Management Plan as well as a 25% constant fractional marking program. Funding will be provided for hatchery operations to meet mitigation requirements and will continue for eight years following the Decommissioning of Iron Gate Dam. PacifiCorp's eight-year funding obligation assumes that dam removal will occur within one year of cessation of power generation at Iron Gate Dam. If Facilities Removal occurs after one year of cessation of power generation at Iron Gate Dam, then the Parties will Meet and Confer to determine appropriate hatchery funding beyond the eight years.

##### B. Hatchery Production Continuity

PacifiCorp will fund a study to evaluate hatchery production options that do not rely on the current Iron Gate Hatchery water supply. The study will assess groundwater and surface water supply options and water reuse technologies that could support hatchery production in the absence of Iron Gate Dam. The study may include examination of local well records and increasing production potential at existing or new facilities in the Klamath Basin as well as development of a test well or groundwater supply well. Based on the study results and with the approval of the California Department of Fish and Wildlife and the National Marine Fisheries

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Service, PacifiCorp will provide one-time funding to construct and implement the measures identified as necessary to continue to meet current mitigation production objectives for a period of eight years following the Decommissioning of Iron Gate Dam. PacifiCorp's eight-year funding obligation assumes that Facilities Removal will occur within one year of cessation of power generation at Iron Gate Dam. If dam removal occurs after one year of cessation of power generation at Iron Gate Dam, then the Parties will Meet and Confer to determine appropriate hatchery funding beyond the eight years. Production facilities capable of meeting current hatchery mitigation goals must be in place and operational upon removal of Iron Gate Dam. PacifiCorp shall not be responsible for funding hatchery programs, if any, necessary to reintroduce anadromous fish in the Klamath basin.

**8. General Provisions****8.1 Term of Settlement**

The term of this Settlement shall commence on the Effective Date and shall continue until Facilities Removal has been fully achieved and all conditions of this Settlement have been satisfied, unless terminated earlier pursuant to Section 8.11.

**8.2 Effectiveness**

The KHSA was effective upon execution on February 18, 2010 ("Effective Date"). The KHSA as amended will take effect when it is executed by the signatories to the 2016 AIP ("Amendment Effective Date").

**8.3 Successors and Assigns**

This Settlement shall apply to, be binding on, and inure to the benefit of the Parties and their successors and assigns, unless otherwise specified in this Settlement. Except as provided by Section 7.1.10, no assignment may take effect without the express written approval of the other Parties, which approval will not be unreasonably withheld.

**8.4 Amendment**

Except as otherwise expressly provided in Section 8.11.3, this Settlement may only be amended in writing by all Parties still in existence, including any successors or assigns. The Public Agency Parties may also obtain public input on any such modifications as required by Applicable Law. A Party may provide Notice of a proposed amendment at any time. The Parties agree to meet in person or by teleconference within 20 days of receipt of Notice to discuss the proposed amendment.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****8.5 Notices**

Any Notice required by this Settlement shall be written. Notice shall be provided by electronic mail, unless the sending Party determines that first-class mail or an alternative form of delivery is more appropriate in a given circumstance. A Notice shall be effective upon receipt, but if provided by U.S. Mail, seven days after the date on which it is mailed. For the purpose of Notice, the list of authorized representatives of the Parties as of the Effective Date is attached as Appendix K. The Parties shall provide Notice of any change in the authorized representatives designated in Appendix K, and PacifiCorp shall maintain the current distribution list of such representatives. The Parties agree that failure to provide PacifiCorp with current contact information will result in a waiver of that Party's right to Notice under this Settlement. The Party who has waived Notice may prospectively reinstate its right to Notice by providing current contact information to PacifiCorp.

**8.6 Dispute Resolution**

All disputes between Parties arising under this Settlement shall be subject to the Dispute Resolution Procedures stated herein. The Parties agree that each such dispute shall be brought and resolved in a Timely manner.

**8.6.1 Cooperation**

Disputing Parties shall devote such resources as are needed and as can be reasonably provided to resolve the dispute expeditiously. Disputing Parties shall cooperate in good faith to promptly schedule, attend, and participate in the dispute resolution.

**8.6.2 Costs**

Unless otherwise agreed among the Disputing Parties, each Disputing Party shall bear its own costs for its participation in these Dispute Resolution Procedures.

**8.6.3 Non-Exclusive Remedy**

These Dispute Resolution Procedures do not preclude any Party from Timely filing and pursuing an action to enforce an obligation under this Settlement, or to appeal a Regulatory Approval inconsistent with the Settlement, or to enforce a Regulatory Approval or Applicable Law; provided that such Party shall provide a Dispute Initiation Notice and, to the extent practicable, undertake and conclude these procedures, before such action.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**8.6.4 Dispute Resolution ProceduresA. Dispute Initiation Notice

A Party claiming a dispute shall give Notice of the dispute within seven days of becoming aware of the dispute. Such Notice shall describe: (1) the matter(s) in dispute; (2) the identity of any other Party alleged to have not performed an obligation arising under this Settlement or Regulatory Obligation; and (3) the specific relief sought. Collectively, the Party initiating the procedure, the Party complained against, and any other Party which provides Notice of its intent to participate in these procedures, are “Disputing Parties.”

B. Informal Meetings

Disputing Parties shall hold at least two informal meetings to resolve the dispute, commencing within 20 days after the Dispute Initiation Notice, and concluding within 45 days of the Dispute Initiation Notice unless extended upon mutual agreement of the Disputing Parties. If the Disputing Parties are unable to resolve the dispute, at least one meeting will be held within the 45 days at the management level to seek resolution.

C. Mediation

If the dispute is not resolved in the informal meetings, the Disputing Parties shall decide whether to use a neutral mediator. The decision whether to pursue mediation, and if affirmative the identity and allocation of costs for the mediator, shall be made within 75 days after the Dispute Initiation Notice. Mediation shall not occur if the Disputing Parties do not unanimously agree on use of a mediator, choice of mediator, and allocation of costs. The mediation process shall be concluded not later than 135 days after the Dispute Initiation Notice. The above time periods may be shortened or lengthened upon mutual agreement of the Disputing Parties.

D. Dispute Resolution Notice

The Disputing Parties shall provide Notice of the results of the Dispute Resolution Procedures. The Notice shall: (1) restate the disputed matter, as initially described in the Dispute Initiation Notice; (2) describe the alternatives which the Disputing Parties considered for resolution; and (3) state whether resolution was achieved, in whole or part, and state the specific relief, including timeline, agreed to as part of the resolution. Each Disputing Party shall promptly implement any agreed resolution of the dispute.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****8.7 Meet and Confer****8.7.1 Applicability**

The Meet and Confer procedures in this Section 8.7 shall apply upon the occurrence of certain events or failure to occur of certain events as specifically required in this Settlement.

**8.7.2 Meet and Confer Procedures**

- A. Any Party may initiate the Meet and Confer procedures by sending Notice: (1) describing the event that requires the Parties to confer, and (2) scheduling a meeting or conference call.
- B. The Parties will meet to discuss the problem and identify alternative solutions. The Parties agree to dedicate a reasonable amount of time sufficient to resolve the problem.
- C. The Meet and Confer procedures will result in: (1) amendment pursuant to Section 8.4; (2) termination or other resolution pursuant to the procedures of Section 8.11; or (3) such other resolution as is appropriate under the applicable section.

**8.8 Remedies**

This Settlement does not create a cause of action in contract for monetary damages for any alleged breach by any Party of this Settlement. Neither does this Settlement create a cause of action in contract for monetary damages or other remedies for failure to perform a Regulatory Obligation. The Parties reserve all other existing remedies for material breach of the Settlement; provided that Section 8.11 shall constitute the exclusive procedures and means by which this Settlement can be terminated.

**8.9 Entire Agreement**

This Settlement contains the complete and exclusive agreement among all of the Parties with respect to the subject matter thereof, and supersedes all discussions, negotiations, representations, warranties, commitments, offers, agreements in principle, and other writings among the Parties, including the 2008 AIP and 2016 AIP, before the Amendment Effective Date of this Settlement, with respect to its subject matter. Appendices B, C, D, F, H, K, and L are hereby incorporated by reference into this Settlement as if fully restated herein. Exhibits 1 through 4 are attached to this Settlement for informational purposes only and are not incorporated by reference except as otherwise noted herein.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**8.10 Severability

This Settlement is made on the understanding that each provision is a necessary part of the entire Settlement. However, if any provision of this Settlement is held by a Regulatory Agency or a court of competent jurisdiction to be invalid, illegal, or unenforceable: (1) the validity, legality, and enforceability of the remaining provisions of this Settlement are not affected or impaired in any way; and (2) the Parties shall negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be invalid, illegal, or unenforceable) that is valid, legal, and enforceable and carries out the Parties' intention to the greatest lawful extent under this Settlement.

8.11 Termination8.11.1 Potential Termination Events

This Settlement shall be terminable if one of the following events occurs and a cure for that event is not achieved pursuant to Section 8.11.3:

- A. A condition precedent to license transfer set forth in Section 7.1.4 is not met;
- B. The Oregon PUC or California PUC do not implement the funding provisions set forth in Sections 4.1 through 4.6;
- C. Conditions of any Regulatory Approval of Interim Measures, denial of Regulatory Approval of Interim Measures including the failure Timely to approve ESA incidental take authorization, or results of any litigation related to this Settlement are materially inconsistent with the provisions of Section 6.1 through 6.3 and Appendices C and D;
- D. Conditions or denial of any Regulatory Approval of Facilities Removal or the results of any litigation about such removal, are materially inconsistent with the Settlement;
- E. The DRE notifies the Parties that it cannot proceed with Facilities Removal because it cannot obtain all permits and contracts necessary for Facilities Removal despite its good faith efforts; or
- F. California, Oregon, the Federal Parties, or PacifiCorp is materially adversely affected by another Party's breach of this Settlement.

8.11.2 Definitions for Section 8.11

- A. For purposes of this section and Section 7.2.1.C, "materially inconsistent" means diverging from the Settlement or part thereof in a manner that: (1) fundamentally changes the economics or



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liability protection such that a Party no longer receives the benefit of the bargain provided by this Settlement; or (2) frustrates the fundamental purpose of this Settlement such that Facilities Removal or the underlying purposes of Interim Measures cannot be accomplished. Events occurring independent of this Settlement, other than those identified in Section 8.11.1, shall not be construed to create a material inconsistency or materially adverse effect.

- B. For purposes of this section, “materially adversely affected” means that a Party no longer receives the benefit of the bargain due to: (1) fundamental changes in the economics or liability protection; or (2) frustration of the fundamental purpose of this Settlement such that Facilities Removal or the underlying purposes of Interim Measures cannot be accomplished.
- C. For purposes of this section, a “result of any litigation” is materially inconsistent with this Settlement or a part thereof if a Party is materially adversely affected by: (1) costs to defend the litigation; or (2) a final order or judgment.

#### 8.11.3 Cure for Potential Termination Event

- A. A Party that believes that a potential termination event specified in Section 8.11.1 has occurred shall provide Notice.
  - (1) The Parties shall use the Meet and Confer Procedures specified in Section 8.7 to consider whether to deem the event to conform to the Settlement, or adopt a mutually agreeable amendment to this Settlement. These procedures shall conclude within 90 days of Notice.
  - (2) If these procedures do not resolve the potential termination event, the Federal Parties, the States, the DRE if a Party, and PacifiCorp may, within 90 days thereafter, agree to an amendment, or deem the event to conform to the Settlement; otherwise, this Settlement shall terminate. In no event shall any amendment under this subsection provide for Facilities Removal with respect to fewer than four Facilities.
- B. If the Federal Parties, the States, the DRE if a Party, and PacifiCorp disagree whether a potential termination event specified in Section 8.11.1 has occurred, these Parties shall follow the Dispute Resolution Procedures in Section 8.6 to attempt to resolve that dispute. If such a Notice of Dispute is filed while the Meet and Confer Procedures referenced in 8.11.3.A are ongoing, those Meet and Confer Procedures are deemed concluded, subject to being recommenced in accordance

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with the remainder of this subsection. Upon conclusion of the Dispute Resolution Procedures in Section 8.6, the Federal Parties, the States, the DRE if a Party, and PacifiCorp shall issue a Notice of Dispute Resolution.

(1) If, in the Notice of Dispute Resolution, the Federal Parties, the States, and PacifiCorp agree that a potential termination event has occurred, or agree to consider whether a cure could be achieved, the further procedures stated in Section 8.11.3.A(1) and (2) above shall apply.

(2) If, in the Notice of Dispute Resolution, the Federal Parties, the States, the DRE if a Party, and PacifiCorp disagree whether a potential termination event has occurred, this Settlement shall terminate unless a Party seeks and obtains a remedy preserving the Settlement under Applicable Law.

C. A Party may reasonably suspend performance of its otherwise applicable obligations under this Settlement, upon receipt of Notice and pending a resolution of the potential termination event as provided in Section 8.11.3.A or B.

D. If the Federal Parties, the States, the DRE if a Party, and PacifiCorp, pursuant to the procedures in Section 8.11.3.A, agree to an amendment or other cure to resolve a potential termination event absent agreement by all other Parties pursuant to Section 8.4, any other Party may accept the amendment by Notice. If it objects, such other Party: (1) may seek a remedy regarding the potential termination event that resulted in the disputed amendment, to the extent provided by Section 8.8; (2) may continue to suspend performance of its obligations under this Settlement; and (3) in either event shall not be liable in any manner as a result of its objection or the suspension of its performance of its obligations under this Settlement.

E. The Parties shall undertake to complete the applicable procedures under this section within six months of a potential termination event.

#### 8.11.4 Obligations Surviving Termination

A. Upon termination, all documents and communications related to the development, execution, or submittal of this Settlement to any agency, court, or other entity, shall not be used as evidence, admission, or argument in any forum or proceeding for any purpose to the fullest extent allowed by Applicable Law, including 18 C.F.R. § 385.606. This provision does not apply to the results of studies or other technical information developed for use by a Public Agency Party.

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This provision does not apply to any information that was in the public domain prior to the development of this Settlement or that became part of the public domain at some later time through no unauthorized act or omission by any Party. Notwithstanding the termination of this Settlement, all Parties shall continue to maintain the confidentiality of all settlement communications.

This provision does not prohibit the disclosure of: (1) any information held by a federal agency that is not protected from disclosure pursuant to the Freedom of Information Act or other applicable law; (2) any information held by a state or local agency that is not protected from disclosure pursuant to the California Public Records Act, the Oregon Public Records Law, or other applicable state or federal law; or (3) disclosure pursuant to Section 1.6.8.

B. The prohibitions in Section 1.6.8 survive termination of this Settlement.

#### 8.12 No Third-Party Beneficiaries

This Settlement is not intended to and shall not confer any right or interest in the public, or any member thereof, or on any persons or entities that are not Parties hereto, as intended or expected third-party beneficiaries hereof, and shall not authorize any non-Party to maintain a suit at law or equity based on a cause of action deriving from this Settlement. The duties, obligations, and responsibilities of the Parties with respect to third parties shall remain as imposed under Applicable Law.

#### 8.13 Elected Officials Not to Benefit

No Member of or Delegate to Congress, Resident Commissioner, or elected official shall personally benefit from this Settlement or from any benefit that may arise from it.

#### 8.14 No Partnership

Except as otherwise expressly set forth herein, nothing contained in this Settlement is intended or shall be construed to create an association, trust, partnership, or joint venture, or impose any trust or partnership duty, obligation, or liability on any Party, or create an agency relationship between or among the Parties or between any Party and any employee of any other Party.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****8.15 Governing Law****8.15.1 Contractual Obligation**

A Party's performance of an obligation arising under this Settlement shall be governed by (1) applicable provisions of this Settlement, and (2) Applicable Law for obligations of that type.

**8.15.2 Regulatory Obligation**

A Party's performance of a Regulatory Obligation, once approved as proposed by this Settlement, shall be governed by Applicable Law for obligations of that type.

**8.15.3 Reference to Applicable Law**

Any reference in this Settlement to an Applicable Law shall be deemed to be a reference to such law in existence as of the date of the action in question.

**8.16 Federal Appropriations**

To the extent that the expenditure or advance of any money or the performance of any obligation of the Federal Parties under this Settlement is to be funded by appropriations of funds by Congress, the expenditure, advance, or performance shall be contingent upon the appropriation of funds by Congress that are available for this purpose and the apportionment of such funds by the Office of Management and Budget. No breach of this Settlement shall result and no liability shall accrue to the United States in the event such funds are not appropriated or apportioned.

**8.17 Confidentiality**

The confidentiality provisions of the *Agreement for Confidentiality of Settlement Communications and Negotiations Protocol Related to the Klamath Hydroelectric Project*, as it may be amended, shall continue as long as this Settlement is in effect.

**9. Execution of Settlement****9.1 Signatory Authority**

Each signatory to this Settlement certifies that he or she is authorized to execute this Settlement and to legally bind the entity he or she represents, and that such entity shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****9.2 Signing in Counterparts**

This Settlement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as if all signatory Parties had signed the same instrument. The signature pages of counterparts of this Settlement may be compiled without impairing the legal effect of any signatures thereon.

**9.3 New Parties**

Except as provided in Section 9.4 any entity listed on pages 1 through 2 of this Settlement that signs this Settlement on or before December 31, 2016, will become a Party to this Settlement. After December 31, 2016, any entity listed on pages 1 through 2 of this Settlement may become a Party through an amendment of this Settlement in accordance with Section 8.4. After 90 days from the Amendment Effective Date, an entity not listed on pages 1 through 2 of this Settlement may become a Party through an amendment of this Settlement in accordance with Section 8.4.

**9.4 DRE and Liability Transfer Corp. as Parties**

The Parties expect that the DRE will become a Party by executing this Settlement within 90 days of the Amendment Effective Date. No action by any other Party is necessary for the DRE to become a Party. If the DRE assigns any of its responsibilities to a Liability Transfer Corp. as described in Section 7.1.10 and Appendix L, the Liability Transfer Corp. shall become a Party by executing this Settlement. No action by any other Party is necessary for the Liability Transfer Corp. to become a Party.

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FOLLOWING PAGE]

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**IN WITNESS THEREOF,**

the Parties, through their duly authorized representatives, have caused this Settlement to be executed as of the date set forth in this Settlement.

**United States Department of the Interior**

  
By: Sally Jewell, Secretary of the Interior


Date: April 6, 2016

**United States Department of Commerce's National Marine Fisheries Service**

  
By: Dr. Kathryn D. Sullivan  
Under Secretary of Commerce for  
Oceans and Atmosphere

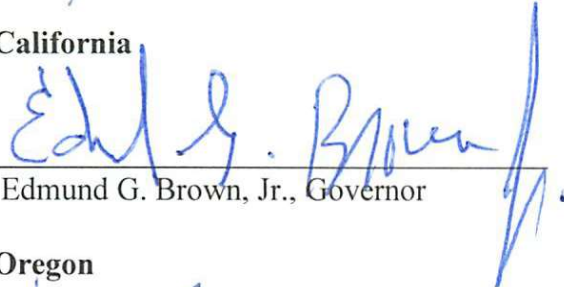
Date: April 6, 2016

**PacifiCorp d/b/a Pacific Power**

  
By: Stefan A. Bird, President and CEO

Date: 4/6/16

**State of California**

  
By: Edmund G. Brown, Jr., Governor

Date: 4/6/2016

**State of Oregon**

  
By: Kate Brown, Governor

Date: 4/6/16

**California Department of Fish and Wildlife**

  
By: Chuck Bonham, Director

Date: 4/6/16

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**California Natural Resources Agency**

By:   
John Laird, Secretary

Date: 4/6/16

**Oregon Department of Environmental Quality**

\_\_\_\_\_  
By: Peter Shepherd, Director

Date: \_\_\_\_\_

**Oregon Department of Fish and Wildlife**

\_\_\_\_\_  
By: Curt Melcher, Director

Date: \_\_\_\_\_

**Oregon Water Resources Department**

\_\_\_\_\_  
By: Thomas Byler, Director

Date: \_\_\_\_\_

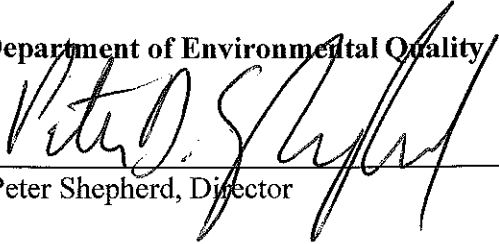
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**California Natural Resources Agency**

\_\_\_\_\_  
By: John Laird, Secretary

Date: \_\_\_\_\_

**Oregon Department of Environmental Quality**

  
\_\_\_\_\_  
By: Peter Shepherd, Director

Date: 4-26-2016

**Oregon Department of Fish and Wildlife**

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By: Curt Melcher, Director

Date: \_\_\_\_\_

**Oregon Water Resources Department**

\_\_\_\_\_  
By: Thomas Byler, Director

Date: \_\_\_\_\_



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**California Natural Resources Agency**

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By: John Laird, Secretary

Date: \_\_\_\_\_

**Oregon Department of Environmental Quality**

\_\_\_\_\_  
By: Peter Shepherd, Director

Date: \_\_\_\_\_

**Oregon Department of Fish and Wildlife**

  
\_\_\_\_\_  
By: Curt Melcher, Director

Date: 4/27/16

**Oregon Water Resources Department**

\_\_\_\_\_  
By: Thomas Byler, Director

Date: \_\_\_\_\_

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**California Natural Resources Agency**

\_\_\_\_\_  
By: John Laird, Secretary

Date: \_\_\_\_\_

**Oregon Department of Environmental Quality**

\_\_\_\_\_  
By: Peter Shepherd, Director

Date: \_\_\_\_\_

**Oregon Department of Fish and Wildlife**

\_\_\_\_\_  
By: Curt Melcher, Director

Date: \_\_\_\_\_

**Oregon Water Resources Department**

  
\_\_\_\_\_  
By: Thomas Byler, Director

Date: 4/27/16

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**Klamath River Renewal Corporation**



Date: August 30, 2016

By: Lester Snow

Title: Vice President

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**Yurok Tribe**


A handwritten signature in blue ink, appearing to read "T.P.O'Rourke, Sr.", written over a horizontal line.

Date: 4-6-16

By: Thomas P. O'Rourke, Sr.,  
Chairperson

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**Karuk Tribe**

  
\_\_\_\_\_  
By: Russell Attebery, Chairman

Date: 4-6-16

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Klamath Tribes**

\_\_\_\_\_  
By: Chairman

Date: \_\_\_\_\_

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**Humboldt County, California**



Date: 5-31-16

By: Mark Lovelace  
Chairman, Board of Supervisors

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**Ady District Improvement Company**

\_\_\_\_\_  
By: Jason Flowers

Date: \_\_\_\_\_



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**Collins Products, LLC**

\_\_\_\_\_  
By: Eric Schooler  
President and Chief Executive Officer

Date: \_\_\_\_\_

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**Enterprise Irrigation District**

\_\_\_\_\_  
By: Michael Beeson, President

Date: \_\_\_\_\_

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**Don Johnston & Son**

\_\_\_\_\_  
By: Donald Scott Johnston, Owner

Date: \_\_\_\_\_

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**Inter-County Properties Co., which acquired title as Inter-County Title Co.**

\_\_\_\_\_  
By: Darrel E. Pierce

Date: \_\_\_\_\_

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**Klamath Irrigation District**

\_\_\_\_\_  
By: Brent Cheyne, President

Date: \_\_\_\_\_

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**Klamath Drainage District**

\_\_\_\_\_  
By: Tim O'Connor, President

Date: \_\_\_\_\_

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**Klamath Basin Improvement District**

\_\_\_\_\_  
By: George Rajnus, Chairman

Date: \_\_\_\_\_

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**Klamath Water Users Association**

\_\_\_\_\_  
By: Brad Kirby, President

Date: \_\_\_\_\_



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**Bradley S. Luscombe**

\_\_\_\_\_  
By: Bradley S. Luscombe

Date: \_\_\_\_\_

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**Malin Irrigation District**

\_\_\_\_\_  
By: Ed Stastny, President

Date: \_\_\_\_\_

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Midland District Improvement Company**

\_\_\_\_\_  
By: Frank Anderson, President

Date: \_\_\_\_\_

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**Pioneer District Improvement Company**

\_\_\_\_\_  
By: Lyle Logan, President

Date: \_\_\_\_\_

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**Plevna District Improvement Company**

\_\_\_\_\_  
By: Steve Metz, President

Date: \_\_\_\_\_

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**Reames Golf and Country Club**

\_\_\_\_\_  
By: L.H. Woodward, President

Date: \_\_\_\_\_

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Shasta View Irrigation District**

\_\_\_\_\_  
By: Claude Hagerty, President

Date: \_\_\_\_\_

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Sunnyside Irrigation District**

\_\_\_\_\_  
By: Pat Patterson, President

Date: \_\_\_\_\_



**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Tulelake Irrigation District**

\_\_\_\_\_  
By: Brad Kirby, President

Date: \_\_\_\_\_

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Upper Klamath Water Users Association**

\_\_\_\_\_  
By: Matthew Walter, President

Date: \_\_\_\_\_

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Van Brimmer Ditch Company**

\_\_\_\_\_  
By: Gary Orem, President

Date: \_\_\_\_\_

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Randolph Walthall and Jane Walthall as trustees under declaration of trust dated  
November 28, 1995**

\_\_\_\_\_  
By: Jane Walthall

Date: \_\_\_\_\_

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Westside Improvement District #4**

\_\_\_\_\_  
By: Steven L. Kandra, President

Date: \_\_\_\_\_

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Winema Hunting Lodge, Inc.**

\_\_\_\_\_  
By: R. David Bolls, III

Date: \_\_\_\_\_

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**American Rivers**

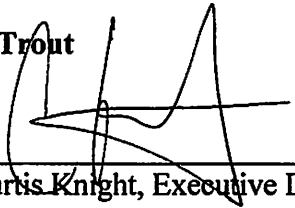


By: W. Robert Irvin, President

Date: 4/14/16

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**California Trout**

A handwritten signature in black ink, appearing to be 'Curtis Knight', written over a horizontal line.

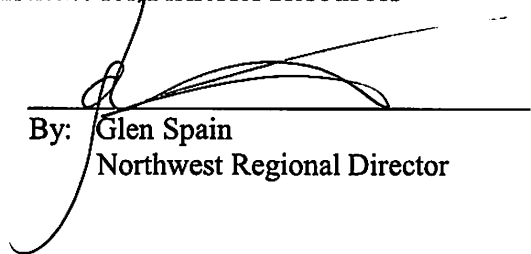
By: Curtis Knight, Executive Director

Date: 4/13/2016



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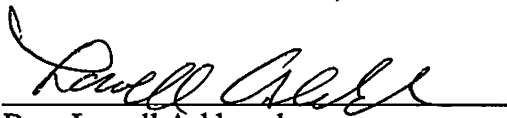
**Institute for Fisheries Resources**

  
By: Glen Spain  
Northwest Regional Director

Date: 5/25/16

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**Northern California Council, Federation of Fly Fishers**

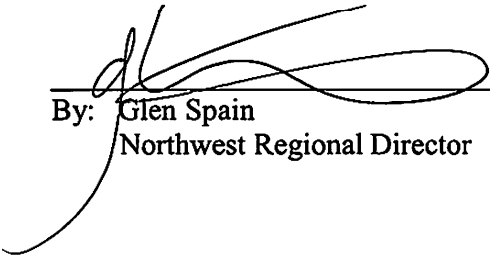


By: Lowell Ashbaugh  
Vice-President, Conservation

Date: 5/3/2016

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Pacific Coast Federation of Fishermen's Associations**

  
By: Glen Spain  
Northwest Regional Director

Date: 5/25/14

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Salmon River Restoration Council**

\_\_\_\_\_  
By: Petey Brucker

Date: \_\_\_\_\_

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**Trout Unlimited**



Date: 7/6/16

By: Chris Wood  
Chief Executive Officer

Sam Johnson  
California Director

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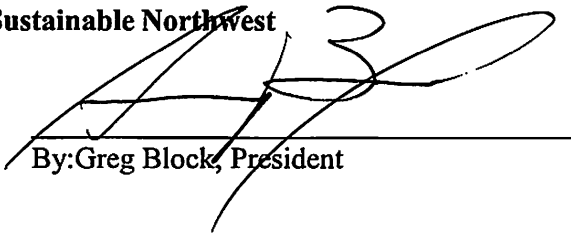
**Klamath Riverkeeper**

\_\_\_\_\_  
By: Konrad Fisher, Exective Officer

Date: \_\_\_\_\_

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Sustainable Northwest**

A large, stylized handwritten signature in black ink, appearing to be 'G. Block', is written over a horizontal line. The signature is somewhat abstract and loops around itself.

By: Greg Block, President

Date: 4/25/16

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Arthur G. Baggett, Jr.**<sup>1</sup>

\_\_\_\_\_  
By: Arthur G. Baggett, Jr.

Date: \_\_\_\_\_

\_\_\_\_\_  
<sup>1</sup>Mr. Baggett is signing this Agreement as a recommendation to the California State Water Resources Control Board, and not as a Party.



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# **APPENDICES**

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED  
ACTIONS IN APPENDIX A HAVE BEEN COMPLETED  
OR ARE NO LONGER APPLICABLE**

**APPENDIX A**

**Coordination Process for the Studies Supporting the Secretarial Determination**

1. Introduction

While the proposed Secretarial Determination is an inherently governmental function that may not be delegated to others, the Federal Parties understand and recognize the unique nature of this task and are committed to participating in the development of the basis for the Secretarial Determination in a Timely, open, transparent manner and employing the highest standards of scientific integrity. As part of that process and as appropriate and governed by Applicable Law, the Secretary will:

- A. seek the input from the other Parties and the public, on:
  - i. identification of data and analysis necessary to make the Secretarial Determination;
  - ii. identification of existing data and analysis and the protocols needed to assess its sufficiency;
  - iii. work plans to obtain and study new information necessary to fill material data gaps that may exist, which may include sediment contamination studies (including but not limited to dioxin); and
  - iv. any other process to gather, develop, and assess any additional data, existing data, or analysis determined necessary by the United States to support the Secretarial Determination,
- B. utilize the expertise each of the Parties may have with regard to data and analysis that is necessary to support the Secretarial Determination; and
- C. create the means by which the Parties can ensure Timely performance of the studies.

Further, the Federal Parties have expressed their commitment to ensuring that the studies, reports, and analyses utilized to inform the Secretarial Determination are supported by a complete and scientifically-sound record.

2. Purpose of the Coordination Process

The purpose of the Coordination Process is to seek, discuss, and consider the views of the Parties regarding the basis of the Secretarial Determination in a Timely manner in support of the Secretary's decision-making process. As described in Section 3 below, the Secretary will foster communication between the Federal agencies engaged in the Determination and the Parties to

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this Settlement. This includes providing Timely notice to allow the Parties and the public to provide meaningful input to the items identified in Section 1 above.

3. The Process

- A. To provide an opportunity for the non-federal Parties to provide input to the Secretary on the categories of data outlined in Section 1 above, there is established under the terms of this Settlement a Technical Coordination Committee (TCC) consisting of membership from all of the non-Federal Parties to this Settlement. The TCC will meet or hold conference calls on a monthly basis, at a minimum, and more often as deemed necessary. The TCC will also form sub-teams and hold separate workshops/meetings as necessary to address specific technical and scientific issues. The principal objective of the TCC will be to exchange information and data, as appropriate, among the non-federal Parties on technical aspects of the Secretarial Determination that may affect the resources of the non-federal Parties and provide input to the Federal Parties. The Federal Parties will hold public workshops or otherwise provide Timely information to the TCC and the public concerning the status of the Determination, the studies in support of the Determination and the environmental compliance actions. To the extent practicable and in accordance with Applicable Law, the Federal Parties will provide the information necessary for the non-federal Parties to have Timely and meaningful input consistent with the schedule for completing the Secretarial Determination. The TCC will provide its input in writing to the Federal Parties for their consideration, consistent with the Coordination Process.
- B. The Parties may participate in the NEPA process as cooperating agencies, if eligible under the applicable Federal regulations and guidance, or as members of the public.
- C. Nothing in this Settlement shall restrict the Department of the Interior or other Federal agency from providing funding through other agreements or memoranda of understanding.

4. Meet and Confer

This Coordination Process is intended to provide the Parties with the opportunity to provide Timely and meaningful input to the Federal Parties' actions in carrying out the terms of this Settlement. If the Parties find that their needs are not being met by this Coordination Process, then the Parties may engage in Meet and Confer Procedures to try to address the Parties' concerns.

5. Limitations

This Process is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or party against the United

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States, its agencies, its officers, or any other person. The provisions of this Process are not intended to direct or bind any person.

6. Government-to-Government Relationship

In accordance with Applicable Law, nothing in this Coordination Process is intended to waive or supersede any obligation of the United States to fulfill its government-to-government relationship with any Indian Tribe, state, county, or local government concerning the Secretarial Determination or this Settlement.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****APPENDIX B****Interim Measures Implementation Committee (Interim Measure 1)**1. Purpose and Goal of Committee

The purpose of the Interim Measures Implementation Committee (IMIC or Committee) is to collaborate with PacifiCorp on ecological and other issues related to the implementation of the Interim Measures set forth in Appendix D of the Settlement. The primary goals of the IMIC are: (a) to achieve consensus where possible; and (b) timely implementation of the matters within the scope of the IMIC's responsibilities under the Settlement.

2. Committee Functions and Responsibilities

2.1 The IMIC shall meet, discuss, and seek to reach consensus on implementation of the following Non-ICP Interim Measures as detailed in each Interim Measure:

2.1.1 Interim Measure 7. The IMIC will consult with PacifiCorp to approve gravel placement projects and approve third parties to implement the projects.

2.1.2 Interim Measure 8. The IMIC will consult with PacifiCorp on a plan to remove the sidecast rock barrier located upstream of the J.C. Boyle Powerhouse, and approve a schedule for the removal.

2.1.3 Interim Measure 11. The IMIC will consult with PacifiCorp to identify studies or pilot projects and to develop a priority list of projects to be carried out following the DRE's acceptance of the FERC surrender order, as approved by the agencies specified in Interim Measure 11.

2.1.4 Interim Measure 13. The IMIC will identify species specific habitat needs on which to base J.C. Boyle Dam instream flow releases in the event dam removal occurs in a staged manner and anadromous fish are naturally and volitionally present in the J.C. Boyle Bypass Reach.

2.1.5 Interim Measure 15. The IMIC will resolve significant disputes that may arise regarding the water quality monitoring plan content or funding.

2.2 The IMIC shall advise the Settlement Parties concerning any proposed amendments to the Interim Measures based on monitoring conducted under the Interim Measures and any other adaptive management considerations.

2.3 PacifiCorp will prepare and provide to the IMIC periodic reports, no less frequently than annually, on the status of implementation of the Interim Conservation Plan measures set forth in Appendix C of the Settlement.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**3. Committee Membership and Meeting Participation

- 3.1 The IMIC shall be comprised of PacifiCorp and the following members, subject to their signing the Settlement:
- A. State and Federal Members: One representative each from: U.S. Department of the Interior, National Marine Fisheries Service, Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, Oregon Water Resources Department, and the California Department of Fish and Wildlife.
  - B. Tribal Members: One representative each from the Tribes.
  - C. Other Members: One representative each from: conservation group Parties, fishing group Parties, signatory counties, and irrigation group Parties.
- 3.2 The California State Water Resources Control Board and the North Coast Regional Board may also be members of the IMIC even though they have not signed the Settlement.
- 3.3 Each member or category of members may designate a primary representative to the IMIC within 30 days after the Effective Date of the Settlement, or at any time thereafter with five days' notice. Designation shall be by Notice to the Parties in accordance with Section 8.5 of the Settlement. Each member or category of members may name alternative representatives to the IMIC. Failure to designate a representative shall not prevent the IMIC from convening or conducting its functions in accordance with the time schedules established in the Settlement.
- 3.4 The IMIC, by unanimous agreement not subject to Dispute Resolution, may grant any other Party to the Settlement membership status on the IMIC, provided that the entity seeking membership submits a proposal to the IMIC that requests membership and demonstrates: (1) reasons why its interests are not adequately represented by present IMIC membership; and (2) appropriate qualifications of the entity to participate in the IMIC.
- 3.5 Each member should select a representative who has relevant training or experience with natural resource management.
- 3.6 Participation by identified state and federal resource agencies complements their statutory responsibility and does not otherwise affect their authority. Issues involving the exercise of specific agency authority can be discussed, but decisions are not delegated to the Committee.
- 3.7 The IMIC may establish technical working groups to facilitate implementation of individual Interim Measures or categories of Interim Measures, such as a

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Fisheries Technical Working Group and a Water Quality Technical Working Group. The role of the technical working groups would be to make recommendations to the IMIC.

**4. Meeting Provisions**

- 4.1 PacifiCorp shall convene the IMIC not later than three months after the Effective Date of the Settlement.
- 4.2 PacifiCorp will arrange, administer, and chair all meetings. A meeting facilitator may be used if necessary. PacifiCorp will provide no fewer than 10 days' prior notice of any meeting to the IMIC members, other Settlement Parties and agencies with jurisdictional authority, unless otherwise agreed to by the IMIC or required in order to meet a Settlement deadline or other emergency circumstance.
- 4.3 PacifiCorp, or the facilitator, will provide draft meeting summaries for concurrence by the IMIC prior to final distribution. Meeting summaries will note member concerns.
- 4.4 The IMIC will establish protocols for meetings such as agenda development, location and scheduling. Meetings will be fairly distributed between Portland, the Medford area, and Sacramento with teleconferencing provided between sites.
- 4.5 The meeting agenda will list specific Interim Measures and all other topics for action or discussion.
- 4.6 Meetings will be scheduled as required by the actions contained within specific Interim Measure provisions, but no less frequently than annually.
- 4.7 PacifiCorp will bear all costs associated with conducting meetings. Each member will bear its own cost of attendance.
- 4.8 PacifiCorp will circulate final meeting summaries and any other written comments.
- 4.9 The role of the IMIC will be evaluated at the end of five years after the Effective Date of the Settlement. The members will review the IMIC and determine if it should remain the same, be modified or discontinued.

**5. Committee Deliberations**

- 5.1 During meetings, prior to Committee deliberations, other Settlement Parties and agencies with jurisdictional authority may address the Committee and provide comments on each agenda topic being discussed.

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- 5.2 Following Committee deliberation, the Committee shall seek to reach consensus of all members present. Committee decisions shall be based on a two-thirds majority vote of those participating.
- 5.2.1 PacifiCorp or the facilitator will provide the results of the vote to all IMIC members within three working days.
- 5.2.2 Decisions of the Committee will stand unless a Party provides Notice within seven working days that it will seek Dispute Resolution pursuant to Section 8.6 of the Settlement on the ground of inconsistency with the Settlement.
- 5.2.3 In the event that PacifiCorp believes a proposed action or failure Timely to propose an action: (1) is inconsistent with this Settlement or any other contract to which it is a party; (2) violates the terms of the FERC license or other regulatory requirement; (3) interferes with operations; or (4) subjects PacifiCorp to undue risk of litigation, cost overruns, or liability, PacifiCorp will consult with the IMIC to identify a modified or alternative action. In the event the IMIC does not approve PacifiCorp's modified or alternative action, PacifiCorp may implement its proposed action after obtaining approval by any agency specifically assigned that decision under the particular Interim Measure, and after obtaining any necessary regulatory approvals. An IMIC member who disagrees with the elements of PacifiCorp's proposed actions that are not specified in the Interim Measures may dispute those elements in applicable regulatory processes. The Parties agree that such disputes are beyond the scope of Settlement Section 2.1.
- 5.3 Any requirements for PacifiCorp to consult with a resource agency or other member under an Interim Measure that specifically references that agency or other member shall be deemed satisfied by consultation with that agency or other member through the IMIC, provided that the IMIC is in existence and that agency or other member has participated through the IMIC in consultation on the requisite items. To the extent agency consultation is not provided through Committee participation, PacifiCorp shall comply with all applicable regulatory consultation requirements including plan submission to appropriate agencies, including agencies specified in the Interim Measure. However, consultation with an agency representative participating in the Committee shall not be deemed to satisfy or predetermine any Regulatory Approval required under Applicable Law.
- 5.4 PacifiCorp will seek to resolve concerns expressed by the federal and state fish and wildlife agencies and the state water quality agencies on matters in which they have expertise prior to seeking consensus of the IMIC.
- 5.5 These provisions for Committee deliberations do not supersede a decision by an agency specifically assigned that responsibility under an Interim Measure.



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6. Support for Committee Decisions

- 6.1 Committee members shall first use the Dispute Resolution process of Settlement Section 8.6 to resolve disputes arising from Committee deliberations.
- 6.2 If Dispute Resolution is unsuccessful and time allows, the IMIC may convene an independent science advisory panel. The IMIC may consider the recommendations of the independent science advisory panel to resolve the dispute.
- 6.3 All Committee members participating in a consensus decision will support PacifiCorp's defense of such decision in any forum where the decision is challenged and the member is participating, to the extent permitted by Applicable Law and consistent with Section 2.1.3 of the Settlement. For this purpose, participating means non-opposition and does not include absence.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****APPENDIX C****Interim Conservation Plan (ICP) Interim Measures<sup>2</sup>****Interim Measure 2: California Klamath Restoration Fund / Coho Enhancement Fund**

PacifiCorp shall establish a fund to be administered in consultation with the California Department of Fish and Wildlife (after providing notice and opportunity for comment to the State Water Resources Control Board and North Coast Regional Water Quality Control Board) and NMFS to fund actions within the Klamath Basin designed to enhance the survival and recovery of coho salmon, including, but not limited to, habitat restoration and acquisition. PacifiCorp has provided \$510,000 to this fund in 2009 and shall continue to provide this amount of funding annually by January 31 of each subsequent year in which this funding obligation remains in effect. Subject to Section 6.1.1, this funding obligation shall remain in effect until the time of decommissioning of all of the Facilities in California.

**Interim Measure 3: Iron Gate Turbine Venting**

PacifiCorp shall implement turbine venting on an ongoing basis beginning in 2009 to improve dissolved oxygen concentrations downstream of Iron Gate dam. PacifiCorp shall monitor dissolved oxygen levels downstream of Iron Gate dam in 2009 and develop a standard operating procedure in consultation with NMFS for turbine venting operations and monitoring following turbine venting operations in 2009.

**Interim Measure 4: Hatchery and Genetics Management Plan**

Beginning in 2009, PacifiCorp shall fund the development and implementation of a Hatchery and Genetics Management Plan (HGMP) for the Iron Gate Hatchery. PacifiCorp, in consultation with the National Marine Fisheries Service and the California Department of Fish and Wildlife, will develop an HGMP for approval by NMFS in accordance with the applicable criteria and requirements of 50 C.F.R. § 223.203(b)(5). To implement the HGMP, PacifiCorp, in consultation with NMFS and CDFW, will develop and agree to fund an adequate budget. When completed, CDFW shall implement the terms of the HGMP at Iron Gate Hatchery in consultation with PacifiCorp and NMFS. Funding of this measure is in addition to the 100 percent funding described in Non-ICP Interim Measure 18.

**Interim Measure 5: Iron Gate Flow Variability**

In coordination with NMFS, USFWS, States and Tribes, PacifiCorp and Reclamation shall annually evaluate the feasibility of enhancing fall and early winter flow variability to benefit

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<sup>2</sup>The complete ICP was filed at FERC on November 25, 2008 and includes some additional measures not reflected in this Appendix that are not part of this Settlement.

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salmonids downstream of Iron Gate Dam, subject to both PacifiCorp's and Reclamation's legal and contractual obligations. In the event that fall and early winter flow variability can feasibly be accomplished, PacifiCorp, in coordination with NMFS, USFWS, and Reclamation will, upon a final Incidental Take Permit issued to PacifiCorp by NMFS becoming effective, annually develop fall and early winter flow variability plans and implement those plans. Any such plans shall have no adverse effect on the volume of water that would otherwise be available for the Klamath Reclamation Project or wildlife refuges.

**Interim Measure 6: Fish Disease Relationship and Control Studies**

PacifiCorp has established a fund in the amount of \$500,000 in total funding to study fish disease relationships downstream of Iron Gate Dam. Research proposals will be solicited and agreed upon by PacifiCorp and NMFS for the purpose of determining that the projects are consistent with the criteria and requirements developed by PacifiCorp and NMFS in the ESA review process applicable under Settlement Section 6.2. PacifiCorp will consult with the Klamath River Fish Health Workgroup regarding selection, prioritization, and implementation of such studies, and such studies shall be consistent with the standards and guidelines contained in the Klamath River Fish Disease Research Plan and any applicable recovery plans.

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**Non-ICP Interim Measures<sup>3</sup>****Interim Measure 7: J.C. Boyle Gravel Placement and/or Habitat Enhancement**

Beginning on the Effective Date and continuing through decommissioning of the J.C. Boyle Facility, PacifiCorp shall provide funding of \$150,000 per year, subject to adjustment for inflation as set forth in Section 6.1.5 of the Settlement, for the planning, permitting, and implementation of gravel placement or habitat enhancement projects, including related monitoring, in the Klamath River above Copco Reservoir.

Within 90 days of the Effective Date, PacifiCorp, in consultation with the IMIC, shall establish and initiate a process for identifying such projects to the Committee, and, upon approval of a project by the Committee, issuing a contract or providing funding to a third party approved by the Committee for implementation of the project.

The objective of this Interim Measure is to place suitable gravels in the J.C. Boyle bypass and peaking reach using a passive approach before high flow periods, or to provide for other habitat enhancement providing equivalent fishery benefits in the Klamath River above Copco Reservoir.

**Interim Measure 8: J.C. Boyle Bypass Barrier Removal**

Within 90 days of the Effective Date, PacifiCorp, in consultation with the Committee, shall commence scoping and planning for the removal of the sidecast rock barrier located approximately three miles upstream of the J.C. Boyle Powerhouse in the J.C. Boyle bypass reach. In accordance with a schedule approved by the Committee, PacifiCorp shall obtain any permits required for the project under Applicable Law and implement removal of the barrier. If blasting will be used, PacifiCorp shall coordinate with ODFW to ensure the work occurs during the appropriate in-water work period. The objective of this Interim Measure is to provide for the safe, timely, and effective upstream passage of Chinook and coho salmon, steelhead trout, Pacific lamprey, and redband trout.

**Interim Measure 9: J.C. Boyle Powerhouse Gage**

Upon the Effective Date, PacifiCorp shall provide the U.S. Geological Survey (USGS) with continued funding for the operation of the existing gage below the J.C. Boyle Powerhouse (USGS Gage No. 11510700). Funding will provide for continued real-time reporting capability for half-hour interval readings of flow and gage height, accessible via the USGS website.

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<sup>3</sup> The Parties agree that PacifiCorp will implement the interim measures as provided in this Appendix. Pursuant to Section 7.3.6 of the Settlement, if the Parties determine that the schedule for Facilities Removal must extend beyond December 31, 2020, then the Parties shall consider whether modification of Interim Measures is necessary to appropriately balance costs to customers and protection of natural resources based on circumstances at that time.

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PacifiCorp shall continue to provide funding for this gage until the time of decommissioning of the J.C. Boyle Facility.

**Interim Measure 10: Water Quality Conference**

PacifiCorp shall provide one-time funding of \$100,000 to convene a basin-wide technical conference on water quality within one year from the Effective Date of this Settlement. The conference will inform participants on water quality conditions in the Klamath River basin and will inform decision-making for Interim Measure No. 11, with a focus on nutrient reduction in the basin including constructed wetlands and other treatment technologies and water quality accounting. PacifiCorp, the North Coast Regional Water Quality Control Board, and the Oregon Department of Environmental Quality, will convene a steering committee to develop the agenda and panels.

**Interim Measure 11: Interim Water Quality Improvements**

The purpose of this measure is to improve water quality in the Klamath River during the Interim Period leading up to dam removal. The emphasis of this measure shall be nutrient reduction projects in the watershed to provide water quality improvements in the mainstem Klamath River, while also addressing water quality, algal and public health issues in Project reservoirs and dissolved oxygen in J.C. Boyle Reservoir. Upon the Effective Date of the Settlement until the date of the DRE's acceptance of the FERC surrender order, PacifiCorp shall spend up to \$250,000 per year to be used for studies or pilot projects developed in consultation with the Implementation Committee regarding the following:

- Development of a Water Quality Accounting Framework
- Constructed Treatment Wetlands Pilot Evaluation
- Assessment of In-Reservoir Water Quality Control Techniques
- Improvement of J.C. Boyle Reservoir Dissolved Oxygen

Within 60 days of the DRE's acceptance of the FERC surrender order, PacifiCorp shall develop a priority list of projects in consultation with the Implementation Committee. The priority list will be informed by, among other things, the information gained from the specific studies conducted before the DRE's acceptance of the FERC surrender order and the information generated at the water quality conference specified in Interim Measure 10. Following the DRE's acceptance of the FERC surrender order, PacifiCorp shall provide funding of up to \$5.4 million for implementation of projects approved by the Oregon Department of Environmental Quality (ODEQ) and the State and Regional Water Boards, and up to \$560,000 per year to cover project operation and maintenance expenses related to those projects, these amounts subject to adjustment for inflation as set forth in Section 6.1.5 of this Settlement. Recognizing the emphasis on nutrient reduction projects in the watershed while also seeking to improve water

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quality conditions in and downstream of the Project during the Interim Period, the Parties agree that up to 25 percent of the funding in this measure for pre-surrender-order-acceptance studies and post-surrender-order-acceptance implementation may be directed towards in-reservoir water quality improvement measures, including but not limited to J.C. Boyle.

**Interim Measure 12: J.C. Boyle Bypass Reach and Spencer Creek Gaging**

PacifiCorp shall install and operate stream gages at the J.C. Boyle Bypass Reach and at Spencer Creek. The J.C. Boyle Bypass Reach gaging station will be located below the dam and fish ladder and fish bypass outflow, but above the springs in order to record flow releases from J.C. Boyle Dam. The Spencer Creek gage will utilize an existing Oregon Water Resources Department gaging location. It is assumed that the required measurement accuracy will be provided using stage gaging at existing channel cross-sections with no need for constructed weirs. The installed stream gages shall provide for real-time reporting capability for half-hour interval readings of flow and gage height, accessible via an agreed-upon website, until such time as it is accessible on the USGS website. The Spencer Creek gage shall be installed in time to provide flow indication for Iron Gate Flow Variability (ICP Interim Measure 5). Both gages shall be installed and functional prior to September 1, 2010. Installation of the bypass gage, and measurement and maintenance shall conform to USGS standards. The Spencer Creek gage will be maintained according to USGS standards, as applicable.

**Interim Measure 13: Flow Releases and Ramp Rates**

PacifiCorp will maintain current operations including instream flow releases of 100 cubic feet per second (cfs) from J.C. Boyle Dam to the J.C. Boyle bypass reach and a 9-inch per hour ramp rate below the J.C. Boyle powerhouse prior to transfer of the J.C. Boyle facility.

Provided that if anadromous fish have volitional passage<sup>4</sup> to the J.C. Boyle bypass reach after removal or partial removal of the lower dams and before J.C. Boyle is transferred, PacifiCorp will operate J.C. Boyle as a run of river facility with a targeted ramp rate not to exceed two inches per hour, and flows will be provided in the J.C. Boyle bypass reach to provide for the appropriate habitat needs of the anadromous fish species. The operation will also avoid and minimize take of any listed species present. Daily flows through the J.C. Boyle powerhouse will be informed by reservoir inflow gages below Keno Dam and at Spencer Creek. Provided further that if anadromous fish have volitional passage upstream of Iron Gate Dam before the Copco Facilities are transferred, PacifiCorp will operate the remaining Copco Facility that is furthest downstream as a run of the river facility with a targeted ramp rate not to exceed two inches per hour and coordinate with NMFS and FWS to determine if any other flow measures are necessary

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<sup>4</sup> Volitional passage shall not be deemed to have occurred if presence of anadromous fish is the result of anthropogenic placement of such fish above, within or below the J.C. Boyle Bypass Reach, including as a result of scientific studies, experiments or investigations, prior to removal of Facilities downstream of the J.C. Boyle Bypass Reach to the extent sufficient to provide fish passage past those Facilities.

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to avoid or minimize take of any listed species present. In either event, flows in the respective bypass reaches will be based on species-specific habitat needs identified by the IMIC. The Parties agree that if dam removal occurs in a staged manner, J.C. Boyle is intended to be the last dam decommissioned. If, however, the FERC surrender order or Definite Plan directs a different sequence for Decommissioning and Facilities Removal, then the Parties shall Meet and Confer to identify adjustments necessary to implement Facilities Removal in a manner that is consistent with PacifiCorp's Economic Analysis.

**Interim Measure 14: 3,000 cfs Power Generation**

Upon approval by OWRD in accordance with Exhibit 1, PacifiCorp may divert a maximum of 3,000 cfs from the Klamath River at J.C. Boyle dam for purposes of power generation at the J.C. Boyle Facility prior to decommissioning of the facility. Such diversions shall not reduce the minimum flow releases from J.C. Boyle dam required of PacifiCorp under Interim Measure 13. The implementation of this interim measure shall not: reduce or adversely affect the rights or claims of the Klamath Tribes or the Bureau of Indian Affairs for instream flows; affect the operation of Link River dam or Keno Dam or any facility of the Klamath Reclamation Project; or otherwise adversely affect lake levels at Upper Klamath Lake, flows in Link River, or Keno reservoir elevations.

**Interim Measure 15: Water Quality Monitoring**

PacifiCorp shall fund long-term baseline water quality monitoring to support dam removal, nutrient removal, and permitting studies, and also will fund blue-green algae (BGA) and BGA toxin monitoring as necessary to protect public health. Funding of \$500,000 shall be provided per year. The funding shall be made available beginning on April 1, 2010 and annually on April 1 until the time the dams are removed. Annual coordination and planning of the monitoring program with stakeholders will be performed through the Klamath Basin Water Quality Group or an entity or entities agreed upon by the Parties and in coordination with the appropriate water quality agencies. The Regional Board and ODEQ will take responsibility for ensuring that the planning documents will be completed by April 1 of each year. Monitoring will be performed by the Parties within their areas of regulatory compliance or Tribal responsibility or, alternatively, by an entity or entities agreed upon by the Parties. Monitoring activities will be coordinated with appropriate water quality agencies and shall be conducted in an open and transparent manner, allowing for participation, as desired, among the Parties and water quality agencies.

Significant disputes that may arise between the Parties, or with the Regional Board, regarding the monitoring plan content or funding will be resolved by the Implementation Committee, acting on input and advice, as necessary, from the water quality agencies. Notwithstanding the forgoing, the Oregon Department of Environmental Quality and the California State Water Resources Control Board shall make final decisions regarding spending of up to \$50,000 dedicated to BGA and BGA toxin monitoring as necessary to protect public health.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****Interim Measure 16: Water Diversions**

PacifiCorp shall seek to eliminate three screened diversions (the Lower Shovel Creek Diversion – 7.5 cfs, Claim # S015379; Upper Shovel Creek Diversion – 2.5 cfs, Claim # S015381; and Negro Creek Diversion – 5 cfs, Claim # S015380) from Shovel and Negro Creeks and shall seek to modify its water rights as listed above to move the points of diversion from Shovel and Negro Creeks to the mainstem Klamath River. Should modification of the water rights be feasible, and then successful, PacifiCorp shall remove the screened diversions from Shovel and Negro creeks associated with PacifiCorp's water rights prior to the time that anadromous fish are likely to be present upstream of Copco reservoir following the breach of Iron Gate and Copco dams. To continue use of the modified water rights, PacifiCorp will install screened irrigation pump intakes, as necessary, in the Klamath River. The intent of this measure is to provide additional water to Shovel and Negro creeks while not significantly diminishing the water rights or the value of ranch property owned by PacifiCorp. Should costs for elimination of the screened diversions and installation of a pumping system to provide continued use of the water rights exceed \$75,000 then the Parties will Meet and Confer to resolve the inconsistency.

**Interim Measure 17: Fall Creek Flow Releases**

Within 90 days of the Effective Date and during the Interim Period for the duration of its ownership while this Settlement is in effect, PacifiCorp shall provide a continuous flow release to the Fall Creek bypass reach targeted at 5 cfs. Flow releases shall be provided by stoplog adjustment at the diversion dam and shall not require new facility construction or the installation of monitoring equipment for automated flow adjustment or flow telemetry.

Additionally, if anadromous fish have passage to the Fall Creek following removal of the California dams, flows will be provided in the Fall Creek bypass reach to provide for the appropriate habitat needs of the anadromous fish species of any kind that are naturally and volitionally present in the Fall Creek bypass reach. Flows will be based on species specific habitat needs identified by the IMIC. The operation will also avoid and minimize take of any listed species present.

**Interim Measure 18: Hatchery Funding**

Beginning in 2010, PacifiCorp shall fund 100 percent of Iron Gate Hatchery operations and maintenance necessary to fulfill annual mitigation objectives developed by the California Department of Fish and Wildlife in consultation with the National Marine Fisheries Service and consistent with existing FERC license requirements. PacifiCorp shall provide funding of up to \$1.25 million dollars per year for operations and maintenance costs, subject to adjustment for inflation as set forth in Section 6.1.5 of the Settlement. These operations and maintenance costs shall include a program for 25 percent fractional marking of chinook at the Iron Gate Hatchery facilities as well as the current 100 percent marking program for coho and steelhead. Labor and materials costs associated with the 25 percent fractional marking program (fish marking, tags, tag recovery, processing, and data entry) shall be included within these operations and



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maintenance costs. This operations and maintenance funding will continue until the removal of Iron Gate Dam.

PacifiCorp will provide one-time capital funding of \$1.35 million for the 25 percent fractional marking program. This funding will include the purchase of necessary equipment (e.g. electrical upgrades, automatic fish marking trailer, tags and a wet lab modular building for processing fish heads). PacifiCorp will ensure the automatic fish marking trailer is available for use by April 2011. PacifiCorp is not responsible for funding the possible transition to a 100 percent Chinook marking program in the future.

**Interim Measure 19: Hatchery Production Continuity**

Within six months of the Effective Date of the Settlement, PacifiCorp will begin a study to evaluate hatchery production options that do not rely on the current Iron Gate Hatchery water supply. The study will assess groundwater and surface water supply options, water reuse technologies or operational changes that could support hatchery production in the absence of Iron Gate Dam. The study may include examination of local well records and the feasibility of increasing the production potential at existing or new hatchery facilities in the basin.

Based on the study results, and within six months following the DRE's acceptance of the FERC surrender order, PacifiCorp will propose a post-Iron Gate Dam Mitigation Hatchery Plan (Plan) to provide continued hatchery production for eight years after the removal of Iron Gate Dam. PacifiCorp's eight-year funding obligation assumes that dam removal will occur within one year of cessation of power generation at Iron Gate Dam. If dam removal occurs after one year of cessation of power generation at Iron Gate Dam, then the Parties will Meet and Confer to determine appropriate hatchery funding beyond the eight years. PacifiCorp's Plan shall propose the most cost effective means of meeting hatchery mitigation objectives for eight years following removal of Iron Gate Dam. Upon approval of the Plan by the California Department of Fish and Wildlife or Oregon Department of Fish and Wildlife (as appropriate) and the National Marine Fisheries Service, PacifiCorp will begin implementation of the Plan. Plan implementation may include PacifiCorp contracting with the owners or administrators of other identified hatchery facilities and/or funding the planning, design, permitting, and construction of measures identified in the Plan as necessary to continue to meet mitigation production objectives. Five years after the start of Plan implementation, or as otherwise agreed by PacifiCorp, the California Department of Fish and Wildlife or Oregon Department of Fish and Wildlife (as appropriate) and the National Marine Fisheries Service, the CDFW or ODFW (as appropriate) and the NMFS shall meet to review the progress of Plan implementation. The five-year status review will also provide for consideration of any new information relevant to Plan implementation. Plan implementation shall ultimately result in production capacity sufficient to meet hatchery mitigation goals for the eight-year period being in place and operational upon removal of Iron Gate Dam.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****Interim Measure 20: Hatchery Funding After Removal of Iron Gate Dam**

After removal of Iron Gate Dam and for a period of eight years, PacifiCorp shall fund 100 percent of hatchery operations and maintenance costs necessary to fulfill annual mitigation objectives developed by the California Department of Fish and Wildlife in consultation with the National Marine Fisheries Service. The hatchery mitigation goals will focus on chinook production, with consideration for steelhead and coho, and may be adjusted downward from current mitigation requirements by the California Department of Fish and Wildlife and National Marine Fisheries Service, in consultation with the other Klamath River fish managers, in response to monitoring trends.

**Interim Measure 21: BLM Land Management Provisions**

Beginning in 2010 and continuing until Decommissioning of the J.C. Boyle facility, PacifiCorp shall fund land management activities by the Bureau of Land Management as specified in this interim measure. BLM will provide PacifiCorp an annual Work Plan for the management measures described below for road maintenance, invasive weed management, cultural resource management, and recreation. The Work Plan will include the status of Work Plan tasks from the prior year, a description of the prioritized tasks for the upcoming year, and their estimated costs. PacifiCorp or BLM will mutually establish the annual delivery date of the Work Plan taking into consideration fiscal and maintenance calendars and may request a meeting to coordinate the content of the plan. PacifiCorp will provide funding within 60 days of concurring with the Work Plan. Administrative services, environmental review or permitting efforts, if necessary, to implement actions under the funds shall not require additional PacifiCorp funding beyond the amounts specified below.

- A. PacifiCorp shall provide up to \$15,000 per year to BLM towards projects identified through the coordination process described above for the purpose of road maintenance in the Klamath Canyon. This funding will be used to annually maintain the access road from State Highway 66 to the J.C. Boyle Powerhouse and terminate at the BLM Spring Island Boat Launch. Remaining funds will be used to do non-recurring road maintenance work on roads within the Canyon as mutually agreed upon in writing by BLM and PacifiCorp.
- B. PacifiCorp shall provide up to \$10,000 per year to BLM for use by the Oregon Department of Agriculture (ODA) towards projects identified through the coordination process described above for the purpose of integrated weed management of invasive weed species along the road system and river corridor within the Klamath Canyon. Noxious weed control projects will be coordinated with Siskiyou County to ensure that weeds are controlled along the river corridor from the Oregon-California boundary to the top of Copco Reservoir.
- C. PacifiCorp shall provide up to \$10,000 per year to BLM towards projects identified through the coordination process described above for the management of the following 5 BLM cultural sites which are within, or partially within, the T1

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terrace of the J.C. Boyle full flow reach: 35KL21/786, 35KL22, 35KL24, 35KL558, and 35KL577. Management of additional sites with these funds can occur with mutual written agreement between PacifiCorp and BLM.

- D. PacifiCorp shall provide up to, but no more than, \$130,000 in funding for the development and implementation of a Road Management Plan to be implemented during the Interim Period. The Road Management Plan shall be developed by BLM and PacifiCorp and will determine priorities for operation and maintenance, including remediation or restoration of redundant or unnecessary facilities, of the shared BLM/PacifiCorp road system within the Klamath River Canyon from J.C. Boyle Dam to the slack water of Copco Reservoir.

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**APPENDIX E**

**Elements for the Proposed Federal Legislation**

**Elements Related to the Klamath Basin Restoration Agreement**

- A. Confirm, ratify or approve as necessary to ensure the effectiveness of the Klamath Basin Restoration Agreement (KBRA), including any amendments approved by the Parties prior to enactment. Authorize and direct the Secretary of the Interior, Secretary of Commerce, and the Secretary of Agriculture or their designees to execute and implement the KBRA.
- B. Confirm that execution of the KBRA by the Secretary of the Interior, Secretary of Commerce, and the Secretary of Agriculture or their designees is not a major federal action for purposes of the National Environmental Policy Act, 42 U.S.C. § 4321, and direct all Federal Agency Parties to comply with all applicable environmental laws in consideration and approval of actions in implementation of the KBRA following its execution.
- C. Authorize Federal Agency Parties to enter into contracts, cooperative agreements, and other agreements in implementation of the KBRA; and authorize the acceptance and expenditure of non-federal funds or in-kind services for KBRA implementation.
- D. Notwithstanding any other provision of law, enactment of the KBRA title of this legislation and implementation of KBRA will not restrict the Tribes' or other Parties' eligibility for or receipt of funds, or be construed as an offset against any obligations or existing funds, under any federal or state laws.
- E. Establish in the Treasury the type and number of funds necessary for the deposit of appropriations and other monies, including donated funds, for implementation of the KBRA. Management of funds shall be in accordance with the KBRA. Monies donated by non-federal entities for specific purposes to implement the KBRA shall be expended for those purposes only and shall not be subject to appropriation.
- F. Authorize appropriation of such sums as are necessary to carry out the programs, projects, and plans of the KBRA. Costs associated with any actions taken pursuant to this Agreement shall be non-reimbursable to Reclamation Project contractors.
- G. Provide that the purposes of the Klamath Reclamation Project include irrigation, reclamation, domestic, flood control, municipal, industrial, power (as necessary to implement the KBRA), National Wildlife Refuge, and fish and wildlife. Nothing in the project purposes section of the legislation shall be deemed to create a water right or affect existing water rights or water right claims. The fish and wildlife and National Wildlife Refuge purposes of the Klamath Reclamation Project shall

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not adversely affect the irrigation purpose of the Project, *provided* that the provisions regarding water allocations and delivery to the National Wildlife Refuges agreed upon in Section 15.1.2, including any additional water made available under Sections 15.1.2.E.ii and 18.3.2.B.v, of the Klamath River Basin Restoration Agreement are hereby deemed not to constitute an adverse effect upon the Klamath Reclamation Project's irrigation purpose. For purposes of the determination of water rights in the KBA, the purpose or purposes of the Klamath Reclamation Project shall be as existed prior to the enactment of this legislation; this provision shall be inapplicable upon the filing of Appendix E-1 to the KBRA.

- H. Provide that: notwithstanding any other provision of law, the disposition of net revenues from the leasing of refuge lands within the Tule Lake National Wildlife Refuge and Lower Klamath National Wildlife Refuge, under section 4 of Public Law 88-567, 78 Stat. 850 (Sept. 2, 1964) (Kuchel Act) shall hereafter be:
1. Ten percent of said net revenues to Tule Lake Irrigation District, as provided in article 4 of Contract No. 14-06-200-5954 and section 2(a) of the Act of August 1, 1956;
  2. Payment to Counties in lieu of taxes as provided in section 3 of Public Law 88-567;
  3. Twenty percent of said net revenues directly, without further authorization, to the U.S. Fish and Wildlife Service, Klamath Basin Refuges, for wildlife management purposes on the Tule Lake National Wildlife Refuge and Lower Klamath National Wildlife Refuge;
  4. Ten percent of said net revenues directly, without further authorization to Klamath Drainage District for operation and maintenance responsibility for the Reclamation water delivery and drainage facilities within the boundaries of both Klamath Drainage District and Lower Klamath National Wildlife Refuge exclusive of the Klamath Straits Drain, subject to Klamath Drainage District's assuming the U.S. Bureau of Reclamation's Operation and Maintenance duties for Klamath Drainage District (Area K) lease lands; and
  5. The remainder shall be covered to the Reclamation fund to be applied as follows:
    - (a) to operation and maintenance costs of Link River and Keno Dams; and
    - (b) in any year where the remainder exceeds the actual costs in (a), for the Renewable Power Program in Section 17.7 of the KBRA or future capital costs of the Klamath Reclamation Project, pursuant to an expenditure plan submitted to and approved by the Secretary.

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- I. As applicable for the United States and the signatory Tribes:
  - 1. Confirm the commitments made in the KBRA, including the Assurances in Section 15.3 of the KBRA, and that such commitments are effective and binding according to their terms.
  - 2. Authorize the Tribes to issue the voluntary relinquishment and release of claims against the United States as provided in Section 15.3 of the KBRA.
  - 3. Establish terms limiting the effect of the commitments of the United States and Tribes to only those provided in the KBRA.
  - 4. Authorize and direct the Secretary to publish the notice identified in KBRA Sections 15.3.4.A or 15.3.4.C as applicable.
- J. Provide for judicial review of a decision by the Secretary affecting rights or obligations created in Sections 15.3.5.C, 15.3.6.B.iii, 15.3.7.B.iii, 15.3.8.B, and 15.3.9 under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
- K. Authorize the United States and the Klamath Tribes to enter into agreements consistent with Section 16.2 of the KBRA.
- L. Provide that nothing in the KBRA title of the legislation shall: determine existing water rights, affect existing water rights beyond what is stated in the KBRA, create any private cause of action, expand the jurisdiction of state courts to review federal agency actions or determine federal rights, provide any benefit to a federal official or member of Congress, amend or affect application or implementation of the Clean Water Act, Endangered Species Act, Federal Land Management Policy Act, Kuchel Act (Public Law 88-567), National Wildlife Refuge System Improvement Act of 1997 (Public Law 105-57), or supersede otherwise applicable federal law, except as expressly provided in the federal legislation.
- M. The KBRA title of the legislation shall provide that the provisions of the KBRA are deemed consistent with 43 U.S.C. § 666.
- N. Require that if the KBRA terminates, any federal funds provided to Parties that are unexpended must be returned to the United States, and any federal funds expended for the benefit of a Party shall be treated as an offset against any claim for damages by such Party arising from the Agreement.

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**Elements Related to the Klamath Hydroelectric Settlement Agreement**

- A. Authorize and direct the Secretary of the Interior (Secretary), Secretary of Commerce, and Federal Energy Regulatory Commission (FERC) to implement the Klamath Hydroelectric Settlement Agreement (KHSA).
- B. Authorize and direct the Secretary to make the determination by March 31, 2012 as set forth in Section 3 of the KHSA: whether facilities removal will advance restoration of the salmonid fisheries of the Klamath Basin and is in the public interest, which includes but is not limited to consideration of potential impacts on affected local communities and Tribes.
- C. Prohibit the Secretary from making the determination set forth in Section 3 of the KHSA if the conditions specified in Section 3.3.4 of the KHSA have not been satisfied.
- D. Authorize and direct the Secretary, if the Secretarial determination provides for facilities removal, to designate as part of that determination a dam removal entity (DRE) with the capabilities and responsibilities set forth in Section 7 of the KHSA; the Secretary may designate either the Department of the Interior or a non-federal entity as the DRE, consistent with the requirements of Section 3.3.4.E of the KHSA.
- E. Direct the Secretary to publish notification of the Secretarial Determination in the Federal Register.
- F. Provide jurisdiction for judicial review of the Secretarial determination in the U.S. Court of Appeals for the 9th Circuit or the D.C. Circuit.
- G. Authorize the DRE: to accept, expend and manage non-federal funds for facilities removal; to enter into appropriate agreements with the States of California and Oregon, Tribes, other public agencies, or others to assist in implementation of the KHSA; to develop a definite plan for facilities removal; to accept from PacifiCorp all rights, title, and other interests in the facilities upon providing notice that it is ready to commence with facilities removal; and to perform such removal, all as provided in Sections 4 and 7 of the KHSA.
- H. Authorize and direct the DRE to seek and obtain necessary permits, certifications, and other authorizations to implement facilities removal, including but not limited to a permit under 33 U.S.C. § 1344.
- I. Provide that Facilities Removal shall be subject to applicable requirements of State and local laws respecting permits, certifications and other authorizations, to the extent such requirements are consistent with the Secretarial determination and the Definite Plan, including the schedules for Facilities Removal.

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- J. Direct the Department of the Interior or the Non-Federal DRE to enter into a contract with PacifiCorp that provides that: upon transfer of title to the facilities, and until notified by the DRE to cease generation of electric power, PacifiCorp shall continue such generation, retain title to any and all power so generated by the facilities, and continue to use the output for the benefit of its retail customers under the jurisdiction of relevant state public utility commissions.
- K. Authorize and direct the Secretary of the Interior, upon notice that the DRE is ready to perform removal of the J.C. Boyle development, to accept transfer of the Keno Dam from PacifiCorp, to be managed as a part of the Klamath Reclamation Project, as provided in Section 3.3.4.B and Section 7.5 of the KHSA.
- L. Provide PacifiCorp with protection from liability as follows: “Notwithstanding any other federal, state, local law or common law, PacifiCorp shall not be liable for any harm to persons, property, or the environment, or damages resulting from either Facilities Removal or Facility operation arising from, relating to, or triggered by actions associated with Facilities removal, including but not limited to any damage caused by the release of any material or substance, including but not limited to hazardous substances.”
- M. Further provide: “Notwithstanding any other federal, state, local law or common law, no person or entity contributing funds for facilities removal pursuant to the KHSA shall be held liable, solely by virtue of that funding, for any harm to persons, property, or the environment, or damages arising from either facilities removal or facility operation arising from, relating to, or triggered by actions associated with facilities removal, including any damage caused by the release of any material or substance, including hazardous substances.”
- N. Further provide that: “Notwithstanding Section 10(c) of the Federal Power Act, this protection from liability preempts the laws of any State to the extent such laws are inconsistent with this Act, except that this Act shall not be construed to limit any otherwise available immunity, privilege, or defense under any other provision of law.”
- O. Further provide that the liability protections in Paragraphs L through N, above, shall take effect as they relate to any particular facility only upon transfer of title to that facility from PacifiCorp to the DRE.
- P. Direct FERC to issue annual licenses authorizing PacifiCorp to continue to operate Project No. 2082 until PacifiCorp transfers title to the DRE, and provide that FERC’s jurisdiction under the Federal Power Act shall terminate with respect to a given facility upon PacifiCorp’s transfer of title for such facility to the DRE; if the facilities are removed in a staged manner, annual FERC license conditions applying to the facility being removed shall no longer be in effect, and PacifiCorp shall continue to comply with license conditions pertaining to any facility still in



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place to the extent such compliance is not prevented by the removal of any other facility.

- Q. Direct FERC to stay its proceeding on PacifiCorp's pending license application for Project No. 2082 as long as the KHSA remains in effect, and resume such proceeding, and take final action on the license application, only if the KHSA terminates; except that FERC will resume timely consideration of the pending FERC license application for the Fall Creek development within 60 days of the transfer of the Iron Gate Facility to the DRE.
- R. Provide that if the KHSA terminates, the Secretarial Determination and findings of fact shall not be admissible or otherwise relied upon in FERC's proceedings on the license application.
- S. Provide that on PacifiCorp's filing of an application for surrender of the Eastside and Westside developments of Project No. 2082 pursuant to Section 6.4.1 of the KHSA, FERC shall issue an appropriate order regarding partial surrender of the license specific to the Eastside and Westside developments, including any reasonable and appropriate conditions.
- T. Provide that nothing in the KHSA title of the legislation shall: modify existing water rights; affect the rights of any Tribe; or supersede otherwise applicable federal law, except as expressly provided in the legislation.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****APPENDIX F****Oregon Surcharge Act (as codified)****757.732 Definitions for ORS 757.732 to 757.744.**

As used in ORS 757.732 to 757.744:

- (1) “Agreement in principle” means the agreement signed November 13, 2008, by the states of Oregon and California, by the United States Department of the Interior and by PacifiCorp.
- (2) “Allocated share” means the portion of PacifiCorp’s costs assigned to this state under the interjurisdictional cost allocation methodology used by the Public Utility Commission for the purpose of establishing rates for PacifiCorp.
- (3) “Customers” means the Oregon retail electricity customers of PacifiCorp.
- (4) “Final agreement” means a successor agreement to the agreement in principle.
- (5) “Klamath River dam” means the J.C. Boyle Dam located in Oregon, the Copco 1 Dam located in California, the Copco 2 Dam located in California or the Iron Gate Dam located in California. [2009 c.690 §2]

**757.734 Recovery of investment in Klamath River dams.**

- (1) Not more than six months after the execution of a final agreement, the Public Utility Commission shall determine a depreciation schedule under ORS 757.140 for each Klamath River dam based on the assumption that the dam will be removed in 2020. The commission may change a depreciation schedule determined under this section at any time if removal of a dam will occur during a year other than 2020.
- (2) The commission shall use the depreciation schedules prepared under this section to establish rates and tariffs for the recovery of Oregon’s allocated share of undepreciated amounts prudently invested by PacifiCorp in a Klamath River dam. Amounts recoverable under this section include, but are not limited to:
  - (a) Return of investment and return on investment;
  - (b) Capital improvements required by the United States or any state for continued operation of the dam until dam removal;
  - (c) Amounts spent by PacifiCorp in seeking relicensing of the dam before July 14, 2009;
  - (d) Amounts spent by PacifiCorp for settlement of the issues of relicensing or removal of the dam; and
  - (e) Amounts spent by PacifiCorp for the decommissioning of the dam in anticipation of the dam’s removal.
- (3) If any amount specified under subsection (2) of this section has not been recovered by PacifiCorp before a dam is removed, the Public Utility Commission shall allow recovery of that amount by PacifiCorp in PacifiCorp’s rates and tariffs. The commission shall allow the recovery without an amortization schedule if the impact of the recovery does not exceed one-half of one percent of PacifiCorp’s annual revenue requirement. If the impact exceeds one-half of one percent of PacifiCorp’s annual revenue requirement, the commission may establish an amortization schedule that limits the annual impact to one-half of one percent of PacifiCorp’s annual revenue requirement. [2009 c.690 §3]

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****757.736 Surcharges for funding costs of removing Klamath River dams; judicial review.**

(1) Not more than 30 days after the execution of a final agreement, PacifiCorp must file a copy of the final agreement with the Public Utility Commission along with full and complete copies of all analyses or studies that relate to the rate-related costs, benefits and risks for customers of removing or relicensing Klamath River dams and that were reviewed by PacifiCorp during the decision-making process that led to PacifiCorp's entering into the final agreement.

(2) PacifiCorp must include with the filing made under subsection (1) of this section tariffs for the collection of two nonbypassable surcharges from its customers for the purpose of paying the costs of removing Klamath River dams as described in subsection (11) of this section.

Notwithstanding the commission's findings and conclusions under subsection (4) of this section, the commission shall require PacifiCorp to begin collecting the surcharges on the date that the filing is made under subsection (1) of this section, or on January 1, 2010, whichever is later, and PacifiCorp shall continue to collect the surcharges pending a final decision on the commission's order under subsection (4) of this section. The surcharges imposed under this section shall be:

- (a) A surcharge for the costs of removing the J.C. Boyle Dam; and
- (b) A surcharge for the costs of removing the Copco 1 Dam, the Copco 2 Dam and the Iron Gate Dam.

(3) The surcharges imposed under this section may not exceed the amounts necessary to fund Oregon's share of the customer contribution of \$200 million identified in the agreement in principle. In addition, the total amount collected in a calendar year under both surcharges may not exceed more than two percent of PacifiCorp's annual revenue requirement as determined in PacifiCorp's last case under ORS 757.210 decided by the commission before January 1, 2010.

(4) Not more than six months after a filing is made under subsection (1) of this section, the commission shall conduct a hearing under ORS 757.210 on the surcharges imposed under this section, and shall enter an order setting forth findings and conclusions as to whether the imposition of surcharges under the terms of the final agreement results in rates that are fair, just and reasonable.

(5) Notwithstanding ORS 183.482 (1), jurisdiction for judicial review of any appeal of an order entered under subsection (4) of this section is conferred on the Supreme Court, and a person seeking judicial review of the order must file a petition for review with the Supreme Court in the manner provided by ORS 183.482. ORS 183.482 (3) does not apply to an order entered under subsection (4) of this section. If a petition for review is filed, the surcharges imposed under the terms of the final agreement shall remain in effect pending a final decision on the petition, but shall be refunded if the rates resulting from the surcharges are finally determined not to be fair, just and reasonable. A petition filed under this subsection must indicate on its face that the petition is filed pursuant to this subsection.

(6) The commission may not use any commercially sensitive information provided to the commission in a filing made under subsection (1) of this section for any purpose other than determining whether the imposition of surcharges under the terms of the final agreement results in rates that are fair, just and reasonable. Notwithstanding ORS 192.410 to 192.505, the commission may not release commercially sensitive information provided to the commission under this section, and shall require any person participating in a proceeding relating to the

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surcharge to sign a protective order prepared by the commission before allowing the participant to obtain and use the information.

(7) The surcharges imposed under this section must be of a specified amount per kilowatt hour billed to retail customers, as determined by the commission. The amount of each surcharge shall be calculated based on a collection schedule that will fund, by December 31, 2019, Oregon's share of the customer contribution of \$200 million identified in the agreement in principle. To the extent practicable, the commission shall set the surcharges so that total annual collections of the surcharges remain approximately the same during the collection period, and, when setting the rate for the surcharges, the commission shall account for the actual and expected changes in energy usage over the collection period and account for the actual and expected changes in interest rates on the collected funds over the collection period. The commission may change the collection schedule if a Klamath River dam will be removed during a year other than 2020.

(8) Except as provided in ORS 757.738 (2), all amounts collected under the surcharges imposed under this section shall be paid into the appropriate trust account established under ORS 757.738.

(9) If the commission determines at any time that amounts have been collected under this section in excess of those needed, or in excess of those allowed, the commission must:

- (a) Direct the trustee of the appropriate trust account under ORS 757.738 to refund these excess amounts to customers or to otherwise use these amounts for the benefit of customers;
- or
- (b) Adjust future surcharge amounts as necessary to offset the excess amounts.

(10) If one or more Klamath River dams will not be removed, the commission shall direct PacifiCorp to terminate collection of all or part of the surcharges imposed under this section. In addition, the commission shall direct the trustee of the appropriate trust account under ORS 757.738 to apply any excess balances in the accounts to Oregon's allocated share of prudently incurred costs to implement Federal Energy Regulatory Commission relicensing requirements. If any excess amounts remain in the trust accounts after that application, the Public Utility Commission shall order that the excess amounts be refunded to customers or otherwise be used for the benefit of customers in accordance with Public Utility Commission rules and policies.

(11) For the purposes of subsection (2) of this section, "the costs of removing Klamath River dams" includes costs of:

- (a) Physical removal of the dams;
- (b) Site remediation and restoration;
- (c) Avoiding downstream impacts of dam removal;
- (d) Downstream impacts of dam removal;
- (e) Permits that are required for the removal;
- (f) Removal and disposal of sediment, debris and other materials, if necessary; and
- (g) Compliance with environmental laws. [2009 c.690 §4; 2011 c.394 §1]

**757.738 Surcharge trust accounts related to removal of Klamath River dams.**

(1)(a) The Public Utility Commission shall establish a separate trust account for amounts generated by each of the two surcharges imposed under ORS 757.736. The commission shall establish the trust accounts as interest-bearing accounts:

- (A) With an agency of the United States identified in the final agreement;

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(B) In a depository that is qualified under ORS 295.001 to 295.108 to receive public funds; or

(C) With the State Treasurer, to be invested as provided in ORS 293.701 to 293.857.

(b) The commission may establish each of the two trust accounts with a different trustee among those listed in paragraph (a) of this subsection.

(c) The commission may authorize transfer of funds from one trust account to another as necessary to fund removal of the Klamath River dams.

(2) If an agreement is entered into under ORS 757.742 (2), the parties to the agreement may agree that a portion of the amounts collected under one surcharge may be deposited in the trust account established for amounts collected under the other surcharge.

(3) Upon request of an agency of the United States, or upon request of the designee of an agency of the United States, the commission shall require the trustee of the appropriate trust account established under this section to transfer to the agency or designee the amounts that are necessary to pay the costs of removing the Klamath River dams as described in ORS 757.736 (11).

(4) If any amounts remain in a trust account established under this section after the trustee makes all payments necessary for the costs of removing the Klamath River dams as described in ORS 757.736 (11), the commission shall direct the trustee of the account to refund those amounts to customers or to otherwise use the excess amounts for the benefit of customers. [2009 c.690 §5; 2011 c.394 §2]

**757.740 Recovery of other costs incurred as result of changes in operation to or removal of Klamath River dams.**

Pursuant to ORS 757.210, the Public Utility Commission shall allow PacifiCorp to include in its rates and tariffs this state's allocated share of any costs that are prudently incurred by PacifiCorp from changes in operation of Klamath River dams before removal of the dams, or that are prudently incurred for replacement power after the dams are removed, that are not otherwise recovered under ORS 757.734 and 757.736. [2009 c.690 §6]

**757.742 Public Utility Commission authorization to enter agreement with California related to cost apportionment and trust fund.**

(1) The State of Oregon may enter into an agreement with representatives of the State of California, either as part of a final agreement or by separate agreement, that establishes each state's share of the customer contribution of \$200 million identified in the agreement in principle.

(2) The Public Utility Commission may enter into an agreement with representatives of the State of California to establish and administer the trust accounts authorized under ORS 757.738 and to ensure that trust account moneys are disbursed for dam removal costs that are necessary and appropriate. [2009 c.690 §7]

**757.744 Disclaimers.**

(1) ORS 757.732 to 757.744 do not authorize the expenditure of any public moneys for removal of Klamath River dams.

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(2) ORS 757.732 to 757.744 do not create a cause of action against the State of Oregon or against any of the officers, employees or agents of the state and may not be used as the basis for an assertion of liability on the part of the State of Oregon or of any officers, employees or agents of the state. [2009 c.690 §8]

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**APPENDIX G-1**

**Water Bond Language (California)**

CALIFORNIA BOND FUNDING APPROVED THROUGH VOTER APPROVAL OF THE WATER QUALITY, SUPPLY, AND INFRASTRUCTURE IMPROVEMENT ACT OF 2014 (PROPOSITION 1) IN NOVEMBER 2014.

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**APPENDIX G-2  
CEQA Legislation Language (California)**

Uncodified Statute

Application of Division 13 of the Public Resources Code to activities and approvals related to the Klamath Basin, as more particularly described in two agreements between the United States, the State of California, the State of Oregon and other Klamath Basin Stakeholders, shall be limited as follows:

(a) The following activities related to restoration of the Klamath Basin are not a “project” as defined in Public Resources Code section 21065:

- (1) Execution of the Klamath Hydroelectric Settlement Agreement;
- (2) Execution of the Klamath Basin Restoration Agreement;
- (3) A request to the California Public Utilities Commission to establish a surcharge to fund dam removal activities pursuant to the Klamath Hydroelectric Settlement Agreement, or the California Public Utilities Commission's action on such request.

(b) Division 13 of the Public Resources Code shall apply to the decision of whether to concur with the determination by the United States to remove any or all of the dams described in the Klamath Hydroelectric Settlement Agreement, whether to approve any projects that are proposed for approval pursuant to such determination and whether to approve any projects that are proposed pursuant to the Klamath Basin Restoration Agreement after its execution.

Environmental review prepared pursuant to this subdivision shall focus on the issues that are ripe for decision at the time of the concurrence and/or proposal, and from which later environmental review may tier. The Department of Fish and Game may be the lead agency for the environmental review of the decision of whether to concur in the determination by the United States described in this subdivision.



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**APPENDIX H**

**Calculation of Initial Customer Surcharge Target**

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**APPENDIX H**

**Monthly Interest Estimator**

**Assumptions:**

Green shaded cells drive table assumptions for Annual interest rate and Annual Spend Rate  
 After setting assumptions, adjust Total Target Collection to achieve \$200M in cell G137

	Annual Collection	Total Target Collection
Annual Surcharge Collected Jan10 - Jun12	\$ 17,200	\$ 172,000
Annual Surcharge Collected Jul12 - Dec20	\$ 17,200	
Annual Interest Rate	3.50%	
	Monthly Spend	Annual Spend
Cash Outflow10-12	0.00%	0.00%
Cash Outflow13-16	0.42%	5.00%
Cash Outflow17-19	0.83%	10.00%

Year	Beginning Balance	Cash Inflow	Cash Outflow	Interest Earned	Ending Balance	Collection Check	Interest Check
J-10	\$ -	\$ 1,433	\$ -	\$ 2	\$ 1,435		
F-10	\$ 1,435	\$ 1,433	\$ -	\$ 6	\$ 2,875		
M-10	\$ 2,875	\$ 1,433	\$ -	\$ 10	\$ 4,319		
A-10	\$ 4,319	\$ 1,433	\$ -	\$ 15	\$ 5,767		
M-10	\$ 5,767	\$ 1,433	\$ -	\$ 19	\$ 7,219		
J-10	\$ 7,219	\$ 1,433	\$ -	\$ 23	\$ 8,676		
J-10	\$ 8,676	\$ 1,433	\$ -	\$ 27	\$ 10,136		
A-10	\$ 10,136	\$ 1,433	\$ -	\$ 32	\$ 11,601		
S-10	\$ 11,601	\$ 1,433	\$ -	\$ 36	\$ 13,071		
O-10	\$ 13,071	\$ 1,433	\$ -	\$ 40	\$ 14,544		
N-10	\$ 14,544	\$ 1,433	\$ -	\$ 45	\$ 16,022		
D-10	\$ 16,022	\$ 1,433	\$ -	\$ 49	\$ 17,504	\$ 17,200	\$ 304
J-11	\$ 17,504	\$ 1,433	\$ -	\$ 53	\$ 18,991		
F-11	\$ 18,991	\$ 1,433	\$ -	\$ 57	\$ 20,481		
M-11	\$ 20,481	\$ 1,433	\$ -	\$ 62	\$ 21,977		
A-11	\$ 21,977	\$ 1,433	\$ -	\$ 66	\$ 23,476		
M-11	\$ 23,476	\$ 1,433	\$ -	\$ 71	\$ 24,980		
J-11	\$ 24,980	\$ 1,433	\$ -	\$ 75	\$ 26,488		
J-11	\$ 26,488	\$ 1,433	\$ -	\$ 79	\$ 28,001		
A-11	\$ 28,001	\$ 1,433	\$ -	\$ 84	\$ 29,518		
S-11	\$ 29,518	\$ 1,433	\$ -	\$ 88	\$ 31,040		
O-11	\$ 31,040	\$ 1,433	\$ -	\$ 93	\$ 32,566		
N-11	\$ 32,566	\$ 1,433	\$ -	\$ 97	\$ 34,096		
D-11	\$ 34,096	\$ 1,433	\$ -	\$ 102	\$ 35,631	\$ 17,200	\$ 927
J-12	\$ 35,631	\$ 1,433	\$ -	\$ 106	\$ 37,170		
F-12	\$ 37,170	\$ 1,433	\$ -	\$ 111	\$ 38,714		
M-12	\$ 38,714	\$ 1,433	\$ -	\$ 115	\$ 40,262		
A-12	\$ 40,262	\$ 1,433	\$ -	\$ 120	\$ 41,815		
M-12	\$ 41,815	\$ 1,433	\$ -	\$ 124	\$ 43,373		
J-12	\$ 43,373	\$ 1,433	\$ -	\$ 129	\$ 44,934		
J-12	\$ 44,934	\$ 1,433	\$ 187	\$ 133	\$ 46,313		
A-12	\$ 46,313	\$ 1,433	\$ 193	\$ 137	\$ 47,691		
S-12	\$ 47,691	\$ 1,433	\$ 199	\$ 141	\$ 49,066		
O-12	\$ 49,066	\$ 1,433	\$ 204	\$ 145	\$ 50,440		
N-12	\$ 50,440	\$ 1,433	\$ 210	\$ 149	\$ 51,812		
D-12	\$ 51,812	\$ 1,433	\$ 216	\$ 153	\$ 53,182	\$ 17,200	\$ 1,561
J-13	\$ 53,182	\$ 1,433	\$ 222	\$ 157	\$ 54,551		
F-13	\$ 54,551	\$ 1,433	\$ 227	\$ 161	\$ 55,918		
M-13	\$ 55,918	\$ 1,433	\$ 233	\$ 165	\$ 57,283		
A-13	\$ 57,283	\$ 1,433	\$ 239	\$ 169	\$ 58,647		
M-13	\$ 58,647	\$ 1,433	\$ 244	\$ 173	\$ 60,008		
J-13	\$ 60,008	\$ 1,433	\$ 250	\$ 177	\$ 61,368		
J-13	\$ 61,368	\$ 1,433	\$ 256	\$ 181	\$ 62,727		
A-13	\$ 62,727	\$ 1,433	\$ 261	\$ 185	\$ 64,083		
S-13	\$ 64,083	\$ 1,433	\$ 267	\$ 189	\$ 65,438		
O-13	\$ 65,438	\$ 1,433	\$ 273	\$ 193	\$ 66,792		
N-13	\$ 66,792	\$ 1,433	\$ 278	\$ 196	\$ 68,143		
D-13	\$ 68,143	\$ 1,433	\$ 284	\$ 200	\$ 69,493		
J-14	\$ 69,493	\$ 1,433	\$ 290	\$ 204	\$ 70,841	\$ 17,200	\$ 2,192
F-14	\$ 70,841	\$ 1,433	\$ 295	\$ 208	\$ 72,187		
M-14	\$ 72,187	\$ 1,433	\$ 301	\$ 212	\$ 73,532		
A-14	\$ 73,532	\$ 1,433	\$ 306	\$ 216	\$ 74,875		
M-14	\$ 74,875	\$ 1,433	\$ 312	\$ 220	\$ 76,217		
J-14	\$ 76,217	\$ 1,433	\$ 318	\$ 224	\$ 77,556		
J-14	\$ 77,556	\$ 1,433	\$ 323	\$ 228	\$ 78,894		
A-14	\$ 78,894	\$ 1,433	\$ 329	\$ 232	\$ 80,231		
S-14	\$ 80,231	\$ 1,433	\$ 334	\$ 236	\$ 81,565		
O-14	\$ 81,565	\$ 1,433	\$ 340	\$ 239	\$ 82,898		
N-14	\$ 82,898	\$ 1,433	\$ 345	\$ 243	\$ 84,230		
D-14	\$ 84,230	\$ 1,433	\$ 351	\$ 247	\$ 85,559	\$ 17,200	\$ 2,710
J-15	\$ 85,559	\$ 1,433	\$ 356	\$ 251	\$ 86,887		
F-15	\$ 86,887	\$ 1,433	\$ 362	\$ 255	\$ 88,213		
M-15	\$ 88,213	\$ 1,433	\$ 368	\$ 259	\$ 89,538		
A-15	\$ 89,538	\$ 1,433	\$ 373	\$ 263	\$ 90,861		
M-15	\$ 90,861	\$ 1,433	\$ 379	\$ 267	\$ 92,182		
J-15	\$ 92,182	\$ 1,433	\$ 384	\$ 270	\$ 93,502		
J-15	\$ 93,502	\$ 1,433	\$ 390	\$ 274	\$ 94,820		
A-15	\$ 94,820	\$ 1,433	\$ 395	\$ 278	\$ 96,136		
S-15	\$ 96,136	\$ 1,433	\$ 401	\$ 282	\$ 97,451		
O-15	\$ 97,451	\$ 1,433	\$ 406	\$ 286	\$ 98,764		
N-15	\$ 98,764	\$ 1,433	\$ 412	\$ 290	\$ 100,075		

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Year	Beginning Balance	Cash Inflow	Cash Outflow	Interest Earned	Ending Balance	Collection Check	Interest Check
D-15 \$	100,075 \$	1,433 \$	417 \$	293 \$	101,385 \$		
J-16 \$	101,385 \$	1,433 \$	422 \$	297 \$	102,693 \$	\$ 17,200	\$ 3,267
F-16 \$	102,693 \$	1,433 \$	428 \$	301 \$	104,000 \$		
M-16 \$	104,000 \$	1,433 \$	433 \$	305 \$	105,304 \$		
A-16 \$	105,304 \$	1,433 \$	439 \$	309 \$	106,608 \$		
M-16 \$	106,608 \$	1,433 \$	444 \$	312 \$	107,909 \$		
J-16 \$	107,909 \$	1,433 \$	450 \$	316 \$	109,209 \$		
J-16 \$	109,209 \$	1,433 \$	455 \$	320 \$	110,507 \$		
A-16 \$	110,507 \$	1,433 \$	460 \$	324 \$	111,804 \$		
S-16 \$	111,804 \$	1,433 \$	466 \$	328 \$	113,099 \$		
O-16 \$	113,099 \$	1,433 \$	471 \$	331 \$	114,392 \$		
N-16 \$	114,392 \$	1,433 \$	477 \$	335 \$	115,684 \$		
D-16 \$	115,684 \$	1,433 \$	482 \$	339 \$	116,974 \$	\$ 17,200	\$ 3,816
J-17 \$	116,974 \$	1,433 \$	975 \$	342 \$	117,774 \$		
F-17 \$	117,774 \$	1,433 \$	981 \$	344 \$	118,570 \$		
M-17 \$	118,570 \$	1,433 \$	988 \$	346 \$	119,362 \$		
A-17 \$	119,362 \$	1,433 \$	995 \$	349 \$	120,150 \$		
M-17 \$	120,150 \$	1,433 \$	1,001 \$	351 \$	120,933 \$		
J-17 \$	120,933 \$	1,433 \$	1,008 \$	353 \$	121,712 \$		
J-17 \$	121,712 \$	1,433 \$	1,014 \$	356 \$	122,486 \$		
A-17 \$	122,486 \$	1,433 \$	1,021 \$	358 \$	123,257 \$		
S-17 \$	123,257 \$	1,433 \$	1,027 \$	360 \$	124,023 \$		
O-17 \$	124,023 \$	1,433 \$	1,034 \$	362 \$	124,785 \$		
N-17 \$	124,785 \$	1,433 \$	1,040 \$	365 \$	125,543 \$		
D-17 \$	125,543 \$	1,433 \$	1,046 \$	367 \$	126,297 \$	\$ 17,200	\$ 4,253
J-18 \$	126,297 \$	1,433 \$	1,052 \$	369 \$	127,047 \$		
F-18 \$	127,047 \$	1,433 \$	1,059 \$	371 \$	127,793 \$		
M-18 \$	127,793 \$	1,433 \$	1,065 \$	373 \$	128,534 \$		
A-18 \$	128,534 \$	1,433 \$	1,071 \$	375 \$	129,272 \$		
M-18 \$	129,272 \$	1,433 \$	1,077 \$	378 \$	130,005 \$		
J-18 \$	130,005 \$	1,433 \$	1,083 \$	380 \$	130,735 \$		
J-18 \$	130,735 \$	1,433 \$	1,089 \$	382 \$	131,461 \$		
A-18 \$	131,461 \$	1,433 \$	1,096 \$	384 \$	132,183 \$		
S-18 \$	132,183 \$	1,433 \$	1,102 \$	386 \$	132,900 \$		
O-18 \$	132,900 \$	1,433 \$	1,108 \$	388 \$	133,614 \$		
N-18 \$	133,614 \$	1,433 \$	1,113 \$	390 \$	134,324 \$		
D-18 \$	134,324 \$	1,433 \$	1,119 \$	392 \$	135,031 \$	\$ 17,200	\$ 4,568
J-19 \$	135,031 \$	1,433 \$	1,125 \$	394 \$	135,733 \$		
F-19 \$	135,733 \$	1,433 \$	1,131 \$	396 \$	136,431 \$		
M-19 \$	136,431 \$	1,433 \$	1,137 \$	398 \$	137,126 \$		
A-19 \$	137,126 \$	1,433 \$	1,143 \$	400 \$	137,817 \$		
M-19 \$	137,817 \$	1,433 \$	1,148 \$	402 \$	138,504 \$		
J-19 \$	138,504 \$	1,433 \$	1,154 \$	404 \$	139,188 \$		
J-19 \$	139,188 \$	1,433 \$	1,160 \$	406 \$	139,868 \$		
A-19 \$	139,868 \$	1,433 \$	1,166 \$	408 \$	140,544 \$		
S-19 \$	140,544 \$	1,433 \$	1,171 \$	410 \$	141,216 \$		
O-19 \$	141,216 \$	1,433 \$	1,177 \$	412 \$	141,885 \$		
N-19 \$	141,885 \$	1,433 \$	1,182 \$	414 \$	142,550 \$		
D-19 \$	142,550 \$	1,433 \$	1,188 \$	416 \$	143,212 \$	\$ 17,200	\$ 4,864
<b>Ten-Year Totals</b>		<b>\$ 172,000</b>	<b>\$ 57,203</b>	<b>\$ 28,415</b>	<b>\$200,415</b>	<b>Total Surcharge Fund Collection</b>	

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**APPENDIX I  
Study Process Guidelines**

In providing the information to support the Secretarial Determination as set forth fully in Section 3 of the Settlement, the federal team will address three decisions to be made by the Secretary:

- Whether Facilities Removal can be completed within the State Cost Cap or an amount otherwise agreed to by the Parties,
- The “Secretarial Determination” of whether Facilities Removal will benefit the fisheries and will otherwise be in the public interest, and
- Whether Interior will be the Dam Removal Entity in the event of an Affirmative Determination.

Overall, the supporting analyses will, at a minimum, address the following:

- A cost estimate of Facilities Removal;
- Identification and management of risks and of foreseeable liabilities associated with Facilities Removal;
- The environmental effects of Facilities Removal;
- The impacts on local and Tribal communities; and
- An economic analysis.

This Appendix outlines the approach to complete the analyses needed to support the Secretarial Determination. The key discipline areas that need study and analysis for the Secretarial Determination fall into six categories, including:

- Engineering
- Sediment Composition, Fate and Transport
- Water Quality
- Fisheries
- Economics
- Liability and Risk Management

The study efforts will concentrate on these areas. However, if other key disciplines are identified in the process, they will be included. The Parties recognize that other studies and analyses are established in the existing record. The non-federal Parties agree to collaborate and provide recommendations for prioritized activities related to the Secretarial Determination for each of the six categories and shall communicate through the Technical Coordination Committee (TCC). See Appendix A. Such recommendations will include developing key questions or

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objectives for the Secretarial Determination in order to provide context for the near-term priority studies and analyses. However, final decisions on studies and analyses remain at the Secretary's discretion.

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**APPENDIX J  
Science Process**

**1. Introduction**

The federal team agrees to an open and transparent science process for the 2012 Secretarial Determination and continuing through the subsequent phases, if there are any, leading up to Facilities Removal in the event of an Affirmative Determination. The goal of this science process is to provide for transparency and integrity in the preparation, identification, and use of scientific and technological information that supports the actions and decisions arising from the Settlement.

**2. Description of Science in Settlement**

For purposes of the Settlement,

**Science Process** means the essential technical studies undertaken that will support the Secretarial Determination and that will continue through subsequent phases up to Facilities Removal. Consistent with well-established scientific standards, the process shall seek to make reasonable, objective, accurate, technically appropriate use of data and analyses, including existing work, and not advocate or otherwise limit the analyses and conclusions of the studies to fit a predetermined outcome. The studies developed or used or the process used to review existing studies will be conducted in accordance with Memorandum on Scientific Integrity attached herein.

**Sufficiency of Science** means that all new studies and analyses undertaken, or any existing data sets or studies relied upon in whole or in part, shall be of high technical quality, scientifically defensible, and of sufficient depth and scope to support fully informed decision-making by the Secretary.

**3. Application**

The Secretary of the Interior will determine whether Facilities Removal should proceed.

Elements of the science process to be established to support the Secretarial Determination are described in the *Coordination Process for the Studies Supporting the Secretarial Determination (Appendix A)* and the peer review process outlined below. The Secretary and the federal team will also seek public input during the Secretarial Determination process.

For the Secretarial Determination there may be opportunities to include findings and raw data from previous studies conducted in the Klamath Basin that could reduce, minimize, or even eliminate the need for new data collection and studies. The federal team will coordinate with the Parties, through the TCC, to identify those important previous studies, current data gaps, and work plans as outlined in Section 1.A of Appendix A.

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**4. Peer Review Process**

The federal parties will consider input from the Parties, through the TCC, and from the public regarding which studies should be peer reviewed. At the discretion of the Secretary, reports and data sets with the potential of having a major effect on the Secretarial Determination will be peer reviewed by subject-matter experts.

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**APPENDIX K**

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**For Upper Klamath Water Users Association:**

Matthew Walter, President  
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**For Tulelake Irrigation District:**

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**For Klamath Irrigation District:**

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**For Klamath Basin Improvement District:**

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**For Ady District Improvement Company:**

Jason Flowers  
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**For Enterprise Irrigation District:**

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**For Shasta View Irrigation District:**

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**For Don Johnston & Son:**

Donald Scott Johnston  
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Klamath Falls, OR 97601  
Tel: 541-884-8937

**For Bradley S. Luscombe:**

Brad Luscombe  
16622 Lower Klamath Lake Road  
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Tel: 530-667-3237

**For Randolph Walthall and Jane Walthall as trustees under declaration of trust dated November 28, 1995:**

Darrel E. Pierce  
P.O. Box 534  
Placerville, CA 95667  
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icpc@d-web.com

**For Inter-County Properties Co., which acquired title as Inter-County Title Co.:**

Darrel E. Pierce  
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**For Reames Golf and Country Club:**

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**For Winema Hunting Lodge, Inc.:**

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**For Collins Products, LLC:**

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**For Plevna District Improvement Company:**

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**For Klamath Water Users Association:**

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**For Klamath Water and Power Agency:**

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**Westside Improvement District #4:**

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**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****APPENDIX L****DRE and Contractor Qualifications, Insurance, Bonding, and Risk Mitigation Requirements****Part I: Contractor Qualifications**

The DRE agrees to conduct a competitive procurement process, including price and qualifications, to select a contractor(s) to perform Facilities Removal and to provide risk mitigation as described below. The DRE further agrees that a contractor(s) must meet the following minimum qualifications:

1. Past performance in performing similar projects in scope, magnitude (complexity and size, such as but not limited to performance of work at multiple locations at the same time), and type (water way work; environmentally regulated);
2. Sufficient financial strength, including basic financial metrics such as corporate net worth and profitability;
3. Experience with federally-regulated permitting processes; and
4. Longevity in industry.

**Part II: Insurance**

The DRE agrees to follow, or to contract with a contractor(s) that will follow, the consolidated insurance program (“CIP”) approach so the DRE, or the contractor(s) that it contracts with, will purchase the General Liability insurance and Worker’s Compensation insurance for all the contractors involved in Facilities Removal. The DRE further agrees that it will obtain the support of a nationally established insurance advisor to assist with the design and implementation of the insurance program, and that as part of its best value evaluation and procurement of a contractor(s) that will perform Facilities Removal or provide liability protection or both, it will consider savings and other benefits obtained by selecting a contractor(s) that already has CIP infrastructure in place.

Unless the States and PacifiCorp agree otherwise, the DRE will obtain the following project-specific types of insurance policies, if applicable. The policy types and coverage limits ultimately obtained by the DRE to provide risk mitigation to the States and PacifiCorp are subject to the approval of the States and PacifiCorp in consultation with the Federal Parties:

1. Commercial General Liability (“CGL”) policy to cover third-party property damage and third-party bodily injury that occurs from activity performed at the dam deconstruction site;
2. Workers Compensation / Employer’s Liability / USL&H policy to provide coverage for injuries that occur on the dam deconstruction site to individual workers;

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3. Builder's Risk / Inland Marine or Commercial Property policy to provide property coverage for damage to any equipment or components of the dam that will be restored or salvaged;
4. Automobile Liability policy to provide coverage for third-party property damage and third-party bodily injury for the auto fleet used related to the construction activities;
5. Umbrella Liability policy to provide excess coverage for General Liability and Automobile Liability;
6. Professional Liability policy to provide coverage to protect an insured if their client is financially harmed from the rendering of their professional services or advice (including lack thereof) and for which the insured is held legally liable;
7. Contractors Pollution Liability ("CPL") policy to provide third-party coverage for clean-up and remediation costs, bodily injury, property damage (including natural resource damages, loss of use and diminution in value) and legal defense expenses, as a result of pollution conditions arising from operations performed by or on behalf of the contractor; and
8. Fixed Site Pollution Liability ("PLL") policy to provide coverage for on-site & off-site clean-up/remediation costs, third-party claims for bodily injury and property damage (including natural resource damages, loss of use and diminution in value) and defense expenses and legal costs not otherwise addressed by the CPL (i.e. Pollution Conditions not caused or exacerbated by the contractors) and arising from Pollution Conditions on, at, under, migrating to and migrating from property owned or leased by the Insured.

The DRE further agrees that the insurance required above will include PacifiCorp, the State of Oregon, the State of California, and their respective officers, agents, employees, and members as additional insureds. As evidence of this required insurance coverage, the DRE will furnish a certificate or certificates of insurance including all of the foregoing coverage(s) to PacifiCorp and the States before any contract for Facilities Removal is effective and before Facilities Removal work begins. The following language shall be used for naming additional insureds:

**ADDITIONAL INSURED: PacifiCorp, the State of Oregon, the State of California, and their respective officers, employees and agents are Additional Insureds for the CONTRACTOR's activities to be performed under this Contract. Coverage is primary and non-contributory with any other insurance and self-insurance.**

**Part III: Bonding**

The DRE agrees to provide, or to contract with entities that will provide, conventional performance and payment bonding, unless otherwise agreed to by the States, DRE, and

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PacifiCorp, from a financially sound surety company to assure that Facilities Removal will be performed as required:

1. Bid Bond;
2. Performance Bond (in an amount equivalent to original contract value); and
3. Payment Bond (in an amount equivalent to original contract value).

The DRE agrees to include PacifiCorp and the States as Third Party Beneficiaries in any contract with a contractor(s) that will perform Facilities Removal or any activities associated with Facilities Removal.

**Part IV: Risk Mitigation****A. Contractual Indemnification**

The DRE agrees to contract with a specialty corporate indemnitor (“Liability Transfer Corp.”) to protect the States and PacifiCorp against any harm to persons, property, or the environment, or damages resulting from either Facilities Removal or Facility operation arising from, relating to, or triggered by actions associated with Facilities Removal, including but not limited to any damage caused by the release of any material or substance, including but not limited to hazardous substances that is not covered contractually or by insurance. Without limiting the generality of the foregoing, this liability protection must include protection from third-party diminution in value land or property claims to the extent not already covered by contractor(s) insurance or mitigation funding.

The Parties agree that the approval of a Liability Transfer Corp. is not subject to the provisions of Section 8.3 of this Settlement; *provided, however*, that the Parties further agree that the selection of a Liability Transfer Corp. will be subject to the approval of the States and PacifiCorp, in consultation with the Federal Parties, whose approval may not be unreasonably withheld.

PacifiCorp and the States agree that, in the selection of a Liability Transfer Corp., the following parameters constitute the minimum indicia of sufficiency:

1. Appropriate corporate capitalization as agreed to by the States and PacifiCorp;
2. Past performance in performing similar projects in scope, magnitude (complexity and size, such as but not limited to performance of work at multiple locations at the same time), and type (water way work; environmentally regulated);
3. Experience with federally regulated permitting processes; and
4. Longevity in industry.

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The Parties agree that the DRE may contract with a Liability Transfer Corp. to provide contractual indemnification for the above-described risks, and further agree that the DRE may also transfer its ownership of the Facilities and Parcel B Lands, in whole or in part, to that entity.

The Parties further agree that the Liability Transfer Corp. will become a party to this Settlement before ownership of the Facilities, in whole or in part, is transferred to the Liability Transfer Corp.

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# **EXHIBITS**

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****EXHIBIT 1****Water Rights Agreement between PacifiCorp and the State of Oregon**

The purpose of this Water Rights Agreement (Agreement) is to establish a process for the reauthorization and resolution of water rights and claims related to the Klamath Hydroelectric Project and for participation of state agencies in such process, in a manner consistent with the Klamath Hydroelectric Settlement Agreement dated February 18, 2010 (Settlement). Parties to this Agreement are PacifiCorp (the Company), and the State of Oregon by and through the following agencies: Oregon Water Resources Department (WRD), Oregon Department of Environmental Quality (DEQ), Oregon Department of Fish and Wildlife (ODFW), and the Hydroelectric Application Review Team (HART).

This Agreement between PacifiCorp and the State of Oregon will be included as an exhibit to the Klamath Hydroelectric Settlement Agreement; however, this Agreement has force and effect independent of the viability of the Klamath Hydroelectric Settlement Agreement.

**I. Reauthorization and Expansion of Use under HE 180**

The Company has filed an application with WRD to reauthorize its right to use 2500 cfs of water under HE No. 180 at J.C. Boyle powerhouse. Pursuant to Section 6.1.1 of the Settlement, the Company will perform certain interim measures and may, subject to the terms described below, divert a maximum of 3,000 cubic feet per second (“cfs”) of water, for purposes of power generation at J.C. Boyle hydroelectric plant prior to the decommissioning and removal of the J.C. Boyle facility. This section addresses agreements between the Company and WRD related to this request.

- A. Reauthorization of HE No. 180: The Company seeks to enlarge its water right by an amount up to 500 cfs more than the 2,500 cfs currently authorized under HE No. 180, pursuant to ORS 543A.145. The Company will provide written notice to WRD expressing its intent to enlarge its water right. If a reauthorized water right is issued by WRD, the priority date for the additional 500 cfs, if approved, shall be the date the Company filed the notice of intent to reauthorize HE No. 180, as provided in ORS 543A.145(3). Any reauthorized water right shall provide that use of any amount additional to the currently authorized 2,500 cfs may not occur following termination of the Settlement as provided in Section 8 of the Settlement, unless extended by mutual agreement of the Company and WRD. WRD will extend the expiration date of HE No. 180 as necessary to allow for completion of the reauthorization process, pursuant to ORS 543A.150(2).

The Parties agree that any reauthorized water right issued by WRD shall have an expiration date of December 31, 2020. The expiration date may be extended in accordance with applicable law.

The Parties agree that any reauthorized water right issued by WRD shall incorporate and require compliance with protocols developed pursuant to the

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Settlement for: quantifying any additional flows in the Klamath River made available through implementation of the Klamath River Basin Restoration Agreement dated February 18, 2010; and for coordinating with the Company on the timing and manner of release of such flows.

- B. Limited License: The Company may apply for a limited license for use of 500 cfs for hydroelectric purposes in addition to uses currently permitted by HE No. 180. The purpose of the application for a limited license is to obtain permission for use of water that the Company intends to request as part of its reauthorization application while the reauthorization application is pending before WRD. The Company's application for a limited license, WRD's review of and determination on the Company's application, and the terms of use of any limited license issued are subject to ORS 537.143 and applicable administrative rules. In addition, any limited license issued as a result of the Company's application is subject to the limitations described herein.

The Parties agree that use of water under this limited license will not have priority over any other water right exercised according to a permit, certificate, or adjudicated right subject to regulation by the watermaster, and shall be subordinate to all other authorized uses that rely upon the same source. The Parties agree that any limited license issued by WRD shall incorporate protocols developed pursuant to the Settlement for: quantifying any additional flows in the Klamath River made available through implementation of the Klamath River Basin Restoration Agreement dated February 18, 2010; and for coordinating with the Company on the timing and manner of release of such flows. If OWRD determines to issue a limited license pursuant to the Agreement, and the protocols developed pursuant to the Settlement have not been completed, OWRD will include in the limited license a condition that the protocols will be incorporated by reference upon their completion. Any limited license subsequently issued pursuant to the Agreement shall incorporate the protocols. In addition, any limited license issued by OWRD shall provide that use under the limited license may not occur following termination of the Settlement as provided in Section 8 of the Settlement, unless such use is mutually agreed to by the Company and WRD.

The Parties further agree that WRD may reconsider or revoke the limited license if the use is determined by WRD in a legal or administrative proceeding to be inconsistent with applicable law or policy. WRD will revoke the limited license upon issuance of a final order on the application for reauthorization if the reauthorization order contains an enlargement of HE No. 180 in the amount of 500 cfs, or if the reauthorization order contains an enlargement of HE No. 180 by an amount less than 500 cfs, WRD will revoke the limited license to the extent of the enlargement. The limited license will have a duration of not more than one year. Prior to the expiration of any limited license term, the Company may request the issuance of a new license for the same use, but the total duration of licenses issued for this use may not exceed five years. The Company agrees to



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pay fees and expenses provided for in Oregon law and associated with a request for a limited license, pursuant to ORS 537.143 and OAR 690-340-0030.

**II. Assignment of the Company's Water Rights and Claims; Conversion to Instream Water Rights**

- A. Background: The Company holds rights for the use of water for hydroelectric purposes as provided by HE 180 and Certificate 24508. In addition, the Company maintains Claim Nos. 167, 168 and 218 for use for hydroelectric purposes in the ongoing Klamath Basin Water Rights Adjudication. ORS 543A.305 provides for the "conversion" of a hydroelectric water right to an instream water right when use of the water ceases for the hydroelectric project.
- B. HE 180: Within 365 days of December 31, 2020, or, if the J.C. Boyle power plant is still operating on that date, within 365 days after use of water under HE No. 180 ceases, or as otherwise provided by ORS 543A.305, the Company shall assign HE 180, or any right resulting from reauthorization of HE 180, to WRD for conversion to an instream water right pursuant to ORS 543A.305. WRD shall accept HE 180 "AS IS"; the Company expressly disclaims any representation or warranty concerning HE 180 or its convertibility to an instream water right. Prior to the assignment, the Company shall use reasonable efforts to avoid allowing HE 180 to become subject to forfeiture for non-use, and shall not otherwise intentionally jeopardize the validity of HE 180, and in times of water shortage the Company and WRD may agree with other existing water users to prorate water shortages notwithstanding relative priority dates. If the Company's historic use of water under HE 180 becomes a matter of dispute in a legal proceeding the Company shall cooperate with WRD in defending the validity of HE 180 by making reasonable efforts to provide documentation regarding the history of the use of water pursuant to HE 180.
- C. Certificate 24508: Within 120 days after use of water under Certificate 24508 ceases, or as otherwise provided by ORS 543A.305, the Company shall assign Certificate 24508 to WRD for conversion to an instream water right pursuant to ORS 543A.305. WRD shall accept Certificate 24508 "AS IS"; the Company expressly disclaims any representation or warranty concerning Certificate 24508 or its convertibility to an instream water right. Prior to the assignment, the Company shall use reasonable efforts to avoid allowing Certificate 24508 to be forfeited for non-use, and shall not otherwise intentionally jeopardize the validity of Certificate 24508, and in times of water shortage the Company and WRD may agree with other existing water users to prorate water shortages notwithstanding relative priority dates. If the Company's historic use of water under Certificate 24508 becomes a matter of dispute in a legal proceeding the Company shall cooperate with WRD in defending the validity of Certificate 24508 by making reasonable efforts to provide documentation regarding the history of the use of water pursuant to Certificate 24508.

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- D. Klamath Basin Water Right Adjudication Claims 167 and 168: Within 120 days after use of water under Claims 167 and 168 ceases, pursuant to a final FERC order amending the license for Project No. 2082 to remove the Eastside and Westside power plants and appurtenant facilities on the Link River from the license, or a final FERC order accepting surrender of the license for Project No. 2082 as it pertains to the Eastside and Westside power plants, or as otherwise provided by ORS 543A.305, the Company shall assign Claims 167 and 168 as described herein. If rights based on either Claim 167 or 168 are determined to exist, and all appeals pertaining to either claim have been exhausted, the Company shall assign such right(s) to WRD. If the Findings of Fact and Order of Determination (“FFOD”) for Claims 167 and 168 has not yet been issued in the Adjudication pursuant to ORS 539.130, or if the portion of the FFOD pertaining to either of these claims is still subject to appeal, the Company shall assign such claim(s) to ODFW. If assignment is made to ODFW, WRD will proceed with conversion as appropriate pursuant to ORS 543A.305, but ODFW will be responsible for further prosecution of Claims 167 and 168 in the Adjudication, unless WRD and ODFW agree to another course of action.

Prior to the assignment of Claims 167 or 168, or any rights recognized under Claims 167 or 168, the Company shall use reasonable efforts to avoid allowing Claims 167 or 168 to be deemed abandoned for non-use prior to adjudication; or for any rights recognized under Claims 167 and 168 in the FFOD, to avoid becoming subject to forfeiture for non-use, and shall not otherwise intentionally jeopardize the validity of Claims 167 or 168, except to the extent that the FERC annual license or Settlement requires flow regimes inconsistent with Claims 167 or 168, and in times of water shortage the Company and ODFW may agree with other existing water users to prorate water shortages notwithstanding relative priority dates. If the Company’s historic use of water under Claims 167 or 168 becomes a matter of dispute in a legal proceeding, the Company shall cooperate with ODFW in defending the validity of Claims 167 or 168 by making reasonable efforts to provide documentation regarding the history of the use of water pursuant to Claims 167 or 168 prior to assignment. If conversion occurs, at the time of conversion the right(s) will be held by WRD as provided by ORS 543A.305. The Company shall cooperate with WRD by making reasonable efforts to provide historic documentation in aid of the conversion.

- E. Klamath Basin Water Right Adjudication Claim 218: In the event the Company decides to permanently cease power generation at Fall Creek hydroelectric power plant in California, or decides not to exercise Claim 218 for power generation, within 365 days of permanent cessation of power generation or water diversion, or as otherwise provided by ORS 543A.305, the Company shall assign Claim 218 as described herein.

If rights based on Claim 218 are determined to exist, and all appeals pertaining to the claim have been exhausted, the Company shall assign such right(s) to WRD. If the Findings of Fact and Order of Determination (“FFOD”) for Claim 218 has

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not yet been issued in the Adjudication pursuant to ORS 539.130, or if the portion of the FFOD pertaining to Claim 218 is still subject to appeal, the Company shall assign Claim 218 to ODFW. If assignment is made to ODFW, WRD will proceed with conversion as appropriate pursuant to ORS 543A.305, but ODFW will be responsible for further prosecution of Claim 218 in the Adjudication, unless WRD and ODFW agree to another course of action. For the purposes of this Agreement, transfer of the Fall Creek hydroelectric power plant, along with Claim 218, to another entity shall not constitute permanent cessation of power generation; provided, that any transfer of the Fall Creek hydroelectric power plant will be governed by applicable law.

Prior to the assignment of Claim 218, or any rights recognized under Claim 218, the Company shall use reasonable efforts to avoid allowing Claim 218 to be deemed abandoned for non-use prior to adjudication; or for any rights recognized under Claim 218 in the FFOD, to avoid becoming subject to forfeiture for non-use, and shall not otherwise intentionally jeopardize the validity of Claim 218, except to the extent that the FERC annual license or Settlement requires flow regimes inconsistent with Claim 218, and in times of water shortage the Company and ODFW may agree with other existing water users to prorate water shortages notwithstanding relative priority dates. If the Company's historic use of water under Claim 218 becomes a matter of dispute in a legal proceeding, the Company shall cooperate with ODFW in defending the validity of Claim 218 by making reasonable efforts to provide documentation regarding the history of the use of water pursuant to Claim 218 prior to assignment. If conversion occurs, at the time of conversion the right(s) will be held by WRD as provided by ORS 543A.305. The Company shall cooperate with WRD by making reasonable efforts to provide historic documentation in aid of the conversion.

WRD shall accept Claim 218 "AS IS"; the Company expressly disclaims any representation or warranty concerning Claim 218 or its convertibility to an instream water right.

Nothing in this Section E is intended in any way to limit the Company's use of water under Claim 218.

**III. The Company's Protests to State Instream Water Right Applications**

Within 90 days of the sooner of: (1) assignment of the water rights or claims pursuant to Sections II.B through II.D of this Agreement; or (2) issuance of a final order in the Klamath Basin Adjudication pursuant to ORS 539.140 and 539.150 and completion of all appeals pertaining to the Company's Claims 167 and 168, and the Company's contests in Cases 282 and 286 of the Klamath Basin Adjudication, the Company agrees to withdraw with prejudice its protests to Instream Water Right Application Numbers 70094, 70812 and 70813. The withdrawal must be in writing in a form subject to the approval, not to be unreasonably withheld, of OWRD.

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Under ORS 543A.405, the Company, as applicant for reauthorization of a hydroelectric project, must pay all expenses related to the review and decision of the HART incurred by any state agency participating in the HART that are not otherwise covered by the reauthorization fee paid under ORS 543A.415. The Company's application is for water rights reauthorization for the Klamath Project (HE 180, J.C. Boyle), located near Klamath Falls, Oregon. WRD, ODFW and DEQ will incur costs in connection with review of the Company's reauthorization application and during participation in federal studies under the Settlement, which studies may also form a basis for the HART's decision whether reauthorization and enlargement of the Company's water rights are in the public interest.

Pursuant to ORS 543A.405, the Company has requested an estimate of the anticipated costs to be incurred in processing and reviewing these applications. The costs to be paid by the Company under this Agreement and their estimate are attached to and incorporated into this Agreement as Appendix 1. For the period of September 1, 2009, through September 1, 2012, the HART estimates the costs for these activities to be :

Estimated costs from September 1, 2009 through September 1, 2012: (See Appendix 1)	<u>\$ 216,371.00</u>
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25% payment due upon signing:	<u>\$ 54,093.00</u>
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Under terms of this Agreement, the Company will make four payments of 25% each of the estimated costs of review according to the following schedule: The initial payment of 25% is to be made within 45 days of the signing of this Agreement, with the remaining three payments of 25% each to be made on or before October 1, 2010, July 1, 2011, and January 30, 2012. Payment shall be made to: Oregon Water Resources Department, 725 Summer Street NE, Suite A, Salem, OR 97301.

During the course of this Agreement, the Company will receive from HART, coordinated by the WRD, a quarterly report indicating cost reimbursement funds received under this Agreement and expenses charged against the project. The reports will be provided to the Company according to the regular report generation schedule of the HART. The report will display the revenue and expenses for each agency receiving funds under the Agreement. In addition, participating agencies will provide a quarterly status report to the Company that includes a summary of work performed. The Company may, at its discretion, request additional revenue and expense information from any agency receiving funds under this Agreement. If requested by the Company, agency parties to this Agreement will work with the Company to provide additional information concerning revenues and activities associated with charged expenses. WRD will only provide additional information for project revenues and expenditures incurred by it and is not responsible, nor is it within its scope, to audit the expenditures of other agencies. If the HART quarterly reporting becomes more than six (6) months delinquent, the Company may withhold payments specified above until quarterly reporting is made current.

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If the costs of evaluating the applications exceeds the estimate provided herein, the HART members receiving funds under this Agreement shall comply with the provisions of ORS 543A.405(5). Additionally, if the total amount paid by the Company exceeds costs actually incurred by the agencies, the excess payment shall be refunded to the Company according to ORS 543A.405(5).

Costs paid by the Company under this Agreement are in addition to any other fee required by applicable law, including but not limited to the annual fee established under ORS 543.088. The Company's payment of costs under this Agreement does not create an obligation to pay the project-specific fee required under ORS 543.080 for agency oversight of measures included in the reauthorized water right, which fee shall be established in and payable under the reauthorized water right.

**V. Other Terms**

- A. Reservations: Nothing in this Agreement is intended or shall be construed to affect or limit the authority or obligation of any Party to fulfill its constitutional, statutory, and regulatory responsibilities or comply with any judicial decision. Nothing in this Agreement shall be interpreted to require any Party to implement any action which is not authorized by applicable law or where sufficient funds have not been appropriated for that purpose. The Parties expressly reserve all rights not granted, recognized, or relinquished in this Agreement.
- B. No Argument, Admission, or Precedent: This Agreement shall not be offered for or against a Party as argument, admission, or precedent regarding any issue of fact or law in any mediation, arbitration, litigation, or other administrative or legal proceeding, except that this Agreement may be used in any future proceeding to interpret or enforce the terms of this Agreement, consistent with applicable law. This Agreement may also be used by any Party in litigation by or against non-Parties to implement or defend this Agreement. This section shall survive any termination of this Agreement.
- C. Successors and Assigns: This Agreement shall apply to, be binding on, and inure to the benefit of the Parties and their successors and assigns, unless otherwise specified in this Agreement. No assignment may take effect without the express written approval of the other Parties, which approval will not be unreasonably withheld.
- D. Amendment: This Agreement may be amended in writing by all Parties still in existence, including any successors or assigns.
- E. Dispute Resolution: The Parties agree to devote such resources as are needed and as can be reasonably provided to resolve any disputes arising under this Agreement expeditiously. Each Party shall bear its own costs for its participation in dispute resolution. If a dispute cannot be timely resolved informally, the Parties may elect to use a neutral mediator. Mediation shall not occur if the

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Parties do not unanimously agree on use of a mediator, choice of mediator, and allocation of costs.

- F. Remedies: This Agreement does not create a cause of action in contract for monetary damages for any alleged breach by any Party of this Agreement. The Parties reserve all other existing remedies.
- G. Entire Agreement: This Agreement contains the complete and exclusive agreement among the Parties with respect to the subject matter thereof, and supersedes all prior discussions, negotiations, representations, warranties, commitments, offers, agreements in principle, and other writings among the Parties, with respect to its subject matter.
- H. Severability: This Agreement is made on the understanding that each provision is a necessary part of the entire Agreement. However, if any provision of this Agreement is held by a regulatory agency or a court of competent jurisdiction to be invalid, illegal, or unenforceable: (i) the validity, legality, and enforceability of the remaining provisions of this Agreement are not affected or impaired in any way; and (ii) the Parties shall negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be invalid, illegal, or unenforceable) that is valid, legal, and enforceable and carries out the Parties' intention to the greatest lawful extent under this Agreement.
- I. Confidentiality: Disclosure of settlement communications pertaining to this Agreement shall be governed by the "Agreement for Confidentiality of Settlement Communications and Negotiations Protocol Related to the Klamath Hydroelectric Project" dated December 3, 2008.
- J. Termination: This Agreement may be terminated at the sole discretion either of: (i) PacifiCorp, or (ii) WRD, DEQ, ODFW, and the HART collectively, in the event of termination of the Settlement.
- K. No Third Party Beneficiaries: This Agreement is not intended to and shall not confer any right or interest in the public, or any member thereof, or on any persons or entities that are not Parties hereto, as intended or expected third party beneficiaries hereof, and shall not authorize any non-Party to maintain a suit at law or equity based on a cause of action deriving from this Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties shall remain as imposed under applicable law.
- L. Elected Officials Not to Benefit: No Member of or Delegate to Congress, Resident Commissioner, or elected official shall personally benefit from this Agreement or from any benefit that may arise from it.
- M. No Partnership: Except as otherwise expressly set forth herein, nothing contained in this Agreement is intended or shall be construed to create an association, trust,

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partnership, or joint venture, or impose any trust or partnership duty, obligation, or liability on any Party, or create an agency relationship between or among the Parties or between any Party and any employee of any other Party.

N. Governing Law: This Agreement shall be governed by the laws of the State of Oregon. Any reference in this Agreement to any applicable law shall be deemed to be a reference to a statute or regulation, or successor, in existence as of the date of the action in question.

**VI. Signatures**

PacifiCorp

\_\_\_\_\_ Date: \_\_\_\_\_

by: \_\_\_\_\_

Oregon Water Resources Department

\_\_\_\_\_ Date: \_\_\_\_\_

by: \_\_\_\_\_

Oregon Department of Environmental Quality

\_\_\_\_\_ Date: \_\_\_\_\_

by: \_\_\_\_\_

Oregon Department of Fish and Wildlife

\_\_\_\_\_ Date: \_\_\_\_\_

by: \_\_\_\_\_

Approved As To Legal Sufficiency in Accordance With ORS 291.047

By: \_\_\_\_\_ Date: \_\_\_\_\_

Jesse D. Ratcliffe  
Assistant Attorney General  
Oregon Department of Justice

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Appendix 1  
Tasks and Cost Estimate

PacifiCorp Klamath Hydroelectric Project  
Oregon Water Resources Department

September 1, 2009 through September 1, 2012

PROJECT/NUMBER: Klamath HE 180, PC 34, PC 35, PC667Klamath/FERC #2082

OWRD PROJECT PERSONNEL: Cost reimbursement primarily for a Natural Resource Specialist 4 (NRS-4) Limited oversight supervision provided by a Division Administrator. Administrative support provided by an Office Specialist 2 position.

<b>Facility Engineer- FE-3</b>		
Salary	Includes salary for 20% of an NRS-4 for first year and 10% for second and third years at \$5985/mo	\$28,728.00
Benefits (at 34% of base salary)	Includes benefits for NRS-4 position at 34%	\$9,767.52
Services & Supplies	Includes training, facility rentals, telecommunications, printing & copying, and office supplies.	\$4,309.20
Travel	Includes hotel, meals, private vehicle mileage, and state motor pool rental vehicle fees	\$4,000.00
Subtotal	Sum of Salary, Benefits, Services, Supplies and Travel	\$46,804.72
Agency Indirect (at 15% of Subtotal)	Includes administrative support such as budget, personnel, accounting, and payroll services; data services; and management oversight.	\$7,020.71
Attorney General's Fees		\$15,036.00
	Subtotal plus Overhead	<b>\$68,861.43</b>



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**ODEQ Cost Estimate for Klamath Hydroelectric Project Activities: September 2009 - September 2012**

**1.1 Salaries**

Period	3	Years
--------	---	-------

**Total**

**1.2 NRS 4**

FTE Estimate:	0.125
---------------	-------

COMPONENT	Monthly (1.0 FTE)	Per Project
Salary	\$ 5,985	\$ 26,933
Benefits	\$ 2,644	\$ 11,899
Services & Supplies	\$ 1,162	\$ 5,230
Agency Indirect	\$ 1,674	\$ 7,533
Program Indirect (LQ only)	\$ -	\$ -
<b>Total</b>	\$ 11,466	\$ 51,595

**1.2 Principle Executive Manager E (Step 9)**

FTE Estimate:	0.025
---------------	-------

COMPONENT	Monthly (1.0 FTE)	Per Project
Salary	\$ 7,585	\$ 6,827
Benefits	\$ 3,351	\$ 3,016
Services & Supplies	\$ 1,473	\$ 1,326
Agency Indirect	\$ 2,122	\$ 1,909
Program Indirect (LQ only)	\$ -	\$ -
<b>Total</b>	\$ 14,531	\$ 13,078

**1.3 Office Specialist 2 (Step 9)**

FTE Estimate:	0.025
---------------	-------

COMPONENT	Monthly (1.0 FTE)	Per Project
Salary	\$ 3,018	\$ 2,716
Benefits	\$ 1,333	\$ 1,200
Services & Supplies	\$ 586	\$ 527
Agency Indirect	\$ 844	\$ 760
Program Indirect (LQ only)	\$ -	\$ -
<b>Total</b>	\$ 5,782	\$ 5,203

Subtotal SALARY: \$69,875.82

\$69,875.82

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**2.0 Travel**

Destination	Trips/Yr	Mileage & Per Diem	
PDX	1	\$300.75	\$902.25
Southern Oregon	1	\$274.13	\$822.38
Northern California	1	\$658.00	\$1,974.00
Subtotal TRAVEL:			\$3,698.63

3,698.63

**3.0 Attorney General**

DOJ Costs	Per Year	Per Project	
		10,000.00	
Subtotal DOJ:		\$10,000.00	\$10,000.00
Grand TOTAL:			83,574.44

Grand TOTAL:

83,574.44

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Lodging	Meals	Nights per trip	Mileage per Trip	Destination
87	44	1	350	Southern Oregon
116	49	1	225	Portland
114	59	2	500	Northern California (2 nights per)

Total Costs
\$300.75
\$274.13
\$658.00

=====  
Total: \$1,232.88

0.485	Mileage Rate
-------	--------------

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**Salary & Benefit Schedule**

Salaries	
NRS4 Step 9	\$5,985
PEME Step 9	\$7,585
OS2 Step 9	\$3,018
Indirect Costs	
Benefits	0.4418
S&S	0.1942
Agency Indirect	0.2797

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

Appendix 1  
Tasks and Cost Estimate

OREGON DEPARTMENT OF FISH AND WILDLIFE  
COST ESTIMATE

PROJECT/NUMBER: Klamath, FERC#2082

ODFW PROJECT PERSONNEL: Cost reimbursement for the following personnel costs: Engineer, Water Rights Coordinator, District Fish Biologist, consulting, and AG assistance. Personnel not included in cost reimbursement agreement: High Desert Region Hydropower Biologist, regional staff, and program leaders.

PERIOD OF AGREEMENT: September 1, 2009 through September 1, 2012

<b>Facility Engineer- FE-3</b>	
Salary	Includes salary for .5 months of a Facility Engineer \$3,294
Benefits (at 39.9% of base salary)	Includes benefits for FE-3 position \$1,315
Services & Supplies	Includes training, facility rentals, telecommunications, printing & copying, and office supplies. \$494
Travel	Includes hotel, meals, private vehicle mileage, and vehicle rental fees \$659
Subtotal	Sum of Salary, Benefits, Services, Supplies and Travel \$5,762
Agency Indirect (at 22.74% of Subtotal)	Includes administrative support such as budget, personnel, accounting, and payroll services; data services; and management oversight. 1,310
<b>Facility Engineer- FE-3 Total</b>	Subtotal plus indirect <b>\$7,072</b>
<b>Water Rights Coordinator</b>	
Salary	Includes salary for .5 months of a WR Coordinator \$3,139
Benefits (at 40.84% of base salary)	Includes benefits for FE-3 position \$1,282
Services & Supplies	Includes training, facility rentals, telecommunications, printing & copying, and office supplies. \$471
Travel	Includes hotel, meals, private vehicle mileage, and vehicle rental fees \$628
Subtotal	Sum of Salary, Benefits, Services, Supplies and Travel \$5,520
Agency Indirect(at 22.74% of Subtotal)	Includes administrative support such as budget, personnel, accounting, and payroll services; data services; and management oversight. 1,255
<b>Water Rights Coordinator- Total</b>	Subtotal plus indirect <b>\$6,775</b>

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<b>District Fish Biologist</b>		
Salary	Includes salary for 1.5 months of a NRS 3 District Biologist or assistant position	\$8,936
Benefits (at 41.91% of base salary)	Includes benefits for position	\$3,745
Services & Supplies	Includes training, facility rentals, telecommunications, printing & copying, and office supplies.	\$1,340
Travel	Includes hotel, meals, private vehicle mileage, and vehicle rental fees	\$1,787
Subtotal	Sum of Salary, Benefits, Services, Supplies and Travel	\$15,809
Agency Indirect(at 22.74% of Subtotal)	Includes administrative support such as budget, personnel, accounting, and payroll services; data services; and management oversight.	\$3,595
<b>District Fish Biologist Total</b>	Subtotal plus indirect	<b>\$19,403</b>
<b>Consulting Costs</b>	Attorney General legal assistance regarding federal studies, NEPA, water rights, and HART reauthorization (1/3 of \$30,000)	\$10,000
	Private Consulting to review Study Results	\$15,000
<b>Consulting Costs Subtotal</b>		<b>\$25,000</b>
Agency Indirect (at 22.74% of Subtotal)		\$5,685
<b>Consulting Costs Total</b>		<b>\$30,685</b>
<b>Total Agency Specific Cost</b>		<b>\$63,935</b>

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**EXHIBIT 2**  
**Sequence of Performance Chart—KHSA**

<b>Action</b>	<b>Actor</b>	<b>Target Date</b>	<b>Section Reference</b>
Enactment of Oregon Legislation (SB 76)	Oregon Legislature and Governor	Passed and signed.	2.3
Release of Public Review Draft	All Parties	September 30, 2009	N/A
Execution of Settlement	All Parties	February 18, 2010	8.2
Execution of Water Right Agreement between PacifiCorp and State of Oregon	PacifiCorp and OWRD	February 18, 2010	2.4.1
PacifiCorp implement ICP Interim Measures 2-6	PacifiCorp	Ongoing or upon Effective Date	Appendix C
PacifiCorp implement Non-ICP Measures 7 (funding), 9, 11 (studies), 13, 17, 21	PacifiCorp	Upon Effective Date	Appendix D
Parties designate representative for IMIC	Each party or category of parties	Within 30 days of Effective Date of Settlement	Appendix B Section 3.3
Parties, except ODEQ, request to the California SWRCB and the ODEQ that permitting and environmental review for PacifiCorp's licensing activities be held in abeyance during the Interim Period	All Parties except ODEQ	Within 30 days of the Effective Date	6.5
PacifiCorp applies for leases authorizing occupancy of submerged and submersible lands by the J.C. Boyle Dam, J.C. Boyle Powerhouse, and Keno Dam	PacifiCorp	Within 60 days of Effective Date of Settlement	2.5
PacifiCorp and the Secretary enter into contract to permit entry onto PacifiCorp lands	PacifiCorp and Interior	Within 3 months of Effective Date of Settlement	3.3.3

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<b>Action</b>	<b>Actor</b>	<b>Target Date</b>	<b>Section Reference</b>
PacifiCorp convene IMIC	PacifiCorp	Within 3 months of Effective Date	Appendix B 4.1
PacifiCorp implement Non-ICP Interim Measures 7 (impl.), 8 (planning)	PacifiCorp	Within 90 days of Effective Date	Appendix D
PacifiCorp files Economic Analysis and requests the Oregon PUC to establish customer surcharges	PacifiCorp	Within 30 days of Effective Date	4.1.1.A, 7.3.9
PacifiCorp files Economic Analysis and requests the California PUC to establish customer surcharge	PacifiCorp	Within 30 days of Effective Date	4.1.1.B, 7.3.9
Parties except ODEQ request California SWRCB and ODEQ to hold permitting and environmental review in abeyance during Interim Period	Parties except ODEQ	Within 30 days of Effective Date	6.5
Enactment of Federal legislation	United States Congress	Legislation to be proposed within 90 days of Effective Date	2.1.1.A
Enactment of California Bond Measure	California Legislature and Voters	Passed in November 2009, to be voted on before March 31, 2012	4.1.2.A
Enactment of California CEQA Legislation	California Legislature; Governor	At the beginning of the next legislative session	2.1.1.C
States submit draft trustee instructions to PUCs	States in consultation with Federal Parties	Within 6 months of Effective Date	4.2.4.A
PacifiCorp implement Non-ICP Interim Measure 19 (study)	PacifiCorp	Within 6 months of Effective Date	Appendix D
PacifiCorp and IMIC develop protocol regarding KBRA flows	PacifiCorp and IMIC	Within 9 months of Effective Date	Appendix D Interim Measure 14



## PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED

Action	Actor	Target Date	Section Reference
PacifiCorp implement Non-ICP Interim Measure 14	PacifiCorp	Upon OWRD approval	Appendix D
PacifiCorp submit TMDL Implementation Plans	PacifiCorp	Within 60 days of TMDL approval	6.3.2.A
PacifiCorp implement Non-ICP Interim Measure 18	PacifiCorp	Beginning in 2010	Appendix D
PacifiCorp implement Non-ICP Interim Measure 12	PacifiCorp	Before Sept.1, 2010	Appendix D
PacifiCorp implement Non-ICP Interim Measure 10	PacifiCorp	Within 1 year of Effective Date	Appendix D
PacifiCorp implement Non-ICP Interim Measure 15	PacifiCorp	Beginning Feb.1, 2010	Appendix D
PacifiCorp files Application for Partial Surrender of license to decommission East Side/West Side facilities	PacifiCorp	Within 6 months of enactment of federal legislation	6.4.1.A
Identify proposed transfer of Parcel B Lands	PacifiCorp and States	Before January 31, 2012	7.6.4.B
Identification of non-federal DRE, if applicable	Secretary of the Interior	Prior to issuance of the Secretarial Determination and DRE designation	3.3.4.E
California and Oregon Concurrence with non-federal DRE-designate, if any	California and Oregon	Prior to Secretarial Determination	3.3.5.A.iii
Secretarial Determination and DRE designation	Secretary of the Interior	March 31, 2012	3.2.5.A and 3.3.5.A
Release of Detailed Plan	Secretary of the Interior	On or before March 31, 2012	3.3.2
Oregon Concurrence with Affirmative Determination	State of Oregon	Within 60 days of publication of an Affirmative Determination in the Federal Register	3.3.5.A

## PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED

Action	Actor	Target Date	Section Reference
California Concurrence with Affirmative Determination	State of California	Within 60 days of publication of an Affirmative Determination in the Federal Register	3.3.5.A
States submit draft revised trustee instructions to PUCs	States in consultation with Federal Parties and DRE	Within 3 months of States' Concurrence on Affirmative Determination	4.2.4.B
PacifiCorp implement Non-ICP Interim Measure 8, 11	PacifiCorp	Upon Affirmative Determination	Appendix D
PacifiCorp implement Non-ICP Interim Measure 19	PacifiCorp	Within 6 months of Affirmative Determination	Appendix D
Parties Meet and Confer to establish schedule to implement Affirmative Determination and Detailed Plan and identify Value to Customers necessary to implement schedule	All Parties	Within 90 days of Affirmative Determination	7.3.4
DRE becomes Party to Settlement	DRE	Within 30 days of Notice from both States of their respective Concurrence with an Affirmative Determination	7.1.3
DRE and PacifiCorp enter into contract and permit of entry	DRE and PacifiCorp	After designation of a DRE	Legislation
DRE releases Definite Plan	DRE	Prior to applying for permits and authorizations for Facilities removal	7.2
Parties review the Definite Plan	All Parties	Within 60 days after the DRE provides Notice to the Parties of the completion of the Definite Plan	7.2.1.B and 2.1.4.C

## PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED

Action	Actor	Target Date	Section Reference
DRE provides Notice to Parties and FERC that Facilities Removal is ready to commence	DRE		7.4.1
PacifiCorp conveys Parcel B Lands	PacifiCorp	After DRE Notice that Facilities Removal is ready to commence	7.6.4.D
FERC issues Order approving transfer of the Iron Gate hatchery from PacifiCorp to CDFG	FERC	Within 60 days of transfer of Iron Gate Dam to DRE	Legislation
FERC resumes timely consideration of pending FERC licensing application for Fall Creek Development	FERC	Within 60 days of transfer of the Iron Gate Hatchery from PacifiCorp to CDFG	Legislation
PacifiCorp transfers title in the Facilities to the DRE	PacifiCorp	Per facility, upon receipt of DRE Notice that all permits and approvals have been obtained	7.4.2
Complete AIP for Keno transfer; complete Keno transfer agreement	Interior and PacifiCorp	June 11, 2011; March 31, 2012	7.5.2
PacifiCorp transfer Keno Development to the United States	PacifiCorp	At the time of transfer of J.C. Boyle	7.5.2
Commencement of Decommissioning	PacifiCorp	January 1, 2020	7.3.1
Completion of Facilities Removal	DRE	December 31, 2020	7.3.1
PacifiCorp assigns its hydroelectric water rights to OWRD for conversion to an instream water right	PacifiCorp	Per Exhibit 1	7.6.5.A
PacifiCorp submits a Revocation Request to California SWRCB and notification of intent to abandon its water rights	PacifiCorp	Within 90 days of completion of Facilities Removal at Copco No. 1, Copco No. 2 and Iron Gate Facilities	7.6.5.B
PacifiCorp implement Non-ICP Interim Measure 20	PacifiCorp	After removal of Iron Gate	Appendix D
PacifiCorp ceases hatchery funding	PacifiCorp	8 years following Decommissioning of Iron Gate Dam	7.6.6.A

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

<b>Action</b>	<b>Actor</b>	<b>Target Date</b>	<b>Section Reference</b>
PacifiCorp, KWAPA, and UKWUA enter into Billing Services Offset Agreement(s)	PacifiCorp, KWAPA, and UKWUA	Timely	5.2
Notify PacifiCorp of desire to commence billing credits	KWAPA / UKWUA	120 days before desired commencement	5.2.4
Provide PacifiCorp with names and other pertinent information re eligible customers	KWAPA / UKWUA	90 days before commencement of bill crediting system	5.2.4
File for any necessary regulatory approval of tariffs implementing bill crediting	PacifiCorp	Within 30 days of receiving names and eligible customers and other pertinent information	5.2.6
Enter agreements and provide notification re federal power	Interior, KWAPA, PacifiCorp	Timely	5.3

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**EXHIBIT 3**  
**Maps**

# PacifiCorp Klamath River Hydroelectric Project Lands Disposition Project Overview

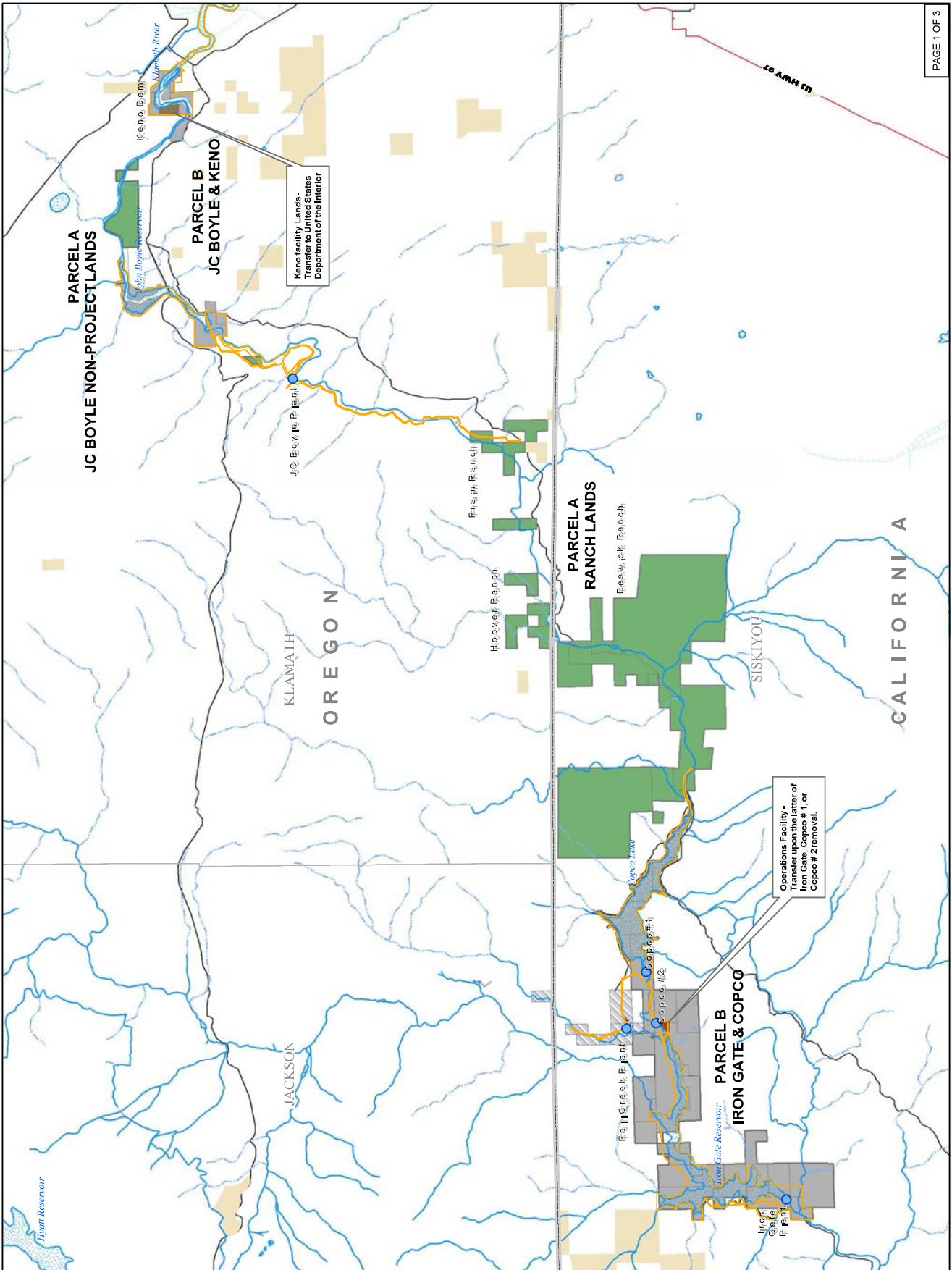
**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

- Klamath River Hydroelectric Project**
- Project Parcels**
- Powerful lands
  - Excluded - Fall Creek Flot
  - Operations Facility
  - Kendallville Lands
- State Lands**
- Administrative Boundaries
  - State
  - County
  - FERC Boundary
- Generation Facilities**
- Generation Type
  - Hydro
  - Major Roads
  - PRIMARY INTERSTATE HWY
  - PRIMARY U.S. & STATE HWY
  - SECONDARY CONNECTING STATE ACCOUNT
- Aquatic Features**
- INTERMITTENT CANAL, DITCH, AQUADUCT
  - PERENNIAL CANAL, DITCH, AQUADUCT
  - INTERMITTENT WATER FEATURE, STREAM, RIVER, WASH
  - PERENNIAL WATER FEATURE, STREAM, RIVER, WASH
  - Regional Lakes



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omissions. The source organization should be contacted for  
validation. The source organization should be contacted for  
source documents consulted to verify the findings of this  
product.



Keno facility Lands -  
Transfer to United States  
Department of the Interior

Operations Facility -  
Transfer upon the later of  
Iron Gate, Copco # 1, or  
Copco # 2 removal.

# PacifiCorp Klamath River Hydroelectric Project Lands Disposition

Parcel B

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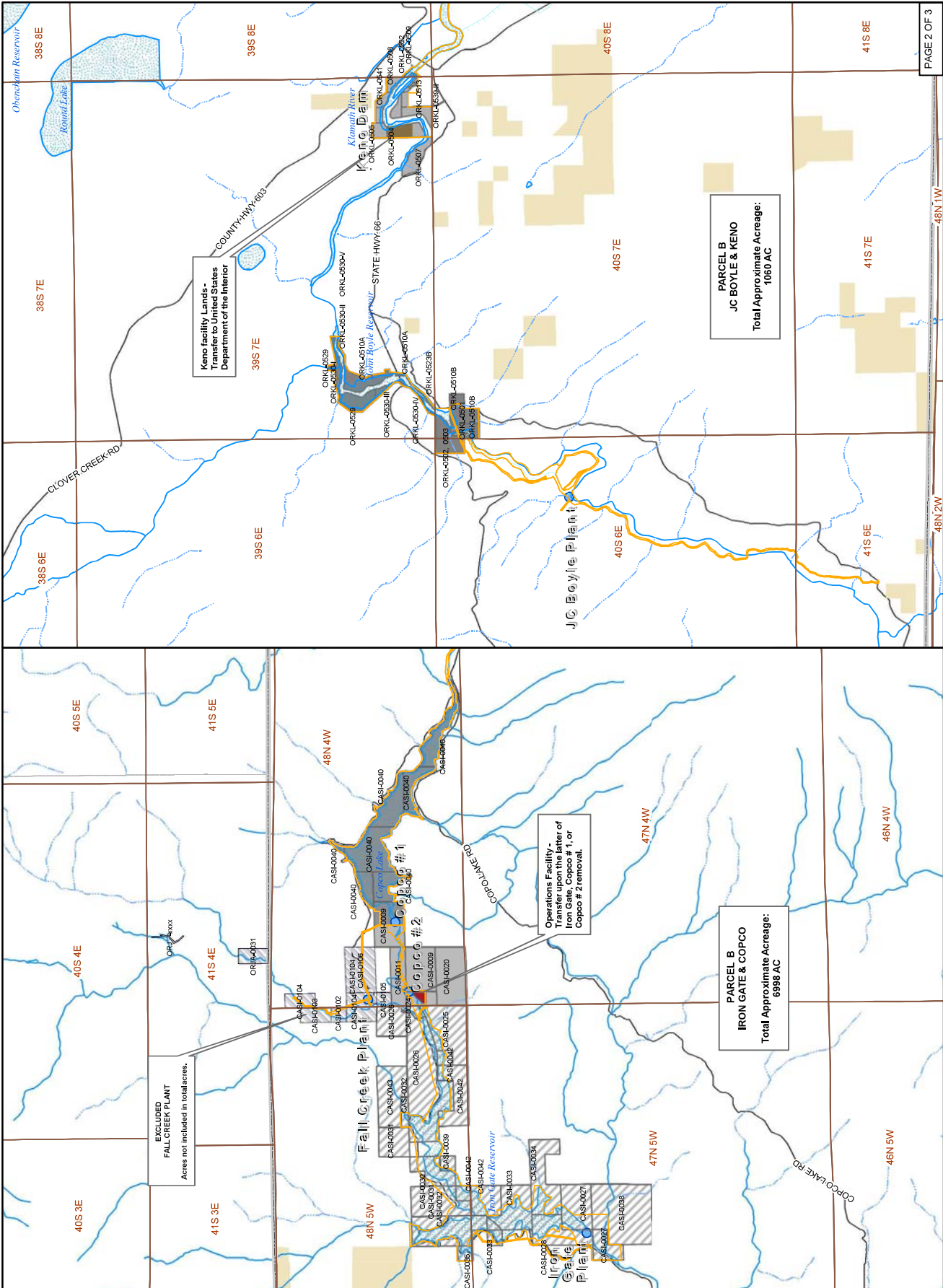
- Legend**
- Project Parcels**
    - Excluded - Fall Creek Plant
  - Parcel B Lands**
    - Iron Gate
    - Copco # 1
    - Copco # 2
    - Operations Facility
    - JC Boyle
    - Keno
    - Keno Facility Lands
  - State Lands**
    - PLS
    - Township/Range
    - Administrative Boundaries
    - State
    - County
  - Aquatic Features**
    - INTERMITTENT CANAL, DITCH, AQUADUCT
    - INTERMITTENT STREAM, RIVER, WASH
    - PERENNIAL CANAL, DITCH, AQUADUCT
    - PERENNIAL STREAM, RIVER, WASH
    - Regional Lakes
  - Generation Facilities**
    - Hydro
  - Generation Type**
    - Major Roads
    - PRIMARY, INTERSTATE HWY
    - PRIMARY, U.S. & STATE HWY
    - SECONDARY, CONNECTING STATE & LOCAL HWY



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Data Map Cont'd  
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# PacifiCorp Klamath River Hydroelectric Project Lands Disposition

Parcel A

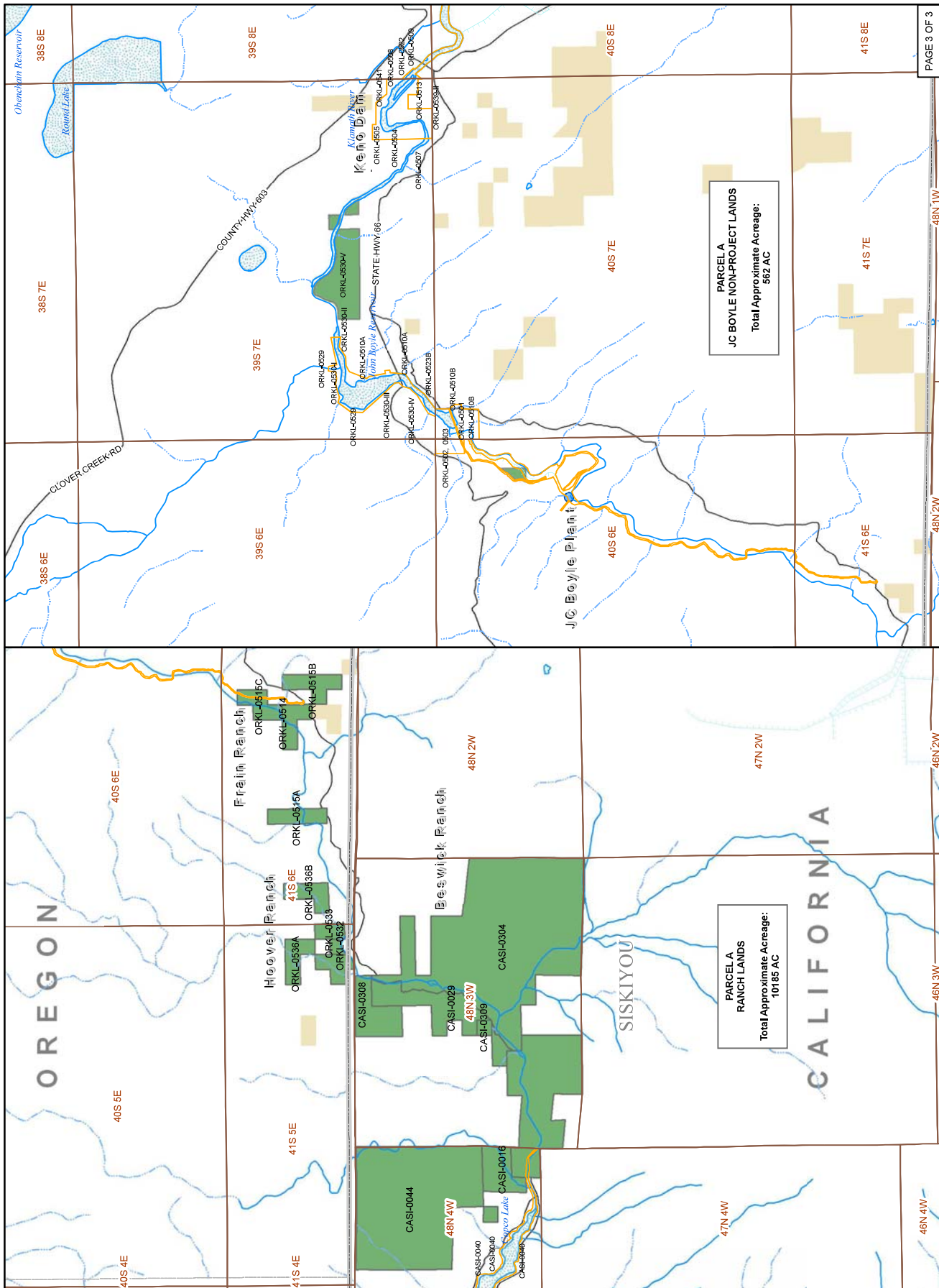
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- Legend**
- Group**
    - Klamath River Properties
    - Parcel A Lands
    - State Lands
  - PLS**
    - PLS
  - Administrative Boundaries**
    - Township/Range
    - State
    - County
    - FERC Boundary
  - Aquatic Features**
    - INTERMITTENT CANAL, DITCH, AQUADUCT
    - INTERMITTENT STREAM, RIVER, WASH
    - PERENNIAL CANAL, DITCH, AQUADUCT
    - PERENNIAL STREAM, RIVER, WASH
    - Regional Lakes
  - Generation Facilities**
    - Hydro
  - Major Roads**
    - PRIMARY INTERSTATE HWY
    - PRIMARY U.S. & STATE HWY
    - SECONDARY, CONNECTING, STATE ROUTE HWY





# PacifiCorp Klamath River Hydroelectric Project Lands Disposition

Parcel B  
Project Overview  
PacifiCorp Parcels

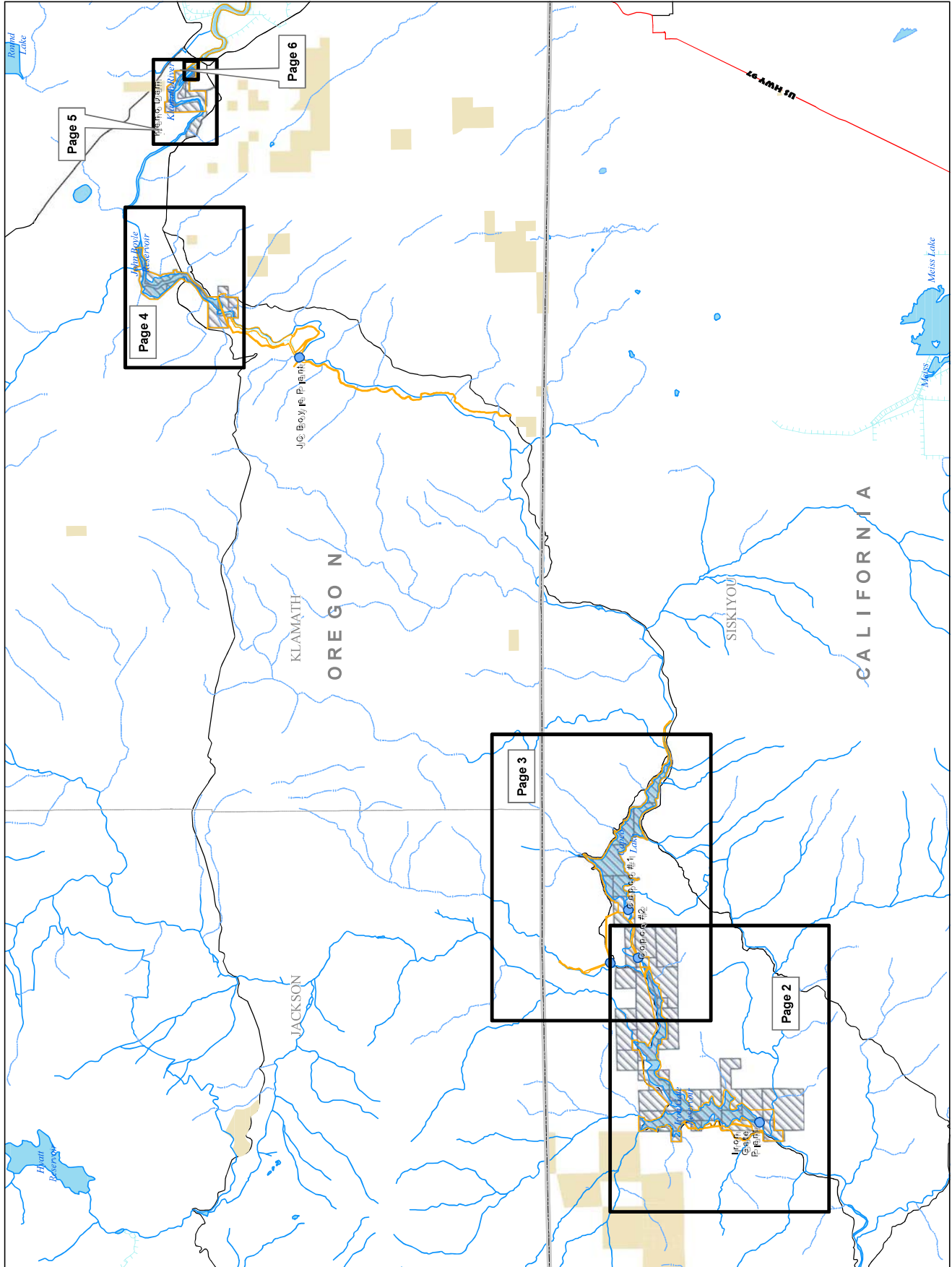
PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED

- Parcel B Lands
- State Lands
- Administrative Boundaries
  - State
  - County
- FERC Boundary
- Generation Facilities
- Generation Type
  - Hydro
- Major Roads
  - PRIMARY INTERSTATE HWY
  - PRIMARY, U.S. & STATE HWY
  - SECONDARY, CONNECTING STATE COUNTIES
- Aquatic Features
  - INTERMITTENT CANAL, DITCH, AQUADUCT
  - INTERMITTENT WATER FEATURE, STREAM, RIVER, WASH
  - PERENNIAL CANAL, DITCH, AQUADUCT
  - PERENNIAL WATER FEATURE, STREAM, RIVER, WASH
  - Regional Lakes



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# PacifiCorp Klamath River Hydroelectric Project Lands Disposition

Parcel B  
Project Overview  
PacifiCorp Parcels

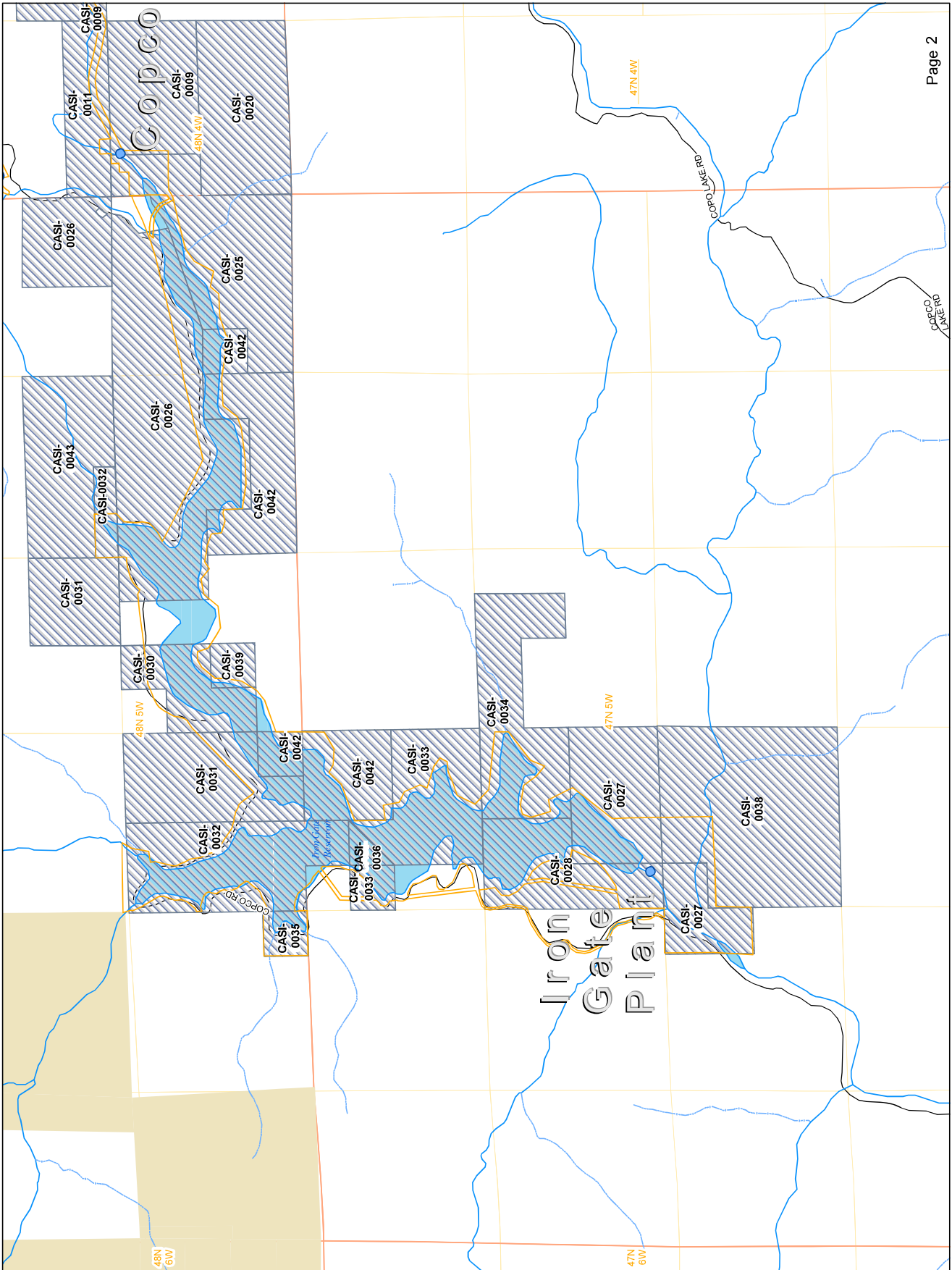
**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

- Parcel B Lands
- State Lands
- Administrative Boundaries
  - State
  - County
  - FERC Boundary
- Generation Facilities
  - Hydro
- Major Roads
  - PRIMARY, INTERSTATE HWY
  - PRIMARY, U.S. & STATE HWY
  - SECONDARY, CONNECTING, STATE COUNTY
- Aquatic Features
  - INTERMITTENT CANAL, DITCH, AQUADUCT
  - INTERMITTENT WATER FEATURE, STREAM, RIVER, WASH
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  - PERENNIAL WATER FEATURE, STREAM, RIVER, WASH
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# PacifiCorp Klamath River Hydroelectric Project Lands Disposition

Parcel B  
Project Overview  
PacifiCorp Parcels

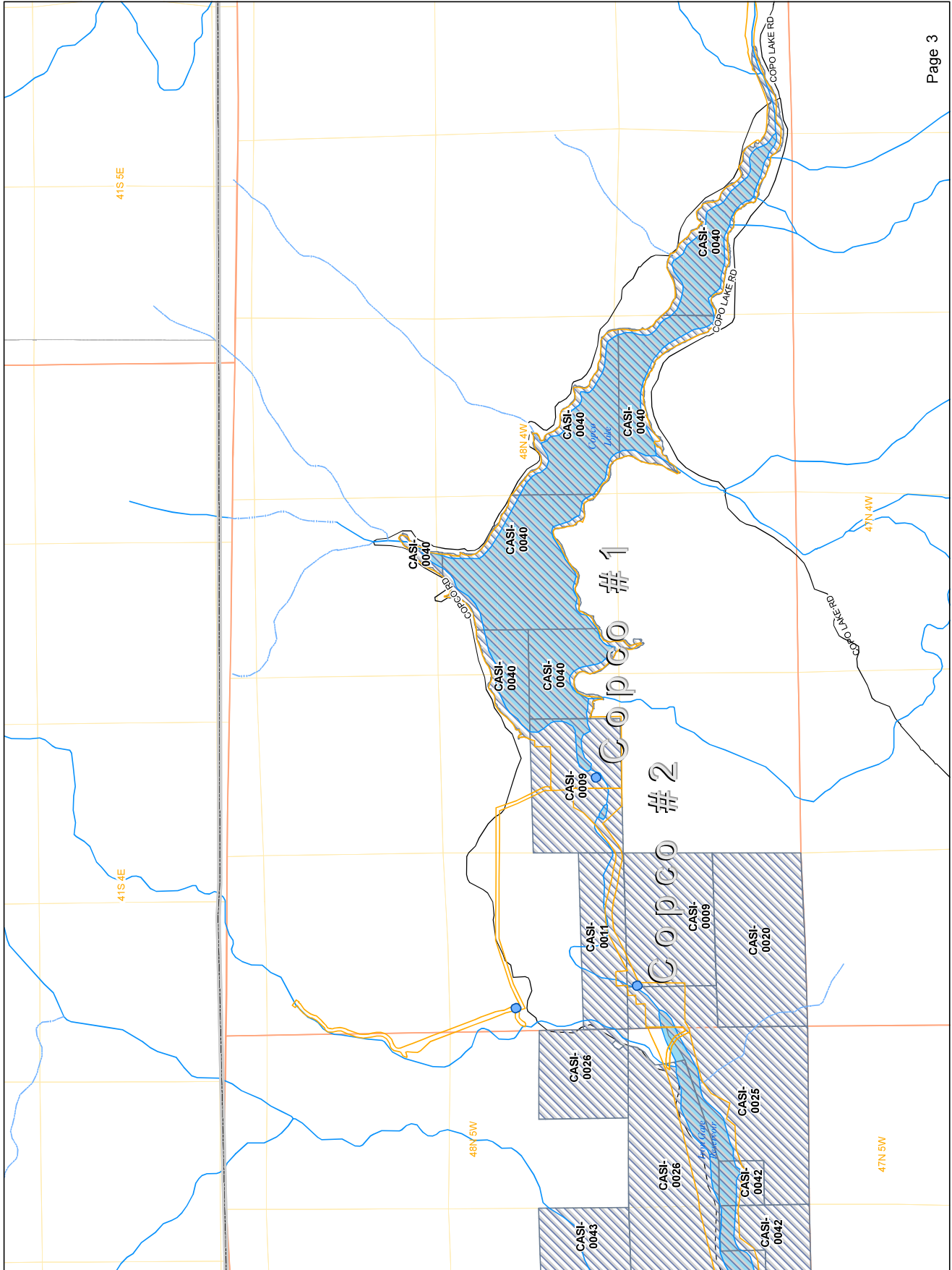
**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

- Parcel B Lands
- State Lands
- Administrative Boundaries
  - State
  - County
- Generation Facilities
  - FERC Boundary
  - Generation Type
    - Hydro
- Major Roads
  - PRIMARY, INTERSTATE HWY
  - PRIMARY, U.S. & STATE HWY
  - SECONDARY, CONNECTING, STATE COUNTY
- Aquatic Features
  - INTERMITTENT CANAL, DITCH, AQUADUCT
  - INTERMITTENT WATER FEATURE, STREAM, RIVER, WASH
  - PERENNIAL CANAL, DITCH, AQUADUCT
  - PERENNIAL WATER FEATURE, STREAM, RIVER, WASH
  - Regional Lakes



Data Mosaic  
Geographic Information Systems  
Geographic Information Systems  
Geographic Information Systems

Data are projected in UTM Zone 10, NAD83, meters.  
PacifiCorp GIS files include information derived from government and private sources. PacifiCorp makes no warranty as to the accuracy, reliability, or completeness of these data and does not accept any liability for any errors or omissions. While every effort is made to ensure the accuracy of these data, the source organization should be contacted for source documents consulted to verify the findings of this product.

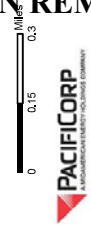


# PacifiCorp Klamath River Hydroelectric Project Lands Disposition

Parcel B  
Project Overview  
PacifiCorp Parcels

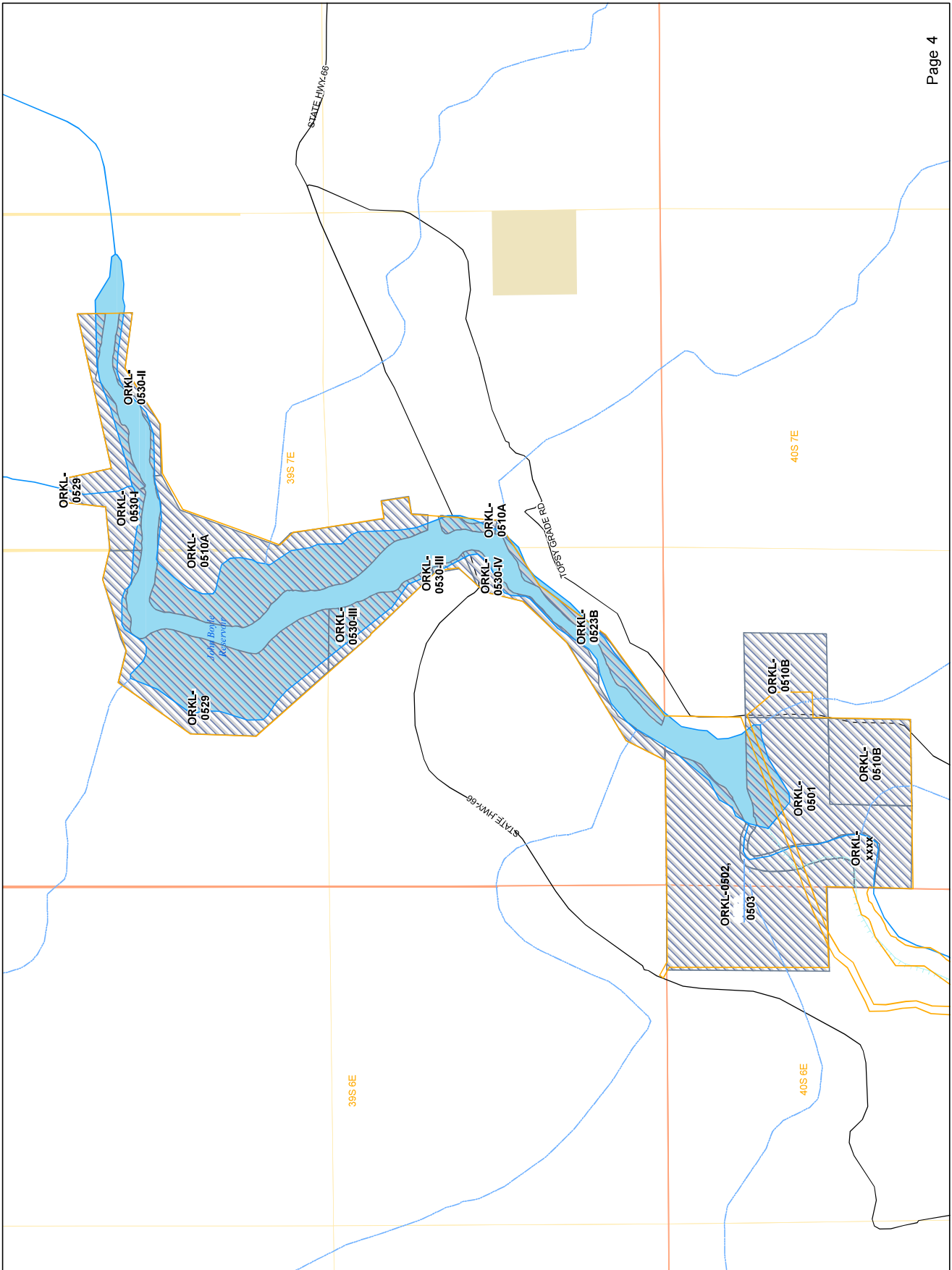
PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED

- Parcel B Lands
- State Lands
- Administrative Boundaries
  - State
  - County
  - FERC Boundary
- Generation Facilities
  - Generation Type
  - Hydro
- Major Roads
  - PRIMARY, INTERSTATE HWY
  - PRIMARY, U.S. & STATE HWY
  - SECONDARY, CONNECTING STATE COUNTIES
- Aquatic Features
  - INTERMITTENT CANAL, DITCH, AQUADUCT
  - INTERMITTENT WATER FEATURE, STREAM, RIVER, WASH
  - PERENNIAL CANAL, DITCH, AQUADUCT
  - PERENNIAL WATER FEATURE, STREAM, RIVER, WASH
  - Regional Lakes



Data Management  
Geographic Information Systems  
PACIFIC CORP  
A PACIFICORP ENERGY COMPANY

Data are projected in UTM Zone 10, NAD83, meters.  
PacifiCorp GIS files include the results of government and private sector data. PacifiCorp makes no warranty as to the accuracy, reliability, or completeness of these data for any purpose other than the specific use intended. While every effort is made to ensure the accuracy of the data, the source organization should be contacted for source documents consulted to verify the findings of this product.



# Keno Dam

PacifiCorp  
Klamath River  
Hydroelectric Project  
Lands Disposition

Parcel B  
Project Overview  
PacifiCorp Parcels

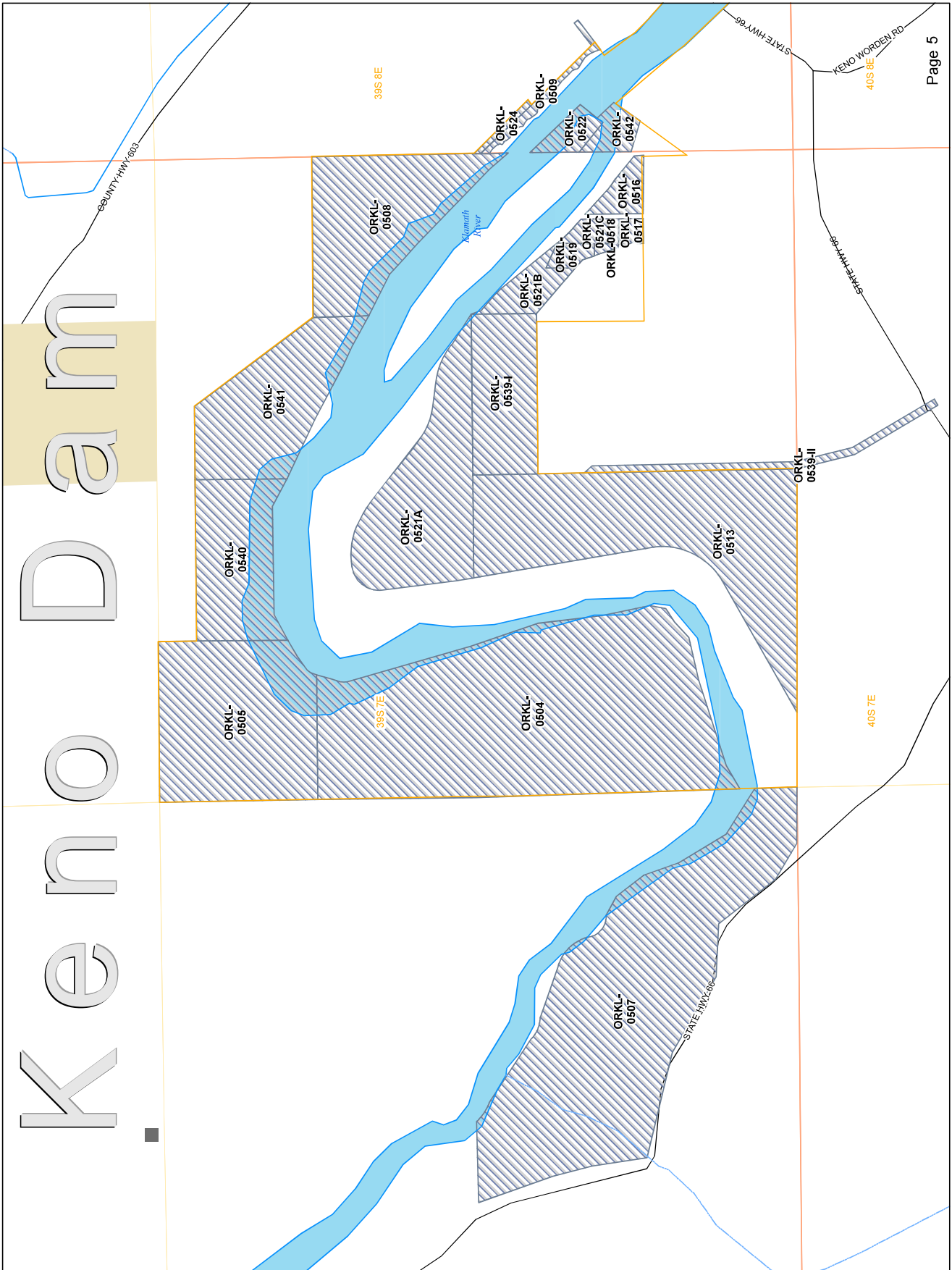
PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED

- Parcel B Lands
- State Lands
- Administrative Boundaries
  - State
  - County
- FERC Boundary
- Generation Type
  - Hydro
- Major Roads
  - PRIMARY INTERSTATE HWY
  - PRIMARY, U.S. & STATE HWY
  - SECONDARY, CONNECTING STATE COUNTY
- Aquatic Features
  - INTERMITTENT CANAL, DITCH, AQUADUCT
  - INTERMITTENT WATER FEATURE, STREAM, RIVER, WASH
  - PERENNIAL CANAL, DITCH, AQUADUCT
  - PERENNIAL WATER FEATURE, STREAM, RIVER, WASH
  - Regional Lakes



Data Management  
Geographic Information Systems

Data are projected in UTM Zone 10, NAD83, meters.  
PacifiCorp GIS files include the National Hydrography Dataset, National Wetlands Inventory, and other data provided by the U.S. Army Corps of Engineers, U.S. Geological Survey, and other agencies. PacifiCorp makes no warranty as to the accuracy, reliability, or completeness of these data and does not accept any liability for any errors or omissions. For more information on the data sources and their use, please refer to the source documents. The source organization should be contacted for any questions or to verify the findings of this product.



# PacifiCorp Klamath River Hydroelectric Project Lands Disposition

Parcel B  
Project Overview  
PacifiCorp Parcels

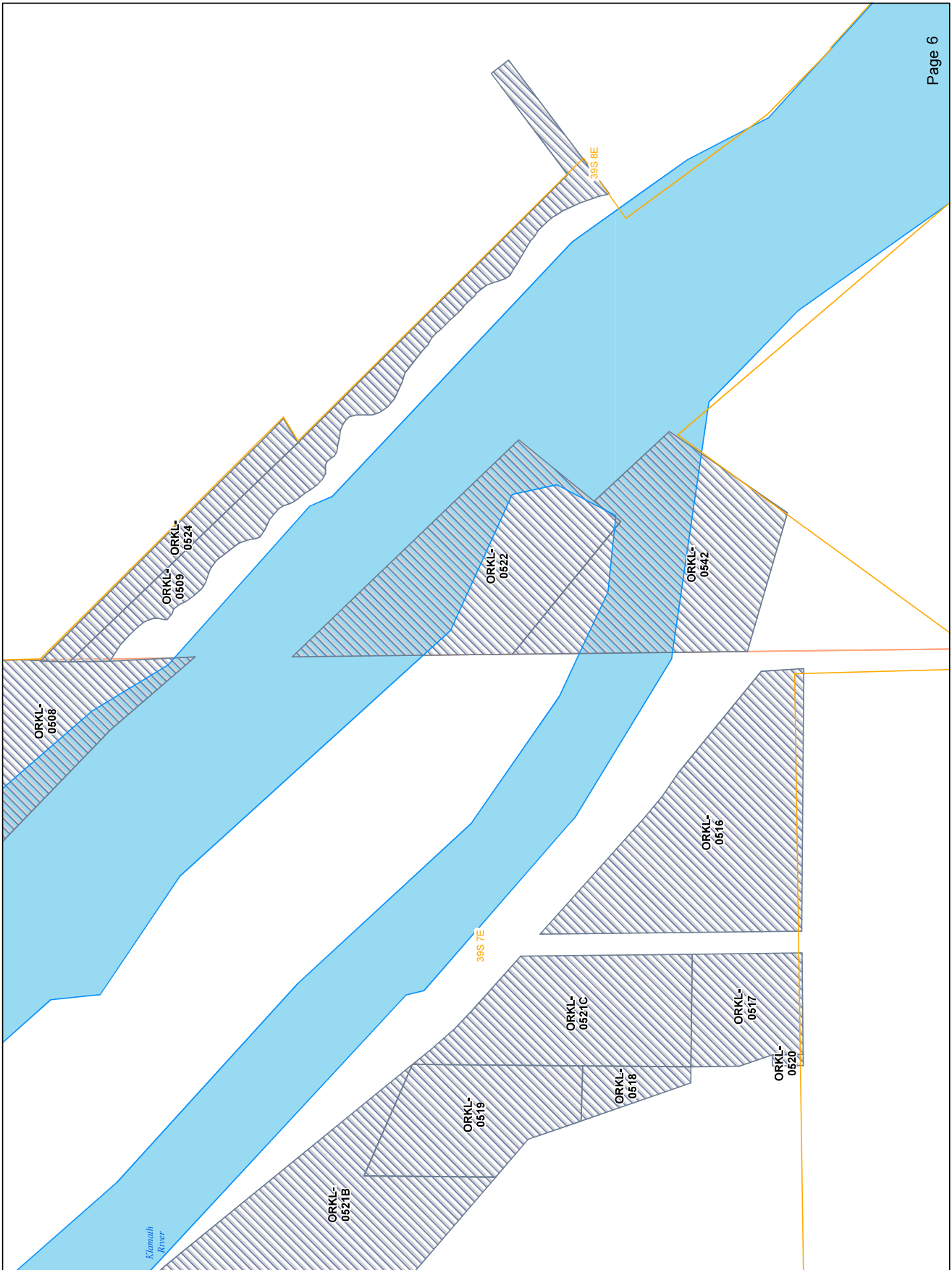
PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED

- Parcel B Lands
- State Lands
- Administrative Boundaries
  - State
  - County
  - FERC Boundary
- Generation Facilities
- Generation Type
  - Hydro
- Major Roads
  - PRIMARY, INTERSTATE HWY
  - PRIMARY, U.S. & STATE HWY
  - SECONDARY, CONNECTING, STATE COUNTY
- Aquatic Features
  - INTERMITTENT CANAL, DITCH, AQUADUCT
  - INTERMITTENT WATER FEATURE, STREAM, RIVER, WASH
  - PERENNIAL CANAL, DITCH, AQUADUCT
  - PERENNIAL WATER FEATURE, STREAM, RIVER, WASH
  - Regional Lakes



Data Management  
Geographic Information Systems  
gis@pacifi.com

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**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**LEGAL DESCRIPTIONS OF PACIFICORP PARCEL B PROPERTIES**

**OREGON PARCELS**

ORKL-0501

Lots five (5), six (6) and eight (8) of Section Six (6) in Township forty (40) South, range seven (7) east of the Willamette Meridian, containing eighty-five and 96/100 (85.96) acres;

ORKL-0502 and 0503

Lot one (1) and the southeast quarter of the northeast quarter of section one (1) in township forty (40) south, range six (6); and lots one (1), two (2), three (3) and four (4) of section six (6) in township forty (40) south, range seven (7) east of Willamette Meridian; excepting and reserving that certain railroad right of way heretofore sold to the Southern Pacific Railway Company, and fully set out and described in that certain deed dated September 27, 1909, recorded on October 4, 1909, at page 404 of volume 26 of the deed records of Klamath County, Oregon;

Also, all of the right, title and interest of the party of the first part in and to that certain instrument dated March 22, 1920, from Leon W. Anderson and Nellie L. Anderson, husband and wife, of Klamath County, State of Oregon, to Mercantile Trust Company, of San Francisco, California, which said document was recorded on April 17, 1920, in the office of the County Clerk of said Klamath County in Volume 52 of Deeds, page 327.

ORKL-0504

Lots One (1), Two (2) and Three (3) of Section Thirty-six (36), Township Thirty-nine (39) South, Range Seven (7) East, Willamette Meridian;

ORKL-0505

**Government Lot 4 in Section 36, Township 39 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon.**

ORKL-0507

**The SE1/4 SW1/4 and the SW1/4 SE1/4 and Government Lots 3, 4 and 5 in Section 35, Township 39 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon; EXCEPTING THEREFROM that portion thereof described as Parcel 3 in that certain Warranty Deed from the California Oregon Power Company, a corporation, to Weyerhaeuser Timber Company, a corporation, recorded July 15, 1959 in Deed Volume 314, page 179, Deed Records of Klamath County, Oregon.**

ORKL-0508

**Government Lot 7 in Section 36, Township 39 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon.**



**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

(road easement granted to Klamath County, 1-26-68)

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

ORKL-0509

The following described land being in Section 31, Township 39 South, Range 8 East, Willamette Meridian, Klamath County, Oregon.

Beginning at a point on the section line which bears South 111.4 feet from the quarter corner on the West boundary of Section 31, Township 39 South, Range 8 East, Willamette Meridian, Klamath County, Oregon; thence South 44°01' East 1316.7 feet to a point on the Northerly boundary line of Riverside Addition to the Town of Keno, Oregon; thence South 53°30 West 78.5 feet more or less, along the Northerly boundary of said Riverside Addition to the low water line on the North bank of the Klamath River; thence Northwesterly along the low water line of the North bank of the Klamath River down stream to a point on the West boundary line of said Section 31; thence 82.0 feet, more or less, North along said Section line to the point of beginning.

Together with a strip of land 40 feet wide extending along the Westerly line of Riverside Addition to Keno, Oregon, from the Northerly line of Broyles Avenue to the Northerly line of the above described premises.

## PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED

ORKL-0510-A

Lot Eight (8), and Southwest quarter ( $SW\frac{1}{4}$ ) of section Twenty-nine (29), Township Thirty-nine (39) South, Range Seven (7) East of Willamette Meridian.

Lots Five (5) and Six (6) of section Thirty (30) Township Thirty-nine (39) South, Range Seven East of Willamette Meridian.

Lot Six (6) of section Thirty-one (31) Township Thirty-nine (39) South, Range Seven (7) East of Willamette Meridian.

Lots One (1) and Two (2), and Northeast quarter of Northwest quarter ( $NE\frac{1}{4}NW\frac{1}{4}$ ), and North half of Northwest quarter ( $N\frac{1}{2}NE\frac{1}{4}$ ) section Thirty-two (32) in Township Thirty-nine (39) South, Range Seven (7) East of Willamette Meridian, also the following described parcels of land, to-wit:

(1) Commencing at a point Twenty (20) chains South of the corner of sections 28, 29, 32 and 33 marked by a stake marked  $\frac{1}{2}$ ; thence West 45 links; thence South 34 degrees 65 minutes West 12.12 chains; thence South 56 degrees 30 minutes East 8.75 chains intersecting the North and south section line between sections 32, and 33; thence North 14.78 chains to point of beginning, containing 5.44 acres more or less.

(2) Beginning at a point twenty (20) chains South and Forty-five (45) links West of the corner of sections 28, 29, 32 and 33, thence West 19.55 chains to the Northwest corner of the Southeast quarter of Northeast quarter of section 32; thence South seven (7) chains; thence East parallel to the North line of said Southeast

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

quarter of Northeast quarter of section 32, 14.81 chains; thence North 34, degrees 5, minutes East 8.45 chains to the place of beginning; all of said two parcels of land being in Section 32, Township Thirty nine (39) South, Range Seven (7) East of Willamette Meridian.

Northwest quarter of Northwest quarter ( $NW\frac{1}{4}NW\frac{1}{4}$ ) and South half of Northwest quarter ( $S\frac{1}{2}NW\frac{1}{4}$ ) and North half of Southwest quarter ( $N\frac{1}{2}SW\frac{1}{4}$ ) of section Thirty-three (33) in Township Thirty-nine (39) South, Range Seven (7) East of Willamette Meridian.

Southwest quarter of Northeast quarter ( $SW\frac{1}{4}NE\frac{1}{4}$ ), West half of Southeast quarter ( $W\frac{1}{2}SE\frac{1}{4}$ ), East half of Southwest quarter ( $E\frac{1}{2}SW\frac{1}{4}$ ), and Southwest quarter of Southwest quarter ( $SW\frac{1}{4}SW\frac{1}{4}$ ) of section 6, in Township Forty (40) South, Range Seven (7) East Willamette Meridian,

Lots Three (3) and Four (4), Southeast quarter of Southwest quarter ( $SE\frac{1}{4}SW\frac{1}{4}$ ), and Southwest quarter of Southeast quarter ( $SW\frac{1}{4}SE\frac{1}{4}$ ) of section Seven (7) Township Forty South, Range Seven (7) East Willamette Meridian.

less property sold to the International Paper Company (all or a portion of Lot 2, Section 32, T39S, R7E, W.M.

less property sold to Ernest and Judy Smith 9/4/87 (a portion located in the N1/2 of Section 32, T39S, R7E, W.M. lying south of State Highway 66 )

less property sold in Section 33 T39S, R7E, W.M.

ORKL-0513

**Government Lots 11, 12 and 13 in Section 36, Township 39 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon. EXCEPTING therefrom those portions conveyed to the United States of America.**

ORKL-0516

Beginning at a point 1282.2 feet north of a point 308.7 feet west of the corner to Townships 39 and 40 South Ranges 7 and 8 East Willamette Meridian, Oregon thence North 263 feet; thence N. 47°41' W. 282.2 feet; thence South 452 feet; thence East 208.7 feet to the place of beginning, containing 1.71 acres, more or less.

ALSO beginning at a point 1282.2 feet north of a point 100 feet west of the corner to Townships 39 and 40 South Ranges 7 and 8 East Willamette Meridian, Oregon; thence North 116 feet; thence N. 54°56' W. 255.5 feet; thence South 263 feet; thence East 208.7 feet to the place of beginning, all of said property being situate in Section 36, Township 39 South, Range 7 East Willamette Meridian.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

ORKL-0518

PARCEL NO. 2. Beginning at a point 1490.9 feet north of a point 766.1 feet west of the corner to Townships 39 and 40 South, Ranges Seven (7) and Eight (8) East Willamette Meridian, Oregon; THENCE North 208.7 feet; THENCE West 208.7 feet; THENCE South 208.7 feet; THENCE East 208.7 feet to the place of beginning, containing one acre, more or less, all of said property being situate in Section 36, Township 39 S. R. 7 E. W. M. less that part conveyed to Leo J. Brennan et al by deed dated February 7, 1967.

ORKL-0519

Beginning at a point 1699.6 feet north of a point 766.1 feet west of the corner to Townships 39 and 40 South, Ranges Seven (7) and Eight (8) East Willamette Meridian, Oregon; THENCE North 273.5 feet; THENCE N. 74° 28' W. 216.6 feet; THENCE South 331.6 feet; THENCE East 208.7 feet to the place of beginning, containing 1.45 acres, more or less, and being situate in Section 36, Township 39 South Range 7 East Willamette Meridian

less that part conveyed to Leo J. Brennan et al by deed dated February 7, 1967.

ORKL-0520

Beginning at a point 1282.2 feet north of a point 766.1 feet west of the corner to Townships 39 and 40 South Ranges Seven (7) and Eight (8) East of the Willamette Meridian, Oregon;  
 THENCE North 208.7 feet;  
 THENCE West 208.7 feet;  
 THENCE South 208.7 feet;  
 THENCE East 208.7 feet to the place of beginning, excepting that part of the herein described land conveyed to Leo J. Brennan et al by deed dated February, 7, 1967 and recorded in Book M67 at Page 942 deed records of Klamath County, Oregon.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

ORKL-0521  
 (A=Lots 9 and 10  
 B, C, D= Lot 8)

{ All of lots Eight (8), Nine (9) and Ten (10) of  
 Section Thirty-six (36), Township Thirty-nine (39) South,  
 Range Seven (7) East Willamette Meridian, EXCEPT the portions  
 thereof already conveyed by Thomas McCormick and wife, as  
 follows:-

- 1;- To the United States of America, by deed dated November 14, 1906, and recorded in Volume 21 of Deeds, page 466, records of Klamath County, Oregon.
- 2;- To the United States of America, by deed dated August 5, 1909, and recorded in Volume 27 of Deeds, page 294, records of said County.
- 3;- To Fred L. Rutledge, by deed dated \_\_\_\_\_ day of August, 1927, and recorded in Volume 81 of Deeds, Page 62, records of said County. K-519
- 4;- To George Crossen, by deed dated August 10, 1928, and recorded in Volume 89 of Deeds, page 348, Records of said County. K-518
- 5;- To Everett Hotchkiss, by deed dated December 6, 1928, and recorded in Volume 86 of Deeds, page 346, records of said County. K-517 (?)
- 6;- To Sam Harris and Ray Harris, by deed dated July 16, 1928, and recorded in Volume 86 of Deeds, page 505, records of said County. K-517
- 7;- To A. W. Reents, by deed dated May 15, 1926 and recorded in Volume 78 of Deeds, page 93, records of said County. K-516

ORKL-0522

**Beginning at a point on the Range line between Section Thirty-One (31), Township Thirty-Nine (39), South Range Eight (8) East of the Willamette Meridian and Section Thirty-Six (36), Township Thirty-Nine (39), South Range Seven (7) East of the Willamette Meridian, which is Eight Hundred Thirty-One and Six-Tenths (831.6) feet South of the quarter corner between said Section 31 and 36; thence South on Range line Seventy-Eight and Two-Tenths (78.2) feet; thence South 50°05' East Three Hundred Twenty-One and One-Tenths (321.1) feet; thence North 39°55' East to the center line of the Klamath River; thence down stream along the center line of said stream along the center line of said stream to said Range line; thence South along said Range line to the point of beginning.**

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

## ORKL-0523-B

Lots Seven (7), Eight (8), and Nine (9) of Section Thirty-one (31) and Lot Three (3) of Section Thirty-two (32), Township Thirty-nine (39) South, Range Seven (7) East of W. M.

## ORKL-0524

Also, beginning at a point on the Range line between Section 31, Township 39 South, Range 8 East, Willamette Meridian and Section 36, Township 39 South, Range 7 East, Willamette Meridian, 40.6 feet South of the quarter corner between Sections 31 and 36 on said range line; thence South along said range line 71.6 feet to a point which is the most Northerly point of the tract of land conveyed by the grantors to the grantee by deed dated May 29, 1930 and recorded in Volume 90, page 340, of the deed records of Klamath County, Oregon; thence South  $44^{\circ}00'$  East along the Northerly boundary of said tract 572.6 feet to a point; thence North  $59^{\circ}59'$  East 51.5 feet to a point; thence North  $44^{\circ}00'$  West 636.4 feet, more or less, to the point of beginning.

## ORKL-0529

Beginning at the Northwest corner of said Section 29; thence South  $0^{\circ}08'$  West along the West line of said Section for a distance of 1812.82 feet to a point marked by a copper nickel pipe,  $5/8$  inch in diameter and 40 inches in length, set in a rock mound; thence North  $86^{\circ}17'$  East for a distance of 697.69 feet to a point marked by an iron pipe,  $3/4$  inch in diameter, driven flush with the ground and designated as LB 10, said iron pipe, as are all other iron pipes mentioned in this description, being referenced by a copper-nickel pipe,  $5/8$  inch in diameter and 40 inches in length, driven adjacent thereto until its top is 10 inches above the ground; thence North  $7^{\circ}03'$  East on a line which passes through a point 693.53 feet distant, marked by an iron pipe,  $3/4$  inch in diameter, driven flush with the ground and designated LB 11, to its intersection with the South line of said NW $1/4$  NW $1/4$ , said point of intersection being the true point of beginning of this description; thence continuing North  $7^{\circ}03'$  East 250 feet, more or less, to said point designated LB 11; thence South  $80^{\circ}43'$  East for a distance of 382.27 feet to a point marked by an iron pipe,  $3/4$  inch in diameter, designated LB 12; thence South  $11^{\circ}24'$  East on a line which passes through a point 742.04 feet distant, marked by an iron pipe,  $3/4$  inch in diameter, driven flush with the ground and designated LB 13, for a distance of 193 feet, more or less, to its intersection with the South line of said NW $1/4$  NW $1/4$ ; thence Westerly along said South line to the true point of beginning of this description.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

Also parts of Government Lots 2 and 1, the E1/2 SW1/4, Government Lots 3 and 4 of Section 30 and the NW1/4 NE1/4 of Section 31, Townsmp 39 South, Range 7 East, Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the Northeast corner of said Section 30; thence South 0°08' West along the East line of said Section for a distance of 1812.82 feet to a point marked by a copper-nickel pipe, 5/8 inch in diameter and 40 inches in length set in a rock mound, said point being the true point of beginning of tms description; thence South 86°17' West for a distance of 0.92 feet to a point marked by an iron pipe 3/4 inch in diameter, driven flush with the ground and designated WT 8, said iron pipe, as are all other iron pipes mentioned in tms description, being referenced by a copper-nickel pipe, 5/8 inch in diameter and 40 inches in length, driven adjacent thereto until its top is 10 inches above the ground; thence North 75°46' West for a distance of 460.81 feet to a point marked by an iron pipe, 3/4 inch in diameter, driven flush with the ground and designated as WT 7; thence South 72°24' West for a distance of 1183.71 feet to a point marked by an iron pipe, 3/4 inch in diameter, driven flush with the ground and designated WT 6; thence North 75°06' West for a distance of 516.19 feet to a point marked by an iron pipe, 3/4 inch in diameter, driven flush with the ground and designated as WT 5; thence South 36°06' West for a distance of 1396.82 feet to a point marked by an iron pipe, 3/4 inch in diameter, and driven flush with the ground and designated WT 4; thence South 2°46' West for a distance of 1031.45 feet to a point marked by an iron pipe, 3/4 inch in diameter, driven flush with the ground and designated as WT 3; thence South 41°00' East (at a distance of 1540.84 feet crossing the South line of said Section 30 at a point which is 767.05 feet distant South 88°34' East from the South 1/4 corner thereof) for a distance of 1542.89 feet to a point marked by an iron pipe, 3/4 inch in diameter, driven flush with the ground and designated WT 2; thence South 39°59' East for a distance of 660.00 feet to a point marked by a copper-nickel pipe, 5/8 inch in diameter and 40 inches in length, driven in the ground until its top is 10 inches above the ground; thence continuing South 39°59' East for a distance of 195 feet, more or less, to a point on the East line of the NW 1/4 NE 1/4 of said Section 31; thence North along said East line for a distance of 640 feet, more or less, to the Northeast corner of said NW 1/4 NE 1/4; thence East along the South line of said Section 30 to the Southeast corner of said Lot 4; thence Northerly along the Easterly line of said Lot 4, the Easterly line of said Lot 3 and the Southeasterly line of said Lot 2 to the Southwest corner of said Lot 1; thence Easterly along the South line of said Lot 1 to the Southeast corner thereof; thence North along the East line of said Section 30 to the true point of beginning.



## PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED

ORKL-0530

Parcel I

Parts of Lots One (1), Two (2), and Three (3) of Section Twenty-nine (29), Township Thirty-nine (39) South, Range Seven (7) East, Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the section corner common to Sections 19, 20, 30, and 29, Township 39 South, Range 7 East, Willamette Meridian; thence South  $0^{\circ} 02' 53''$  East, along the West line of Section 29, a distance of 1,805.49 feet to the TRUE POINT OF BEGINNING of this description; thence South  $75^{\circ} 57' 45''$  East, a distance of 48.18 feet to a point; thence North  $84^{\circ} 47' 58''$  East, a distance of 653.11 feet to a point; thence North  $6^{\circ} 51' 53''$  East to the intersection with the 1/16 Section line between the Northwest Quarter of the Northwest Quarter and Lot 1, a distance of 443.51 feet to an iron pin; thence East along the said 1/16 section line, a distance of 446.09 feet to an iron pin; thence South  $11^{\circ} 33' 51''$  East, a distance of 548.51 feet to an iron pin; thence North  $78^{\circ} 04' 23''$  East, a distance of 2,490.78 feet to a point in Lot 3 from which point the Northeast corner of said Section 29 bears North  $48^{\circ} 22' 12''$  East a distance of 2,082.39 feet; thence South  $0^{\circ} 24' 58''$  East, to the intersection with the Meander Line, along the right bank of the Klamath River, a distance of 365 feet, more or less; thence Westerly along the Meander Lines of said Lots 1, 2, and 3 to the intersection with the West line of said Section 29; thence North along the West line of said Section 29 a distance of 485 feet, more or less, to the true point of beginning;

containing 34.50 acres, more or less, of which 21.90 acres, more or less, are in said Lot 1, 7.60 acres, more or less, in said Lot 2, and 5.00 acres, more or less, in said Lot 3.

## PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED

Parcel II

Parts of Lots Six (6) and Seven (7) of Section Twenty-nine (29), Township Thirty-nine (39) South, Range Seven (7) East, Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the section corner common to Sections 20, 21, 29, and 28, Township 39 South, Range 7 East, Willamette Meridian; thence South  $48^{\circ} 22' 12''$  West, a distance of 2,082.39 feet to a point marked by an iron pin and designated as "LB-14;" thence South  $0^{\circ} 24' 58''$  East, a distance of 868.91 feet to a point marked by an iron pin in Lot 6, said point being the TRUE POINT OF BEGINNING of this description; thence North  $82^{\circ} 03' 08''$  West, a distance of 876.03 feet to a point marked by an iron pin; thence South  $58^{\circ} 29' 02''$  West to the intersection with the South line of said Lot 7, a distance of 1,015 feet, more or less; thence West along the South Line of said Lot 7, a distance of 700 feet, more or less; thence North along the West line of said Lot 7 to the intersection with the Meander Line along said Lot 7, a distance of 130 feet, more or less; thence Easterly along the Meander Lines of said Lots 7 and 6 to the intersection with the line bearing South  $0^{\circ} 24' 58''$  East between said point "LB-14" and the true point of beginning; thence South  $0^{\circ} 24' 58''$  East along said line, a distance of 188.91 feet, more or less, to the true point of beginning; containing 11.75 acres, more or less, of which 5.95 acres, more or less, are in said Lot 6, and 5.80 acres, more or less, in said Lot 7.

## PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED

Parcel III

Parts of Lots Four (4) and Five (5) of Section Thirty-one (31), Township Thirty-nine (39) South, Range Seven (7) East, Willamette Meridian, more particularly described as follows:

Beginning at the 1/4 section corner common to Sections 30 and 31, Township 39 South, Range 7 East, Willamette Meridian; thence South  $88^{\circ} 39' 29''$  East along the North line of Section 31 to the intersection with the West line of said Lot 5, a distance of 1,348.27 feet, more or less, to the TRUE POINT OF BEGINNING of this description; thence South along the West line of said Lot 5, a distance of 640.48 feet to a point; thence South  $41^{\circ} 11' 19''$  East, a distance of 240.29 feet to a point marked by an iron pin; thence South  $42^{\circ} 50' 07''$  East, a distance of 1,194.47 feet to a point marked by an iron pin; thence South  $9^{\circ} 13' 28''$  East, a distance of 386.02 feet to a point marked by an iron pin; thence South  $41^{\circ} 45' 43''$  West to the intersection with the North Boundary of the Right of Way of State Highway No. 21; thence Northeasterly along the said highway right of way to the intersection with the Meander Line

along the East side of said Lot 4; thence Northerly along the Meander Line of said Lots 4 and 5 to the intersection with the North line of said Section 31; thence North  $88^{\circ} 39' 29''$  West along the North line of said Section 31, a distance of 383.93 feet to the true point of beginning; containing 19.25 acres, more or less, of which 5.40 acres, more or less, are in said Lot 4, and 13.85 acres, more or less, in said Lot 5.

## PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED

Parcel IV

Parts of Lots One (1), Two (2), Three (3), and Four (4) of Section Thirty-one (31), Township Thirty-nine (39) South, Range Seven (7) East, Willamette Meridian, more particularly described as follows:

Beginning at the corner common to Sections 36, 31, 1, and 6, Township 39 and 40 South, Range 6 and 7 East, Willamette Meridian; thence South  $89^{\circ} 56' 42''$  East along the South line of said Section 31, a distance of 1,960.02 feet to a point marked by an iron pin and the TRUE POINT OF BEGINNING of this description thence North  $27^{\circ} 31' 03''$  East, a distance of 688.07 feet to a point marked by an iron pin; thence North  $59^{\circ} 46' 33''$  East, a distance of 1,781.22 feet to a point marked by an iron pin; thence North  $44^{\circ} 16' 57''$  East, a distance of 969.68 feet to a point marked by an iron pin; thence North  $14^{\circ} 50' 18''$  East, a distance of 629.93 feet to a point marked by an iron pin; thence North  $41^{\circ} 45' 43''$  East to the intersection with the South Boundary of the Right of Way of State Highway No. 21; thence North-easterly along the said highway right of way to the intersection with the Meander Line along the East side of said Lot 4; thence Southwesterly along the Meander Lines of said Lots 4, 3, 2, and 1 to the intersection with the South line of said Section 31; thence North  $89^{\circ} 56' 42''$  West along the South line of said Section 31, a distance of 165 feet, more or less, to the true point of beginning; containing 17.10 acres, more or less, of which 0.27 acres, more or less, are in said Lot 1, 1.33 acres, more or less, in said Lot 2, 3.57 acres, more or less, in said Lot 3, and 3.93 acres, more or less, in said Lot 4.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

ORKL-0539 I and II

**Parcel 1:**

The North 550 feet of the West 1/2 of the Southeast 1/4 of Section 36, Township 39 South, Range 7 East, Willamette Meridian, Klamath County, Oregon.

EXCEPTING therefrom that portion conveyed to the United States of America by Deed recorded August 9, 1909 in Volume 27, page 294, Deed Records of Klamath County, Oregon.

**Parcel 2:**

A strip of land for road purposes 60 feet in width lying 30 feet on each side of the following described center line:

Commencing at a point on the Northerly right of way line of Oregon State Highway 66 at Station 1807+71; thence North 29°28'52" West, 800 feet; thence North 12°43'22" West, 498 feet to a point which is 30 feet East and 10 feet North of the South quarter corner of Section 36, Township 39 South, Range 7 East, Willamette Meridian, Klamath County, Oregon; thence Northerly along a line which is parallel to and 30 feet Easterly of the West line of the Southeast 1/4 of said Section 36, a distance of 1700 feet; thence North 40°48'41" West 50 feet, more or less, to a point on said West line of the Southeast 1/4.

ORKL-0540

**All that portion of Lot 5, Section 36, Township 39 South, Range 7 East of the Willamette Meridian, EXCEPT the North 319 feet thereof and being more particularly described as follows:**

**Beginning at a point on the West line of Lot 5, Section 36, Township 39 South, Range 7 East of the Willamette Meridian from which the Northwest corner of said Lot 5 bears North 9°09'22" East 319.00 feet distant; thence along the said West line of said Lot 5, South 0°09'22" West 425.81 feet to the North bank of Klamath River; thence along Klamath River North 71°09'15" East 222.86 feet; thence South 76°39'45" East 380.77 feet; thence North 77°56'55" East 94.85 feet; thence South 82°02'05" East 203.00 feet; thence North 73°23'15" East 221.68 feet; thence South 62°13'45" East 198.60 feet; thence South 82°00'45" East 62.74 feet, more or less to the East line of said Lot 5, Section 36; thence along the said East line of said Lot 5, North 0°03'07" East 481.31 feet to a point from which the North quarter corner of said Section 36 bears North 0°03'07" East 319.00 feet distant; thence North 89°43'16" West 1342.12 feet more or less to the point of beginning.**

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

ORKL-0541

Lot 6 except that portion thereof which lies northerly of the following described line: Commencing at a point located on the line between Govt. Lots 5 and 6, said point being located South 0° 03' 07" West, 319.0 feet from the north quarter corner of Section 36; thence South 89° 43' 16" East, 620.0 feet to a point; thence in a southeasterly direction to the northwest corner of Govt. Lot 7 of said Section 36.

subject to road easement granted to Klamath County 1-26-68

ORKL-0542

**A tract of land in Lot 1, (SW1/4) of Section 31, Township 39 South, Range 8 East of the Willamette Meridian, described as follows:**

**Beginning at the intersection of the centerline of River Street and the Westerly boundary line of Brighton Avenue (Highway 66) in the town of Doten, (now Keno) Oregon, which point is marked with an iron pipe; thence North 57°08' West along the centerline of said River Street, projected, a distance of 1,194.6 feet; thence North 32°52' East 372.1 feet to the true point of beginning; thence continuing North 32°52' East 259.8 feet, more or less to the mean water line of the Klamath River; thence North 40°24' West 179.7 feet along said mean water line to the Easterly boundary of the tract of land described in Book 94 at page 36, Deed Records of Klamath County, Oregon; thence along the Easterly and Southerly boundaries of said parcel as follows: South 41°47' West 58.9 feet and North 50°05' West 321.1 feet to the Easterly boundary of the tract of land described in Volume 130 of page 412, Deed Records of Klamath County, Oregon; thence South 0°06' East along said boundary a distance of 434.0 feet; thence South 72°16' East 273.2 feet to the true point of beginning.**

## PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED

## CALIFORNIA PARCELS

CASI-0009

*The North West quarter of South East quarter (NW $\frac{1}{4}$  of SE $\frac{1}{4}$ )  
 South half of South East quarter (S $\frac{1}{2}$  of SE $\frac{1}{4}$ ) and South West  
 quarter (SW $\frac{1}{4}$ ) of Section Twenty-nine (29), East half of  
 North West quarter (E $\frac{1}{2}$  of NW $\frac{1}{4}$ ) and North East quarter (NE $\frac{1}{4}$ )  
 of Section Thirty-one (31), in Township Forty-eight (48) North,  
 Range Four (4) West, Mount Diablo Meridian,  
 containing Five hundred and twenty (520)  
 \_\_\_\_\_ acres, according to the United States Surveys;*

less property sold consisting of 31.85 acres of the SE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  lying south and east of the  
 present reservoir.

CASI-0011

Lot Four (4) and the South East quarter of the South  
 West quarter (SE $\frac{1}{4}$  of SW $\frac{1}{4}$ ) and the South half of the South East  
 quarter (S $\frac{1}{2}$  of SE $\frac{1}{4}$ ) of Section Thirty (30), Township forty-eight  
 (48) North Range Four (4) West, Mount Diablo meridian;

CASI-0020

South Half (S $\frac{1}{2}$ )

of Section Thirty-one (31), Township Forty-eight (48) North, Range Four (4) West  
Mount Diablo Base and Meridian, containing Three Hundred Fifteen and 17/100 (315.17)  
 \_\_\_\_\_ Acres, according to the United States Public Surveys;

CASI-0021

The northwest quarter of the south-  
 west quarter (NW $\frac{1}{4}$  of SW $\frac{1}{4}$ ) of Section  
 thirty-six (36), Township, forty-eight (48)  
 North, Range five (5) West, Mount Diablo  
 Base and Meridian.

## PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED

CASI-0024

That certain fractional portion of the NE $\frac{1}{4}$  of Section thirty-six (36) TWP forty-eight (48) North of Range five (5) West M.D.M., bounded by a line described as beginning at the Northeast corner of said Section 36 and extending westerly four hundred sixty one and nine-tenths (461.9) feet along the section line between said Section 36 and Section 25 of the same Township and Range to the center line of Fall Creek; thence southwesterly along the center line of Fall Creek to the point of intersection of the center lines of Fall Creek and the Klamath River, thence northeasterly along the center line of the Klamath River to the east line of said Section 36, thence northerly along said east line of Section 36, ten hundred ninety (1090) feet to the point of beginning, said tract containing 25.93 acres, more or less: also, a right of way 60 feet wide for a railroad and wagon road across the remaining portion of the N.E. $\frac{1}{4}$  of Section 36, Township 48 North, Range 5 West, the center line of said right of way being more particularly described as follows

Beginning at a point on the quarter section line running north and south in Section 36 T. 48 N. Range 5 West, which is seventeen hundred two and seven-tenths (1702.7) feet south of the quarter section corner on the north line of said section 36, thence north fifty two degrees, eighteen and one half minutes ( $52^{\circ} 18\frac{1}{2}'$ ) east twenty five and three-tenths (25.3) feet to the beginning of a curve whose total deflection angle is thirty degrees and thirty four minutes ( $30^{\circ} 34'$ ) to the right tangent length is one hundred twenty and three-tenths (120.3) feet, radius is four hundred forty and eighty four hundredths (440.84) feet and length is two hundred thirty five and one-tenth (235.1) feet, thence north



## PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED

eighty two degrees, fifty two and one-half minutes ( $82^{\circ} 52\frac{1}{2}'$ ) east, two hundred twenty three and four-tenths (223.4) feet to the beginning of a curve whose total deflection angle is seventeen degrees eighteen minutes ( $17^{\circ} 18'$ ) to the right, tangent length is forty three and six-tenths (43.6) feet, radius is two hundred eighty six and fifty seven hundredths (286.57) feet and length is eighty six and five-tenths (86.5) feet; thence south seventy nine degrees forty nine and one half minutes ( $79^{\circ} 49\frac{1}{2}'$ ) east, one hundred ninety four and eight-tenths (194.8) feet to the beginning of a curve whose total deflection angle is four degrees and eight minutes ( $4^{\circ} 8'$ ) to the left, tangent length is twenty and seven-tenths (20.7) feet, radius is five hundred seventy three and thirteen one hundredths (573.13) feet and length is forty one and three-tenths (41.3) feet, thence south eighty three degrees fifty seven and one half minutes ( $83^{\circ} 57\frac{1}{2}'$ ) east, sixty seven and six tenths (67.6) feet to the beginning of a curve whose total deflection angle is fifteen degrees fifty three minutes ( $15^{\circ} 53'$ ) to the left, tangent length is forty (40) feet, radius is two hundred eighty six and fifty seven one-hundredths (286.57) feet and length is seventy nine and four-tenths (79.4) feet, thence north eighty degree nine and one-half minutes ( $80^{\circ} 09\frac{1}{2}'$ ) east, fifty two and four-tenths (52.4) feet to the beginning of a curve whose total deflection is fourteen degrees, seventeen minutes ( $14^{\circ} 17'$ ) to the left, tangent length is forty four and eight-tenths (44.8) feet, radius is three hundred fifty eight and seventeen one-hundredths (358.17) feet and length is eighty nine and three-tenths (89.3) feet, thence, north sixty five degrees fifty two and one half minutes ( $65^{\circ} 52\frac{1}{2}'$ ) east, five hundred eighty four (584) feet to the center line of Fall Creek, said right of way containing two and thirty two hundredths (2.32) acres, more or less.

## PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED

CASI-0025

*(also described as Lots One and Two of the Northwest quarter)*

The West Half of the Northwest quarter ( $W\frac{1}{2}NW\frac{1}{4}$ ) of Section Thirty one (31) in Township Forty eight (48) North of Range Four (4) West, Mount Diablo Meridian; also all of that portion of Section Thirty Six (36) Township Forty Eight (48) North of Range Five (5) West, Mount Diablo Meridian, lying South of the Klamath River, saving and excepting the Northwest quarter of the Southwest quarter ( $NW\frac{1}{4}SW\frac{1}{4}$ ) of said Section Thirty Six (36).

CAISI-0026

The Southeast quarter ( $SE\frac{1}{4}$ ) of Section 25; the East half of the Northeast quarter ( $E\frac{1}{2}NE\frac{1}{4}$ ) of Section 34; the Northeast quarter ( $NE\frac{1}{4}$ ) and the Northwest quarter of the Southeast quarter ( $NW\frac{1}{4}SE\frac{1}{4}$ ) and the Northeast quarter of the Southwest quarter ( $NE\frac{1}{4}SW\frac{1}{4}$ ) and the Northwest quarter ( $NW\frac{1}{4}$ ) of Section 35; the North half of the Northwest quarter ( $N\frac{1}{2}NW\frac{1}{4}$ ) and the Northwest quarter of the Northeast quarter ( $NW\frac{1}{4}NE\frac{1}{4}$ ) and the Northeast quarter of the Northeast quarter ( $NE\frac{1}{4}NE\frac{1}{4}$ ) and that fractional portion of the Southehalf of the North half ( $S\frac{1}{2}N\frac{1}{2}$ ), lying North of the Klamath River, of Section 36; all in Township Forty-eight (48) North of Range Five (5) West M.D.M.; together with the appurtenances thereunto belonging; save and excepting therefrom that certain fractional portion of the Northeast quarter ( $NE\frac{1}{4}$ ) of Section Thirty-six (36), Township Forty-eight (48) North of Range Five (5) West M.D.M., bounded by a line described as beginning at the Northeast corner of said Section 36, thence extending westerly four hundred sixty one and nine tenths feet (461.9) along the section line between said Section 36 and Section 25 of the same Township

## PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED

and range to a point on the Center line of Fall Creek; thence, Southwesterly along the Center line of Fall Creek, to the point of intersection of the Center line of Fall Creek and the Klamath River; thence Northeasterly along the Center line of the Klamath River to the East line of the said Section 36; thence northerly along said East line of said Section 36, 1190.0 feet to the point of beginning.

## LESS THE FOLLOWING:

A fractional portion of the Southeast quarter of the Southeast quarter of Section 25, Township 48 North, Range 5 West, Mount Diablo Meridian, being more particularly described as follows:

Beginning at a point 30.00 feet southwesterly of the centerline of the Pacific Power & Light Company Transmission Line No. 19, from which point the southeast corner of said Section 25 bears South  $40^{\circ} 51' 31''$  East, 506.61 feet; thence South  $38^{\circ} 31' 10''$  West, 166.98 feet; thence South  $28^{\circ} 14' 58''$  West, 132.47 feet; thence North  $36^{\circ} 15' 00''$  West, 184.77 feet; thence North  $30^{\circ} 54' 15''$  East, 141.54 feet; thence North  $53^{\circ} 45' 00''$  East, 134.36 feet; thence South  $42^{\circ} 46' 42''$  East, 139.73 feet parallel to said Transmission Line No. 19 to the point of beginning.

and subject to a telephone line easement to PT&T 9/28/81 and subject to a 30' pipeline easement to the City of Yreka 8/30/68.

## CASI-0027

The East half of the Southwest quarter ( $E\frac{1}{2}$  of  $SW\frac{1}{4}$ ) and the Southeast quarter ( $SE\frac{1}{4}$ ) of Section Nine (9); the Northwest quarter of the Northwest quarter ( $NW\frac{1}{2}$  of  $NW\frac{1}{4}$ ) of Section Sixteen (16), and the East half of the Northeast quarter ( $E\frac{1}{2}$  of  $NE\frac{1}{4}$ ) of Section Seventeen (17) in Township Forty-seven (47) North (N) of Range Five (5) West, Mount Diablo Base and Meridian; saving and excepting that portion thereof heretofore conveyed to the Klamath Lake Railroad Company;

and subject to a telephone line easement to PT&T 10/13/80 and a 20' road easement to James Liskey.

## PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED

CASI-0028

The West Half of the East Half of the Northwest Quarter ( $W\frac{1}{2} E\frac{1}{2} NW\frac{1}{4}$ ) and the West Half of the West Half ( $W\frac{1}{2} W\frac{1}{2}$ ), and also that portion of the East Half of East Half of Northwest Quarter ( $E\frac{1}{2} E\frac{1}{2} NW\frac{1}{4}$ ) of Section Nine (9) in Township Forty-seven (47) North of Range Five (5) West, Mount Diablo Meridian, which lies on the westerly side of the center line of the Klamath River, where said river flows through said sub-division; subject, however, to right of way one hundred (100) feet wide, across said section, heretofore conveyed to Klamath Lake Railroad Company by Central Pacific Railway Company and United States Trust Company of New York, by deed numbered 213-C, dated August 16, 1905.

CASI-0030

The East half of the Northwest quarter, the Southwest quarter of the Northwest quarter and the Northwest quarter of the Southwest quarter of Section 34, Township 48 North, range 5 West, M.D.M. California, less the Klamath Lake Railroad Company right of way.

subject to a 20 road easement to H.J. Rhodes 6/12/64

CASI-0031

All of Section Twenty-seven (27); Northeast Quarter ( $NE\frac{1}{4}$ ), North Half of Southeast Quarter ( $N\frac{1}{2}$  of  $SE\frac{1}{4}$ ) and Southwest Quarter of Southeast Quarter ( $SW\frac{1}{4}$  of  $SE\frac{1}{4}$ ) of Section Thirty-three (33), Township Forty-eight (48) North, Range Five (5) West, Mount Diablo Base and Meridian, containing Nine Hundred Twenty and 00/100 (920.00) Acres, more or less; together with all rights, privileges and appurtenances thereunto belonging or in any wise appertaining; subject however, to any rights, liens or encumbrances created or permitted, by any other person than the said first party, since March 16, 1931; also subject to the condition that first party shall not be held liable for any encroachments on said premises by existing ditch and telephone line.

EXCEPTING from the foregoing conveyance a right of way of lawful width for any and all existing and lawfully established County Roads.

less the following sold to Rhodes and Roberts 4/13/64:  
the N  $\frac{1}{2}$  and the SW  $\frac{1}{4}$  of Section 27, Township 48N, Range 5W, MDM.

## PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED

## CASI-0032

The South half of the South half of the South West Quarter of Section Twenty-six, and the West half of Section Thirty-three, Township Forty-eight, North, Range Five West, and the North East quarter of the North West quarter of Section Four, Township Forty-seven North, Range Five West, Mount Diablo Meridian, subject to the rights of the Lower School District.

Together with all water rights, water ditches and water privileges thereto belonging or in anywise appertaining.

## CASI-0033

The Southeast quarter; the East half of the Southwest quarter and the South half of the Northwest quarter of Section Four, Township Forty-seven North, Range Five West, Mount Diablo Meridian, saving and excepting that portion of the Southeast quarter of the Northwest quarter of said Section Four lying northerly and westerly of the center line of the Klamath River containing 310 acres, more or less.

## CASI-0034

All that portion of the East half ( $E\frac{1}{2}$ ) of the East half, ( $E\frac{1}{2}$ ), of the North West quarter ( $NW\frac{1}{4}$ ) of Section Nine (9), lying on the East side of the Klamath River where it flows through said land; The North East quarter ( $NE\frac{1}{4}$ ) of Section Nine (9); the North half ( $N\frac{1}{2}$ ) of the North West quarter ( $NW\frac{1}{4}$ ) and the West half ( $W\frac{1}{2}$ ) of the North East quarter ( $NE\frac{1}{4}$ ) of Section Ten (10); all in Township Forty-seven (47), North of Range Five (5) West, Mt. Diablo Meridian, containing in all 340 acres, more or less; together with all water rights, water ditches and water privileges used or enjoyed on the above described property, or in connection therewith, particularly including all rights of said first party in the waters of Bogus Creek.

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CASI-0035

The South East Quarter of the South East quarter of Section Thirty-two, Township Forty-eight North, Range Five West, Mount Diablo Meridian.

Together with all water rights, water ditches and water privileges thereunto belonging or in anywise appertaining.

CASI-0036

All that portion of the South East Quarter of the North West Quarter ( $SE\frac{1}{4}$  of  $NW\frac{1}{4}$ ) of Section Four (4) Township Forty-seven (47) North of Range Five (5) West, Mount Diablo Meridian, lying on the North and West side of the center of the Klamath River.

CASI-0038

The East half; the South West quarter, the East half of the North West Quarter and the South West Quarter of the North West Quarter of Section Sixteen in Township Forty-seven North, Range Five West, Mount Diablo Meridian,

CASI-0039

The Northeast quarter ( $NE\frac{1}{4}$ ) of the Southwest quarter ( $SW\frac{1}{4}$ ) of Section Thirty-four (34), Township Forty-eight (48) North of Range Five (5) West, Mount Diablo Meridian, containing forty acres of land.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

CASI-0040

Those portions of the Southeast 1/4 of Section 29 and the Southwest 1/4 of Section 28, Township 48 North Range 4 West, M.D.M., known as Siskiyou County, California Tax Lot 004050390;

Those portions of the Northeast 1/4 of Section 29 and the Northwest 1/4 of Section 28, Township 48 North Range 4 West, M.D.M., known as Siskiyou County, California Tax Lot 004050380;

That portion of Section 28, Township 48 North Range 4 West, M.D.M., known as Siskiyou County, California Tax Lot 004050060;

That portion of the Northwest 1/4 of Section 33, Township 48 North Range 4 West, M.D.M., known as Siskiyou County, California Tax Lot 004040010;

That portion of the Southeast 1/4 of Section 21, Township 48 North Range 4 West, M.D.M., known as Siskiyou County, California Tax Lot 004360040;

That portion of the South 1/2 of Section 27, Township 48 North Range 4 West, M.D.M., known as Siskiyou County, California Tax Lot 004300020;

That portion of the North 1/2 of Section 34, Township 48 North Range 4 West, M.D.M., known as Siskiyou County, California Tax Lot 004040060;

Those portions of Section 35 and Section 36, Township 48 North Range 4 West, M.D.M., known as Siskiyou County, California Tax Lot 004030070;

CASI-0042

The southeast quarter of the southeast quarter of Section 33, Township 48 North, Range 5 West and the northeast quarter of Section 4, Township 47 North, Range 5 West, M.D.M., and northwest quarter of southwest quarter, south half of south half and northeast quarter of southeast quarter of Section 35, Township 48 North, Range 5 West, M.D.M.

CASI-0043

The South Half (S 1/2) except the south half of the south half of the southwest quarter (S 1/2 S 1/2 SW 1/4) of Section 26, Township 48 North, Range 5 West, Mount Diablo Meridian, Siskiyou County, California, containing 280 acres, more or less,

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**EXHIBIT 4**  
**Estimated Timeline—KHSA as Amended**

<b>TARGET DATE</b>	<b>ACTION</b>	<b>ACTOR</b>
4/6/2016	2016 AIP Signatories and others execute Amended KHSA (“Amendment Effective Date”).	2016 AIP Signatories
By 5/6/2016	PacifiCorp files Amended KHSA with FERC; files expedited motion asking FERC to hold in abeyance relicensing proceeding for Project No. 2082.	PacifiCorp
Within 15 days of FERC’s relicensing abeyance order	PacifiCorp withdraws pending 401 applications in Oregon and California.	PacifiCorp
By July 1, 2016	If FERC denies PacifiCorp’s motion to abate or fails to rule on the motion before July 1, 2016, PacifiCorp will ask the SWRCB and the ODEQ to abate 401 certification and other environmental reviews related to PacifiCorp’s relicensing activities	PacifiCorp
4/2016–6/2016	DRE conducts due diligence review of Amended KHSA, draft funding agreements, and draft FERC filings.	DRE
6/15/2016	Oregon-DRE and California-DRE funding agreements executed.	States, DRE
On or around 7/1/2016	DRE executes Amended KHSA.	DRE
On or around 7/1/2016	File FERC application for license transfer.	PacifiCorp, DRE
On or around 7/1/2016	DRE and PacifiCorp will enter into an operation and maintenance agreement	PacifiCorp, DRE
On or around 7/1/2016	File FERC application for surrender and decommissioning, retaining 2020 target date for removal.	DRE
On or around 7/1/2016	File applications for 401 certifications regarding decommissioning with California Water Resources Control Board and Oregon Department of Environmental Quality.	DRE



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<b>TARGET DATE</b>	<b>ACTION</b>	<b>ACTOR</b>
7/2016–1/2017	<p>DRE develops and files non-FERC regulatory permits, including:</p> <ul style="list-style-type: none"> <li>• 404 application for Facilities Removal with U.S. Army Corps, biological assessments for associated ESA Section 7 consultations, and associated Section 106 historic preservation reviews</li> <li>• 402 construction storm water permit applications</li> <li>• Oregon removal-fill permit with Oregon Department of State Lands</li> <li>• Other regulatory approvals as necessary</li> </ul>	DRE, with technical assistance from Federal Parties, States, and PacifiCorp
By 12/31/19	FERC approves license transfer.	FERC
By 12/31/2019	FERC approves decommissioning and surrender.	FERC
1/1/2020	DRE begins Facilities Removal in accordance with Definite Plan.	DRE

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**Joint Application for Approval of License Amendment and License Transfer**

# **Attachment B**

## **Exhibit M – Klamath Hydroelectric Project**

**(Exhibit A in FERC's current regulations)**

### **Public Version**

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

EXHIBIT M—PROJECT DESCRIPTION

Klamath Hydroelectric Project  
(FERC Project No. 2082)

PacifiCorp  
Portland, Oregon

Version: September 2016

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**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**M1.0 PURPOSE**

This current version of the Exhibit M updates previous information on record and generally describes the Klamath Hydroelectric Project (Project) facilities and lands, which have been retained in the Project (FERC Project No. 2082) while certain developments (J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate) now comprise the newly designated Lower Klamath Project (FERC Project No. xxxxx).<sup>1</sup> Updates to this Exhibit M will be filed with the Commission as necessary.

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<sup>1</sup> This Exhibit M has been prepared to correspond to the requirements of Exhibit A in FERC's current rules, 18 C.F.R. 4.51(b).

## M2.0 PROJECT OVERVIEW

### M2.1 PROJECT FACILITIES

The Klamath Hydroelectric Project (Project) area is located on the upper Klamath River in Klamath County (south-central Oregon) and Siskiyou County (north-central California). The nearest principal cities are Klamath Falls, Oregon, located at the northern end of the Project area; Medford, Oregon, 45 miles northwest of the downstream end of the Project; and Yreka, California, 20 miles southwest of the downstream end. Figure M2.1-1 is a map of the Project area.

The existing Project consists of four developments, three of which are on the Klamath River between river mile (RM) 233 and RM 254. One of these developments, Keno dam, is a reregulation dam with no generation facilities. The fourth development is on Fall Creek, a Klamath River tributary at about RM 196. The four existing Project developments are as follows:

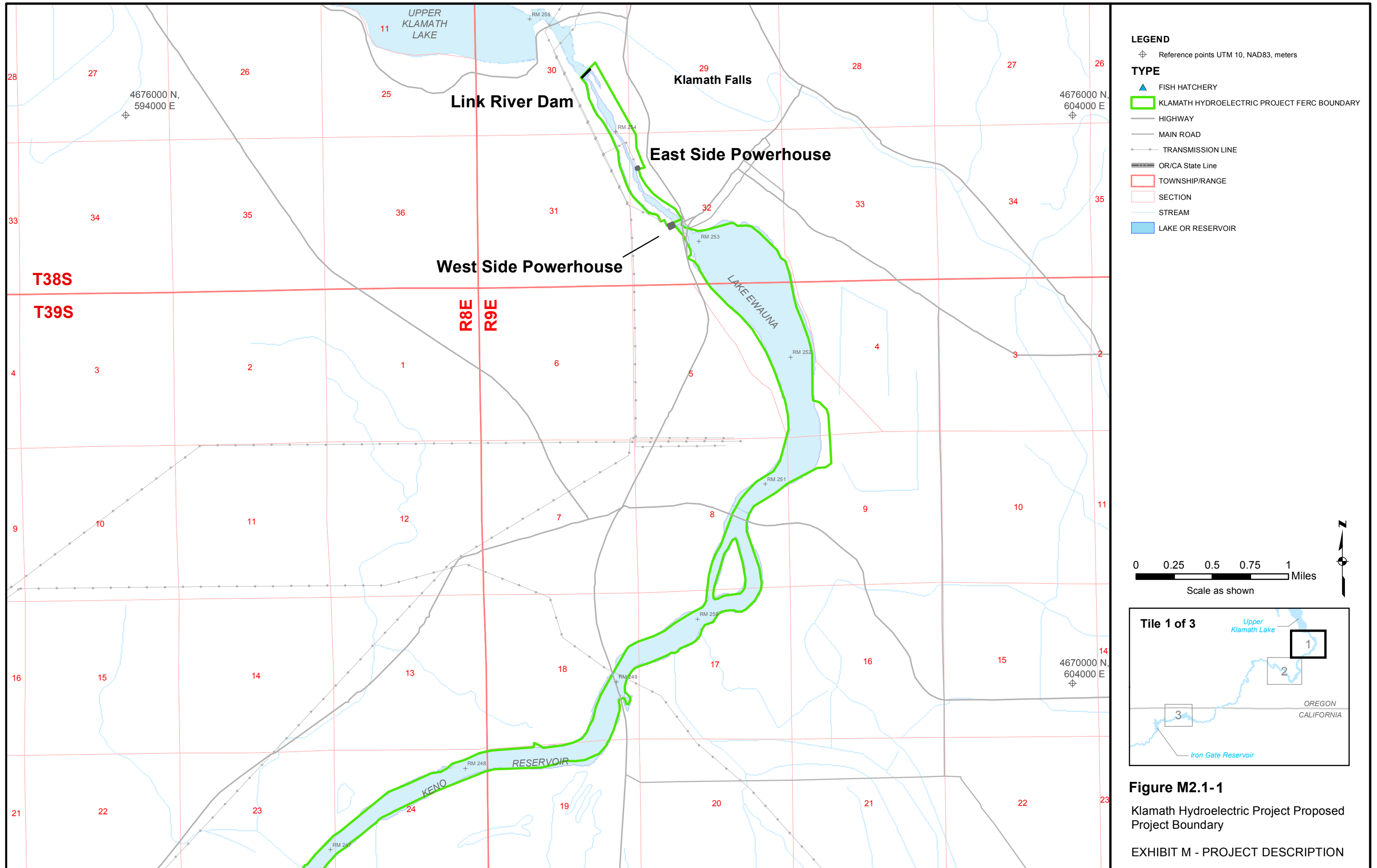
- The East Side Development (3.2 megawatt [MW]) and the West Side Development (0.6 MW) are the facilities farthest upstream, located near RM 254 and within the city limits of Klamath Falls, Oregon. They are associated with Link River dam, which is owned by the U.S. Bureau of Reclamation (USBR) and currently operated by PacifiCorp under USBR's directives. The power plants, transmission lines, and associated water conveyance systems are owned and operated by PacifiCorp.
- The Keno Development is a re-regulating dam facility with no generation capability. At RM 233 in Oregon, it is 21.3 miles downstream of Link River dam. PacifiCorp operates Keno dam to maintain Keno reservoir elevations between 4085.0 and 4086.5 whenever USBR is diverting water to the Klamath Irrigation Project.
- The Fall Creek Development is a run-of-river facility with a low diversion dam, a 4,560-foot-long power canal, and a 2,834-foot-long penstock leading to a powerhouse with three Pelton units. The power plant (2.2 MW at 730 feet of head and 50 cubic feet per second [cfs]) is located on Fall Creek, a small Klamath River tributary that flows into the upper end of Iron Gate reservoir. The Fall Creek Development receives additional water for generation purposes from the Spring Creek diversion, which can provide an additional 16.5 cfs to Fall Creek upstream of the Fall Creek diversion dam.

There are two transmission line segments associated with the Project. These segments are described in subsequent sections of this Exhibit M and their locations are shown in Exhibit K maps. One-line diagrams are provided in Figures M2.1-2 and M2.1-3. The Project interconnects with the PacifiCorp 230-kV system at PacifiCorp's Klamath Falls and Copco No. 2 230-kV substations/switchyards.

Key information about Project facilities is summarized in Table M2.1-1. Additional information about Project facilities and equipment is provided in the remainder of this exhibit.

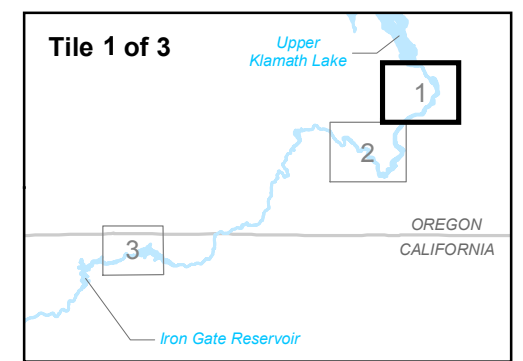
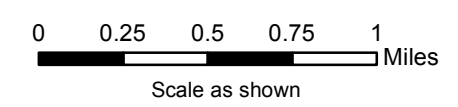


PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED



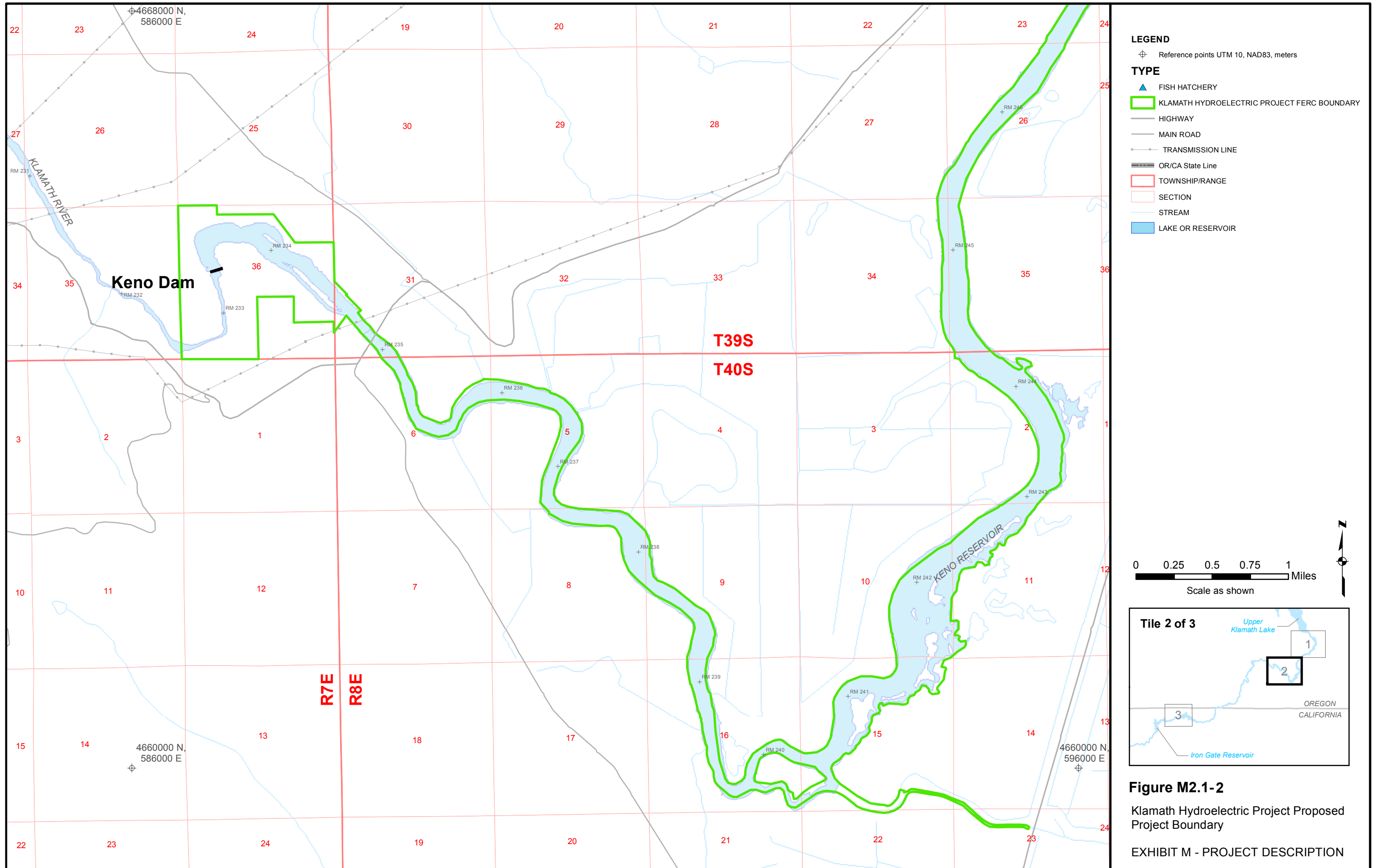
**LEGEND**

- ⊕ Reference points UTM 10, NAD83, meters
- TYPE**
- ▲ FISH HATCHERY
- ▭ KLAMATH HYDROELECTRIC PROJECT FERC BOUNDARY
- HIGHWAY
- MAIN ROAD
- TRANSMISSION LINE
- OR/CA State Line
- ▭ TOWNSHIP/RANGE
- ▭ SECTION
- STREAM
- LAKE OR RESERVOIR

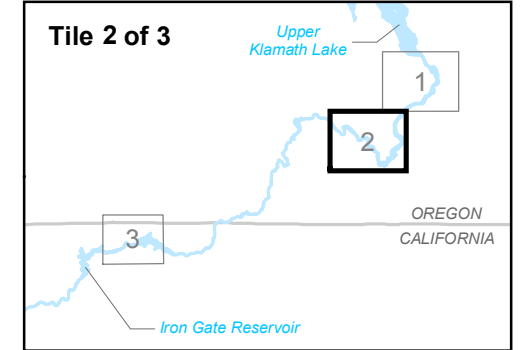
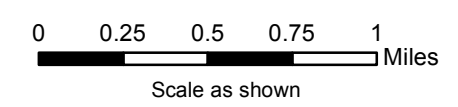


**Figure M2.1-1**  
 Klamath Hydroelectric Project Proposed Project Boundary  
 EXHIBIT M - PROJECT DESCRIPTION

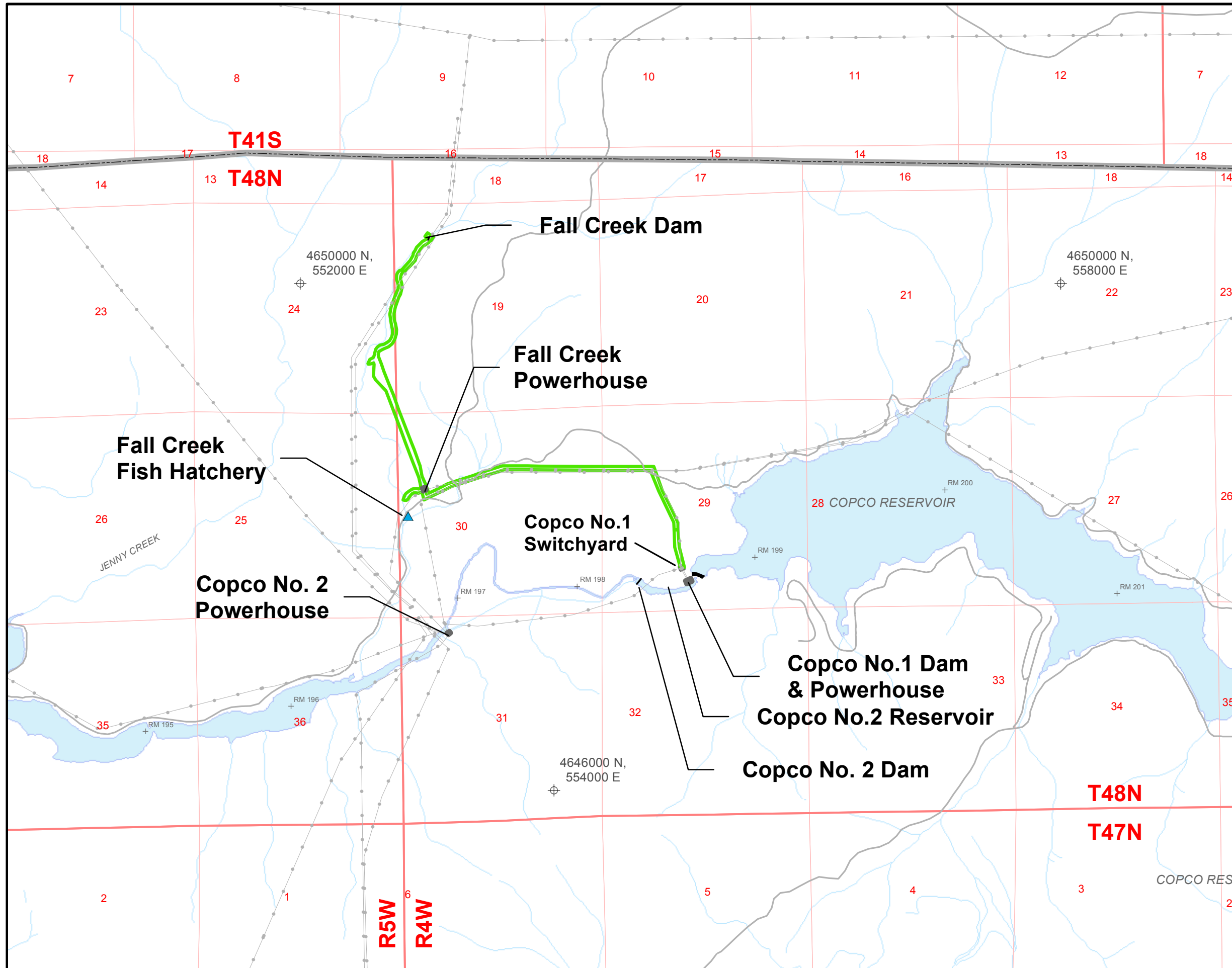
PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED



- LEGEND**
- ⊕ Reference points UTM 10, NAD83, meters
  - TYPE**
  - ▲ FISH HATCHERY
  - ▭ KLAMATH HYDROELECTRIC PROJECT FERC BOUNDARY
  - HIGHWAY
  - MAIN ROAD
  - TRANSMISSION LINE
  - OR/CA State Line
  - ▭ TOWNSHIP/RANGE
  - ▭ SECTION
  - STREAM
  - LAKE OR RESERVOIR

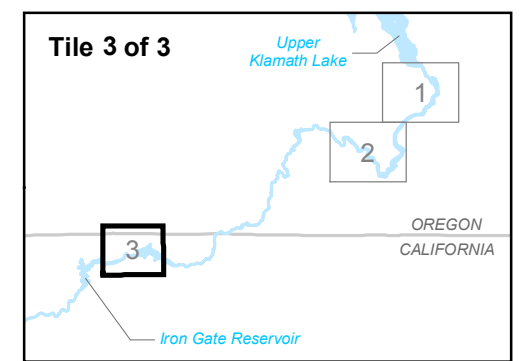
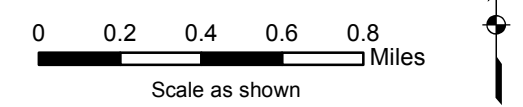


**Figure M2.1-2**  
Klamath Hydroelectric Project Proposed Project Boundary  
EXHIBIT M - PROJECT DESCRIPTION



**LEGEND**

- ⊕ Reference points UTM 10, NAD83, meters
- TYPE**
- ▲ FISH HATCHERY
- ▭ KLAMATH HYDROELECTRIC PROJECT FERC BOUNDARY
- HIGHWAY
- MAIN ROAD
- TRANSMISSION LINE
- OR/CA State Line
- ▭ TOWNSHIP/RANGE
- ▭ SECTION
- STREAM
- LAKE OR RESERVOIR



**Figure M2.1-3**  
 Klamath Hydroelectric Project Proposed Project Boundary  
 EXHIBIT M - PROJECT DESCRIPTION

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

PacifiCorp  
Klamath Hydroelectric Project  
FERC No. 2082

Figure M2.1-2. Transmission network diagram, Oregon/California area.

Transmission network diagrams are considered Critical Energy Infrastructure Information (CEII) and are not contained in this publicly available version of this filing, consistent with Federal Energy Regulatory Commission policies under Order Nos. 702, 630, 630-A, 643, 649 and 683.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**  
PacifiCorp  
Klamath Hydroelectric Project  
FERC No. 2082

Figure M2.1-3. Transmission network diagram, Oregon/California area.

Transmission network diagrams are considered Critical Energy Infrastructure Information (CEII) and are not contained in this publicly available version of this filing, consistent with Federal Energy Regulatory Commission policies under Order Nos. 702, 630, 630-A, 643, 649 and 683.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

PacifiCorp  
Klamath Hydroelectric Project  
FERC No. 2082

Table M2.1-1. Key data regarding the Klamath Hydroelectric Project developments.

Item	Link River Dam	Keno Development	Fall Creek Development/ Spring Creek Diversion
<b>General Information</b>			
Owner of the Dam	USBR	PacifiCorp	PacifiCorp
Purpose	Water supply; hydropower	Flow regulation	Hydropower; water supply
Completion Date	Dam: 1921 East Side: 1924 West Side: 1908	1967	Fall Creek: 1903 Spring Creek: 1988
Dam Location (river mile)	254.3	233.0	Not applicable
Powerhouse Location (river mile)	East Side: 253.7 West Side: 253.3	None	Not applicable
<b>Structural Features of the Dams</b>			
Dam Type	Concrete	Concrete	Earthfill/Earthfill
Dam Height (ft)	16	25	7/6.5
Dam Length (ft)	435	680	95/66
Spillway Length (ft)	300	265	32/42" dia. pipe
Number of Spill Gates	31	6	1/1
Spill Gate Type	Vertical lift	Tainter	Vertical Lift/Vertical Lift
Spillway Crest (ft msl)	4130.0 <sup>a</sup>	4070.0	3253.4/102 (local datum)
Spillway Apron (ft msl)	Not applicable	4052.0	3249.5/95 (local datum)
Gross Head (ft) at Spillway	13	18	3.9/6.5
Spillway Energy Dissipaters?	No	No	No/No
Upstream Fish Passage Ladders?	Yes	Yes	No/No
Juvenile Bypass Facilities?	No	Not applicable	No/No
<b>Reservoir Information</b>			
Reservoir Common Name	Upper Klamath Lake	Keno Reservoir	No reservoir/ no reservoir
Distance to Upstream Dam (miles)	---	24.0	Not applicable/ not applicable
Reservoir Length (miles)	---	22.5	Run of river/ run of river
Maximum Surface Area (acres) <sup>b</sup>	90,000	2,475	Run of river/ run of river
Normal Maximum Depth (ft) from Normal Maximum Surface Elevation	Data not available	19.5	Unknown/5 ft

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

PacifiCorp

Klamath Hydroelectric Project

FERC No. 2082

Table M2.1-1. Key data regarding the Klamath Hydroelectric Project developments.

<b>Item</b>	<b>Link River Dam</b>	<b>Keno Development</b>	<b>Fall Creek Development/ Spring Creek Diversion</b>
Maximum Depth Elevations (ft msl) from 2001-2002 Study <sup>c</sup>	---	4,065.5	No reservoir/ no reservoir
Normal Maximum Operating Surface Elevation (ft msl)	4,143.3	4,085.0	3,250.5/100.2 (local datum)
Normal Minimum Operating Surface Elevation (ft msl)	4137.0	Data not available	3250.5/100 (local datum)
Normal Annual Operating Fluctuation (ft)	6.3	0.5	0/1
Total Storage Capacity (ac-ft) <sup>d</sup>	629,780	18,500	No reservoir/ no reservoir
Current (2001-2002) Estimate of Gross Storage Capacity	NA	NA	No reservoir/ no reservoir
Active Storage Capacity (ac-ft)	515,615 <sup>e</sup>	495	0/0
Average Flow (cfs) <sup>f</sup>	1,428	1,624	40/165
<b>Retention Time (days)</b>			
At Average Flow	185	6	<1 hour/ <1 hour
At 710 cfs	372	13	<1 hour/ <1 hour
At 1,500 cfs	176	6	<1 hour/ <1 hour
At 3,000 cfs	88	3	<1 hour/ <1 hour
At 10,000 cfs (extreme event)	26	1	<1 hour/ <1 hour
<b>Power Generation Features</b>			
Fish Screens	East Side: None West Side: None	Not applicable	None/ none
Trash Racks	East Side: at entrance of wood-stave flow line; 28 x 28 ft with 2 3/4-inch spacing West Side: before canal headgates, 16 x 5 ft with 2.75-inch spacing; before penstock, 12 x 18 ft with 2-inch spacing	Not applicable	At entrance to penstock, 17.5 x 10.7 ft with 3-inch bar spacing/ none

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

PacifiCorp  
Klamath Hydroelectric Project  
FERC No. 2082

Table M2.1-1. Key data regarding the Klamath Hydroelectric Project developments.

<b>Item</b>	<b>Link River Dam</b>	<b>Keno Development</b>	<b>Fall Creek Development/ Spring Creek Diversion</b>
Diversion to Powerhouse	East Side: 1,729 ft wood-stave flow line; 1,362 ft steel flow line; surge tank West Side: 5,575 ft earthen canal; 140 ft steel penstock	Not applicable	4,560-ft waterway to 42-inch (reducing to 30-inch) diameter penstock/ 6,850-ft waterway to Fall Creek
Number of Turbines	East Side: 1 West Side: 1	None	3/0
Turbine Type	East Side: Vertical Francis West Side: Horizontal Francis	None	Pelton/ not applicable
Turbine Generator Nameplate Capacity (MW)	East Side: 3.2 West Side: 0.6	None	Fall Creek: Unit 1: 0.5 Unit 2: 0.45 Unit 3: 1.25
Total Nameplate Generating Capacity (MW)	3.8	None	Fall Creek: 2.2
Gross Head (ft) at Powerhouse	East Side: 47 West Side: 48	None	Fall Creek: 730
Total Turbine Hydraulic Capacity (cfs)	East Side Rated: 1,200 Min: 200 West Side: 250	None	Fall Creek: Rated: 60 Max: 30 Min: 2
Powerhouse Construction	East Side: reinforced concrete structure West Side: reinforced concrete and wood structure	None	Reinforced concrete substructure with steel superstructure enclosed by metal siding/ not applicable
<b>Transmission Lines</b>			
Line Designation	56-8	None	3 (two sections)/ not applicable
Length (mi)	0.36	None	1.65 total/ not applicable
Voltage (kV)	69	None	Both 69/ not applicable
Interconnections	Plant to tap on line 18	None	Plant to tap point on line 18 (very short), Plant to Copco No. 1 switchyard/ not applicable



**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

PacifiCorp

Klamath Hydroelectric Project

FERC No. 2082

Table M2.1-1. Key data regarding the Klamath Hydroelectric Project developments.

Item	Link River Dam	Keno Development	Fall Creek Development/ Spring Creek Diversion
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- <sup>a</sup> The spillway crest at Link River dam is adjustable with stop logs; normal full pool elevation is shown.
- <sup>b</sup> Pool elevations for these values are unknown.
- <sup>c</sup> Data from the Final Bathymetry and Sediment Classification of the Klamath Hydropower Project Impoundments, J.M. Eilers and C.P. Gubala of JC Headwaters, Inc. prepared for PacifiCorp, April 2003.
- <sup>d</sup> Total storage capacity is at normal full pool.
- <sup>e</sup> Upper Klamath Lake active storage capacity taken from Biological Opinions on the Effects of Proposed Klamath Project Operations from May 31, 2013, through March 31, 2023, on Five Federally Listed Threatened and Endangered Species. National Marine Fisheries Service and U.S. Fish and Wildlife Service, May 2013.
- <sup>f</sup> Data for Keno is from USGS Gage 11509500. All other data are average daily turbine flows plus spill flows for 1994 through 1997 provided by PacifiCorp.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

PacifiCorp  
 Klamath Hydroelectric Project  
 FERC No. 2082

**M2.2 FERC PROJECT BOUNDARY**

The FERC Project boundary is depicted in Figure M2.1-1 of this Exhibit M. The FERC Project boundary encloses those lands necessary for operation and maintenance of Project facilities.

PacifiCorp owns and manages approximately 16.3 percent of the existing FERC Project boundary area, including the land containing most of the Project powerhouses, portions of the transmission lines, conduits, canals, and dam facilities, and land underlying the Project reservoirs, and tributary streams. Approximately 3.2 percent of the Project boundary area is federally owned, 72.7 percent state owned (river beds of the Klamath River and Lake Ewauna in Oregon), and 7.6 percent privately owned. Although not within the Project boundary, the Spring Creek diversion dam and ditch are located on BLM land.

Contemporary land use in the Project area and adjacent properties includes hydroelectric generation, livestock grazing, recreation, and timberlands.

**M2.3 LANDS OF THE UNITED STATES**

The lands of the United States enclosed by the Project boundary are listed in Table M2.3-1 with township/range/section descriptions and total areas in acres. Acreages were calculated using geographical information system (GIS) ArcInfo® software. It should be noted that the parcel and FERC boundary GIS data used to calculate ownership acreages are not survey accurate and some discrepancies may exist. There are no Project transmission lines on lands of the United States.

Table M2.3-1. Lands of the United States.

<b>Meridian</b>	<b>Township/Range/ Section</b>	<b>Owner</b>	<b>Area (acres)</b>	<b>Development</b>
Willamette	39S/07E/36	USBR	82.0	Keno
<b>Total</b>			82.0	All

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****M3.0 EAST SIDE AND WEST SIDE DEVELOPMENTS****M3.1 INTRODUCTION**

The existing Project includes the East Side and West Side developments as described below.

**M3.2 OVERVIEW**

Link River dam marks the upstream boundary of the current Klamath Hydroelectric Project at RM 254.3. The dam is owned by the U.S. Bureau of Reclamation (USBR). PacifiCorp operates and maintains the dam at USBR's direction to meet, in order of priority: (1) Endangered Species Act (ESA) requirements; (2) Tribal Trust requirements; (3) irrigation needs; and (4) hydroelectric purposes. Because the dam and its reservoir (Upper Klamath Lake) are not Project facilities, they are described only generally in this exhibit.

Link River dam is the point of water diversion for the East Side and West Side Developments, which are owned and operated by PacifiCorp. The dam has a vertical slot fish ladder that was constructed in 2005 and specifically designed to allow suckers to migrate from below Link River dam upstream to Upper Klamath Lake. USBR owns the ladder and PacifiCorp currently operates it. The ladder is approximately 105 feet long, contains 33 pools, and rises approximately 13 feet in elevation.

Water for the East Side and West Side powerhouses is diverted via intake gates on the east and west ends of the dam. The gates feed canals and flowlines dedicated to each powerhouse.

Key information about the East Side and West Side powerhouses is summarized in Table M2.1-1.

**M3.3 EAST SIDE WATER CONVEYANCE SYSTEM AND POWERHOUSE**

PacifiCorp owns and operates the East Side Development including the water conveyance system from the Link River dam to the powerhouse. The facilities consist of 670 feet of single-wall mortar and stone canal below Link River dam; an intake structure; 1,729 feet of 12-foot-diameter, wood-stave flowline; 1,362 feet of 12-foot-diameter, steel flowline; a surge tank; and a powerhouse on the east bank of Link River. There is no turbine bypass valve at the powerhouse. Maximum diversion capacity for the East Side powerhouse is 1,200 cubic feet per second (cfs).

There are no fish screens at either the Link River dam or at the East Side flowline intake. There is no trash rack at the Link River dam diversion. A steel bar trash rack (28 feet by 28 feet with 2.75-inch bar spacing) is in place at the pipeline intake structure.

The powerhouse is a reinforced-concrete structure housing a single vertical Francis turbine with rated discharge of 975 cfs, and a rated capacity of 4,250 horsepower (hp) at 47 feet of net head. The synchronous generator has a rated capacity of 4,000 kilovolt amperes (kVA) at 0.8 power factor (3.2 MW).

Three single-phase, 1,000-kVA, 4,330/66,000-volt (V) transformers at the powerhouse step-up the generator voltage.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**  
PacifiCorp  
Klamath Hydroelectric Project  
FERC No. 2082

### M3.4 WEST SIDE WATER CONVEYANCE SYSTEM AND POWERHOUSE

PacifiCorp owns and operates the West Side Development including the water conveyance system from the Link River dam to the powerhouse. The facilities consist of a 5,575-foot-long concrete-lined and unlined canal below Link River dam; a spillway and discharge structure; an intake; 140 feet of 7-foot-diameter steel flowline; and a powerhouse on the west bank of the Link River. There is no turbine bypass valve at the powerhouse. An additional gate structure is incorporated into the canal near the intake at Link River dam. Maximum diversion capacity for the West Side canal is 250 cfs. The ungated overflow spillway is approximately 390 feet upstream from the penstock intake structure. The spillway also contains a small gated release structure to facilitate draining of the canal.

There are no fish screens at the Link River dam diversion or at the flowline intake. Trash racks are located in front of the Link River dam diversion. Each rack is 16 feet high and 5 feet wide and has 2.75-inch bar spacing. A second trash rack is located at the flowline entrance. It is 12 feet high and 18 feet wide, and has 2-inch bar spacing.

The West Side powerhouse is a reinforced concrete and wood structure housing a single, horizontal, pit-type Francis turbine with rated discharge of 250 cfs and a rated capacity of 1,040 hp at a net head of 46 feet. The open frame synchronous generator has a rated capacity of 600 kVA at 1.0 power factor (0.6 MW).

Three single-phase, 500-kVA, 2,300/66,000-V transformers at the powerhouse step-up the generator voltage.

### M3.5 TRANSMISSION LINES

From the East Side powerhouse, a 69-kV transmission line, approximately 0.36 mile long (PacifiCorp Line 56-8), crosses over the Klamath River and connects to PacifiCorp's Line 11.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****M4.0 KENO DEVELOPMENT****M4.1 INTRODUCTION**

The existing Project includes the Keno development and information on the Keno development is provided below.

**M4.2 OVERVIEW**

Keno dam is a reregulating facility owned by PacifiCorp. It is located at approximately RM 233, which is approximately 21 miles downstream of Link River dam. The facility does not include power-generating equipment. For the existing Project, PacifiCorp operates Keno dam under a contract with USBR.

**M4.3 DAM**

Keno dam is a combination of earth embankment and reinforced-concrete, non-overflow, and spillway sections. The dam crest elevation is El. 4,070 feet msl and is approximately 680 feet long and 10 feet wide (curb to curb across the concrete section). The reinforced-concrete portion of the dam is 680 feet long. The dam height is approximately 25 feet above the excavated foundation. A grout curtain runs the length of the dam axis.

The ogee-type spillway section has a crest elevation of El. 4,070 feet msl and is 265 feet wide and has six 40-foot-wide spill gates. Normal maximum water surface is El. 4,086.5. The spillway apron extends approximately 60 feet downstream from the toe of the spillway ogee section. The estimated spillway capacity is 25,000 cfs at water surface El. 4,080 and with all six gates open.

There is a 24-pool weir and orifice type fish ladder at the Keno dam. This fish ladder gains 19 feet in elevation over a length of approximately 350 feet. Key information about Keno dam is summarized in Table M2.1-1.

**M4.4 RESERVOIR**

The Keno reservoir has a surface area of 2,475 acres at El. 4,085 feet msl and a total storage capacity of 18,500 acre-feet. Key information about Keno reservoir is summarized in Table M2.1-1.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****M5.0 FALL CREEK DEVELOPMENT****M5.1 OVERVIEW**

The Fall Creek Development is located on Fall Creek, a tributary to the Iron Gate reservoir, approximately 0.4 miles south of the Oregon-California border. Additional diversion facilities are located on Spring Creek. The facilities on Fall Creek consist of a concrete and timber flashboard spillway structure, an earth- and-rock-filled diversion dam, 4,560 feet of earthen and rock-cut power canal, 2,834 feet of steel penstock, and a powerhouse. The purpose of the Fall Creek Development is to generate hydroelectric power.

An associated feature of the Fall Creek development is an earthen diversion dam located on Spring Creek. Spring Creek is a tributary of Jenny Creek, located adjacent and to the west of Fall Creek. When in use, it diverts up to 16.5 cfs from Spring Creek into a tributary of Fall Creek. This flow supplements the flow in Fall Creek at the Fall Creek diversion dam.

**M5.2 DAMS****M5.2.1 Fall Creek**

Fall Creek dam is a 5-foot-high, earth-filled embankment with a concrete and timber flashboard spillway structure. The overall crest length is 130 feet with a crest elevation at El. 3,253.4 feet msl and a crest width of 12 feet. The concrete spillway section is 32 feet wide.

At a normal water surface elevation of El. 3,251 feet msl, there is no active storage in the diversion pond. A small hole in one of the spillway stop logs provides 0.5 cfs of instream flow in Fall Creek below the dam.

The 18-foot-long corrugated metal pipe (CMP) culvert power canal headworks includes a manual slide gate. The adjacent gated 36-inch CMP is used to sluice sediment from in front of the headworks.

The 4,560-foot-long earth and rock power canal is 9 feet wide. At the design flow of 50 cfs, the water depth is 3 feet. At the entrance to the penstock is a trash rack that is 17.5 feet long by 10.7 feet wide with 3-inch bar spacing. The 42-inch-diameter penstock (reducing to 30-inch-diameter), approximately 2,834 feet long, drops over the hillside to the powerhouse.

Key information about Fall Creek dam is summarized in Table M2.1-1.

**M5.2.2 Spring Creek**

The Spring Creek dam is a small earthen embankment approximately 7 feet high and 10 feet wide that spans the entire stream width (approximately 66 feet). Water from Spring Creek is diverted through an earthen canal that discharges to the Fall Creek drainage. The canal includes a 36-inch diameter CMP culvert headworks with manual slide gate. An adjacent 42-inch diameter CMP culvert with manual slide gate and grated inlet is used to bypass flows downstream and to maintain a constant water surface elevation in the reservoir.

Key information about the Spring Creek dam is summarized in Table M2.1-1.

### M5.3 POWERHOUSE

The powerhouse is a reinforced-concrete substructure with a steel superstructure enclosed by corrugated metal siding. It houses three horizontal shaft Pelton turbines. Unit No. 1 has a rated discharge capacity of 14 cfs and a rated output of 1,000 hp at 730 feet of net head. The Unit No. 1 generator is rated 500 kVA at 1.0 power factor (0.5 MW). Unit No. 2 has a rated discharge capacity of 21 cfs and a rated output of 1,500 hp at 730 feet of net head. The Unit No. 2 generator is rated 450 kVA at 1.0 power factor (0.45 MW). Unit No. 3 has a rated discharge capacity of 25 cfs and a rated output of 1,800 hp at 730 feet of net head. The Unit 3 generator is rated 1,250 kVA at 1.0 power factor (1.25 MW). The combined hydraulic capacity of the three turbines is 50 cfs.

There are three single-phase, 833-kVA, 2,300/72,000-V step-up transformers at the powerhouse.

Key information about the Fall Creek powerhouse is summarized in Table M2.1-1.

### M5.4 TRANSMISSION LINES

The Fall Creek plant has two associated 69-kV transmission line segments. Line 3 connects the Fall Creek plant to Copco No. 1 switchyard, approximately 1.65 miles to the east. There is also a very short segment of Line 3 that connects the plant to a tap point on Line 18, which runs nearly overhead.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**M6.0 INFORMATION SOURCES**

Eilers, J.M. and C.P. Gubala. 2003. Draft Bathymetry and Sediment Classification of the Klamath Hydropower Project Impoundments. Prepared for PacifiCorp by JC Headwaters. March 2003.

National Marine Fisheries Service and U.S. Fish and Wildlife Service. Biological Opinions on the Effects of Proposed Klamath Project Operations from May 31, 2013, through March 31, 2023, on Five Federally Listed Threatened and Endangered Species. NMFS file number: SWR-2012-9372, FWS file number: 08EKLA00-2013-F-0014. May 2013.



**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Joint Application for Approval of License Amendment and License Transfer**

# **Attachment C**

## **Exhibit M – Lower Klamath Project Description**

**(Exhibit A in FERC's current regulations)**

### **Public Version**

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

EXHIBIT M—PROJECT DESCRIPTION

Lower Klamath Project  
(FERC Project No. xxxxx)

PacifiCorp  
Portland, Oregon

Version: September 2016

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**M1.0 PURPOSE**

This current version of the Exhibit M updates previous information on record and generally describes the newly designated Lower Klamath Project facilities and lands, which were formerly part of the Klamath Hydroelectric Project (FERC Project No. 2082).<sup>1</sup> Updates to this Exhibit M will be filed with the Commission as necessary.

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<sup>1</sup> This Exhibit M has been prepared to correspond to the requirements of Exhibit A in FERC's current rules, 18 C.F.R. 4.51(b).

## M2.0 PROJECT OVERVIEW

### M2.1 PROJECT FACILITIES

The Lower Klamath Project area is located on the upper Klamath River in Klamath County (south-central Oregon) and Siskiyou County (north-central California). The nearest principal cities are Klamath Falls, Oregon, located at the northern end of the Project area; Medford, Oregon, 45 miles northwest of the downstream end of the Project; and Yreka, California, 20 miles southwest of the downstream end. Figure M2.1-1 is a map of the Project area.

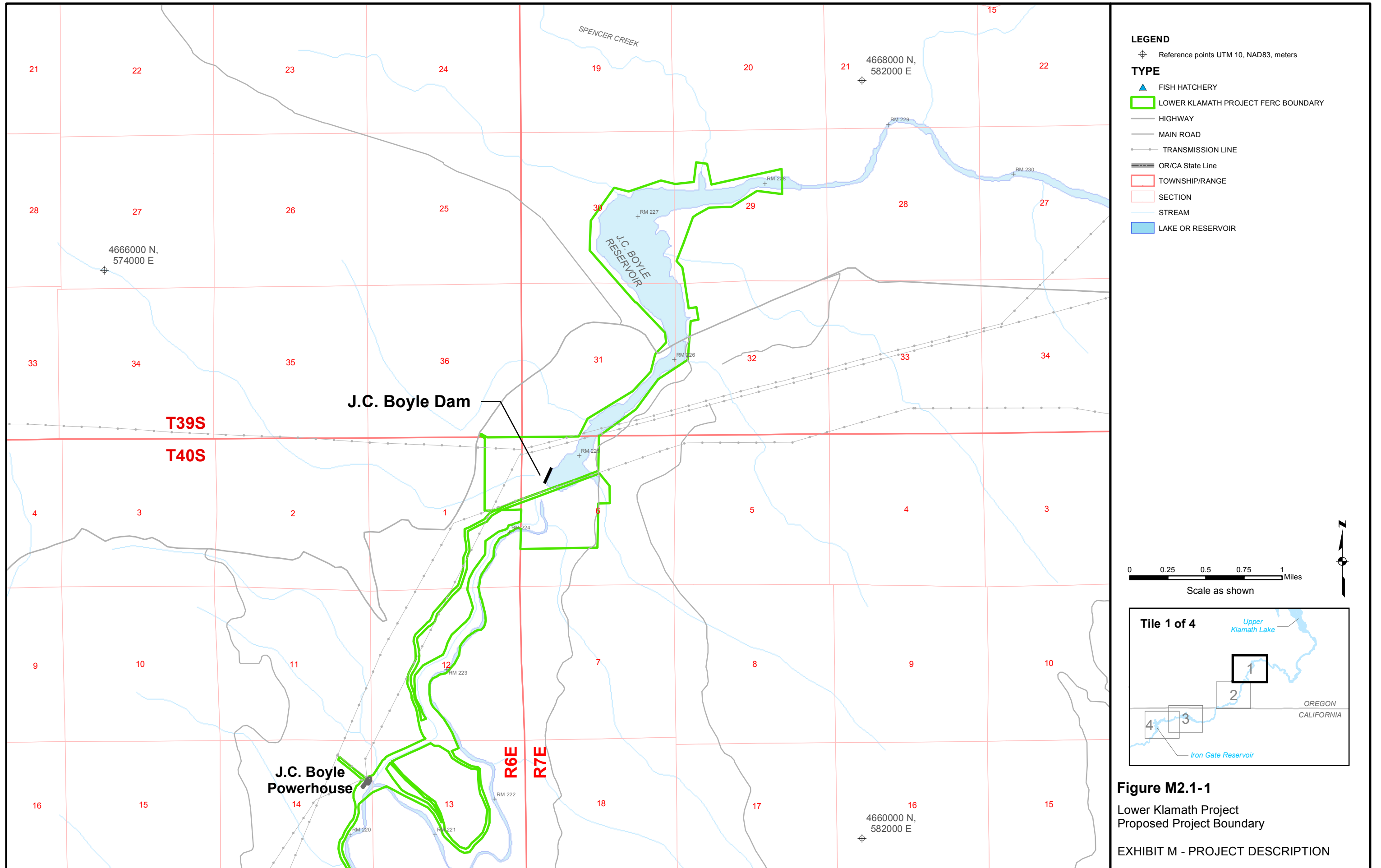
The Lower Klamath Project consists of four developments which are on the Klamath River between river mile (RM) 190 and RM 228. The Lower Klamath Project begins at the J.C. Boyle Development and continues downstream to the Iron Gate Development. The four Lower Klamath Project developments are as follows:

- The J.C. Boyle Development consists of a dam, reservoir, and powerhouse (98 MW), which are located within Oregon. The top of the reservoir is at RM 228.3, the dam is at RM 224.7 and the powerhouse is several miles downstream at RM 220.4.
- The Copco No. 1 Development consists of a dam and power plant located in California at RM 198.6. The Copco No. 1 power plant (20 MW) is located at the base of the dam on the right bank.
- The Copco No. 2 Development is located at RM 198.3 and diverts water to a 5,900-foot-long water conveyance system serving a 27-MW power plant. The Copco No. 2 reservoir above the dam is small and located immediately downstream of the Copco No. 1 dam. Because it has very minimal active storage, the Copco No. 2 powerhouse operates as a “slave” to Copco No. 1.
- The Iron Gate Development consists of a dam, reservoir, and powerhouse (18 MW), and is the farthest downstream (RM 190) development in the Lower Klamath Project. The Iron Gate Development also includes the Iron Gate Fish Hatchery, which was constructed at the same time as the power generation facilities. The development is operated to provide stable river flows in the Klamath River downstream of the Project.

There are five transmission line segments associated with the Lower Klamath Project. These segments are described in subsequent sections of this Exhibit M and their locations are shown in Exhibit K maps. One-line diagrams are provided in Figures M2.1-2 and M2.1-3. The Lower Klamath Project interconnects with the PacifiCorp 230-kV system at PacifiCorp’s J.C. Boyle and Copco No. 2 230-kV substations/switchyards.

Key information about Project facilities is summarized in Table M2.1-1. Additional information about Project facilities and equipment is provided in the remainder of this exhibit.

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**LEGEND**

- ⊕ Reference points UTM 10, NAD83, meters
- TYPE**
- ▲ FISH HATCHERY
- ▭ LOWER KLAMATH PROJECT FERC BOUNDARY
- HIGHWAY
- MAIN ROAD
- TRANSMISSION LINE
- OR/CA State Line
- ▭ TOWNSHIP/RANGE
- ▭ SECTION
- STREAM
- LAKE OR RESERVOIR

0 0.25 0.5 0.75 1 Miles  
Scale as shown

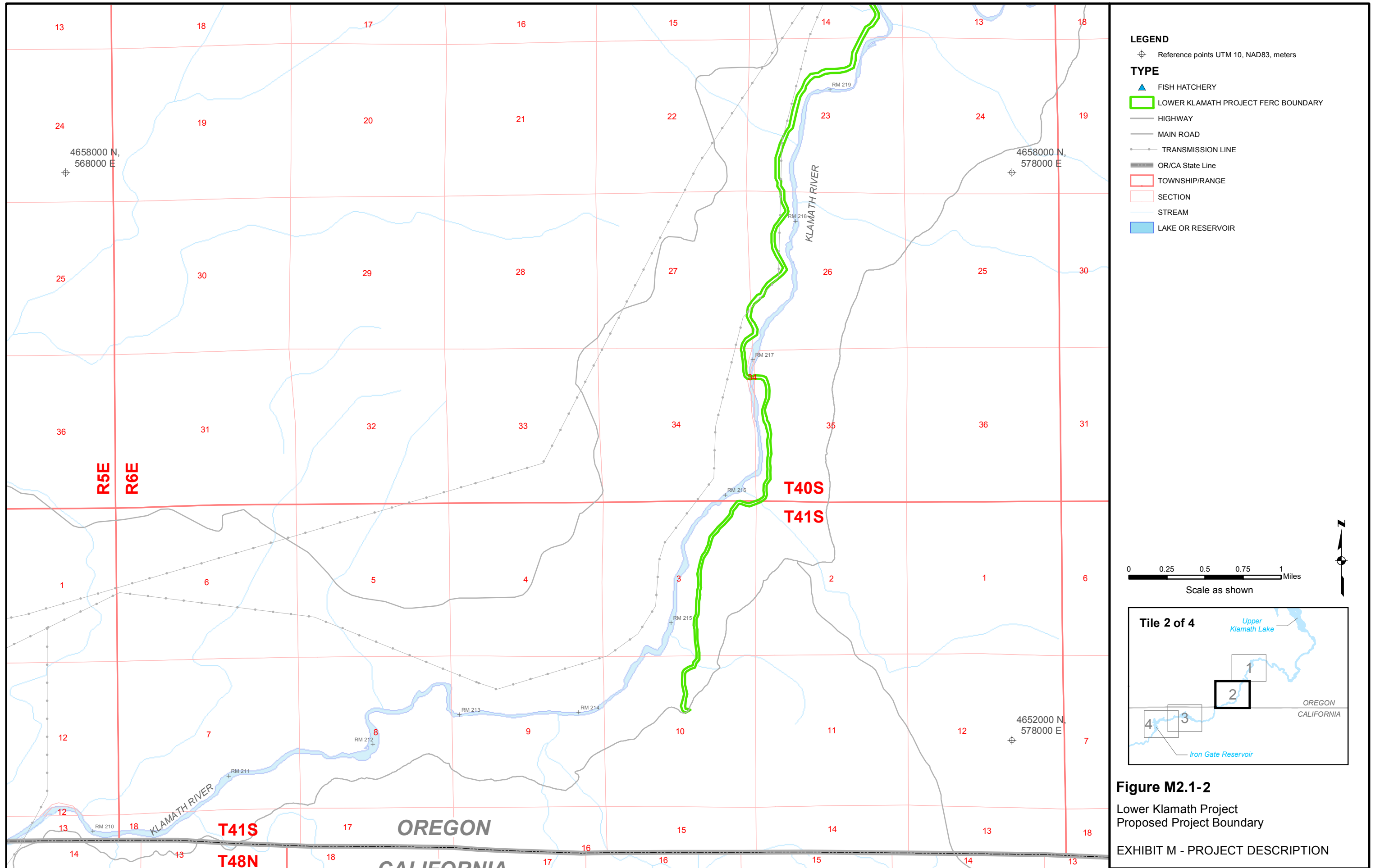
**Tile 1 of 4**

Upper Klamath Lake  
OREGON CALIFORNIA  
Iron Gate Reservoir

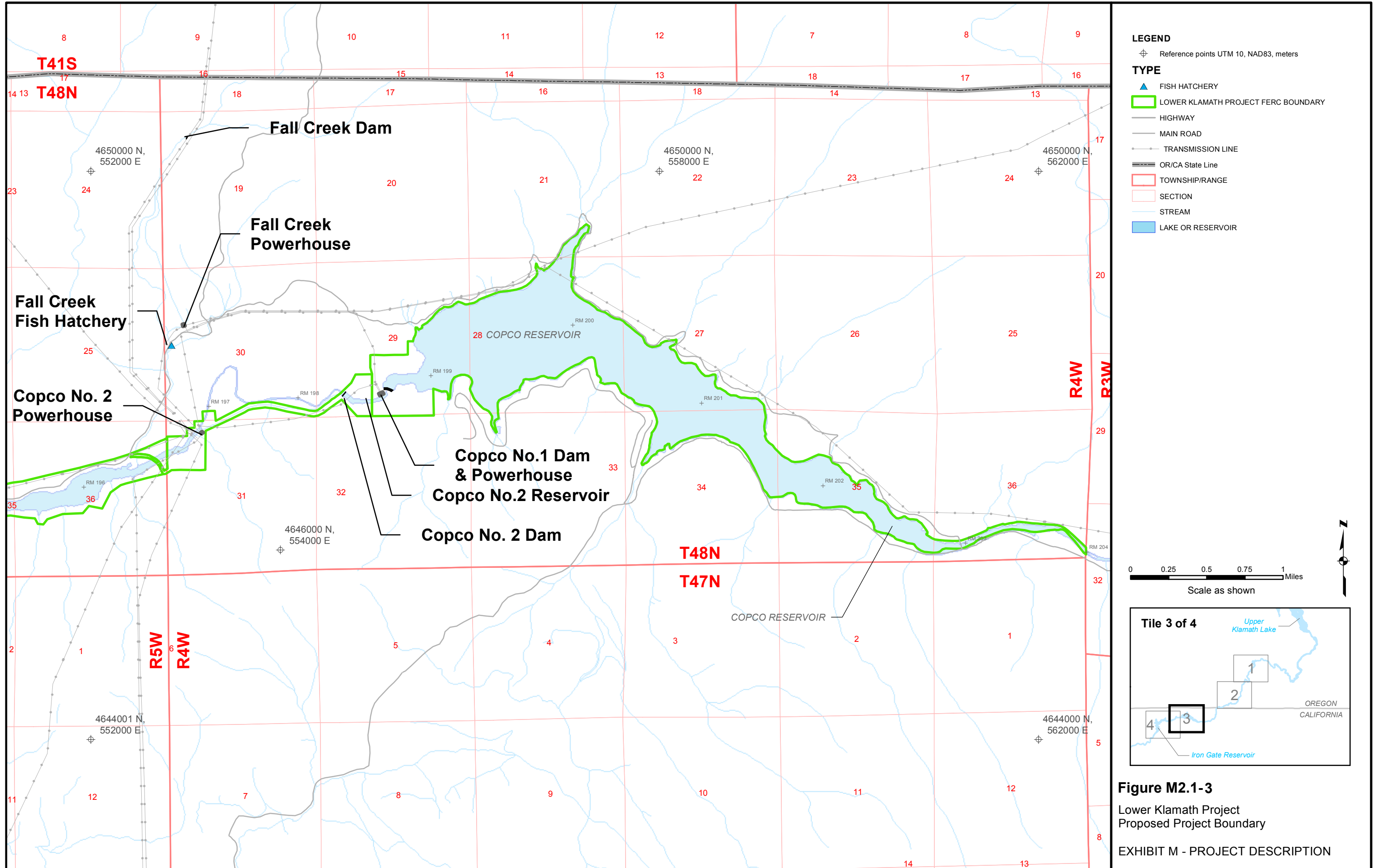
**Figure M2.1-1**  
Lower Klamath Project  
Proposed Project Boundary  
EXHIBIT M - PROJECT DESCRIPTION



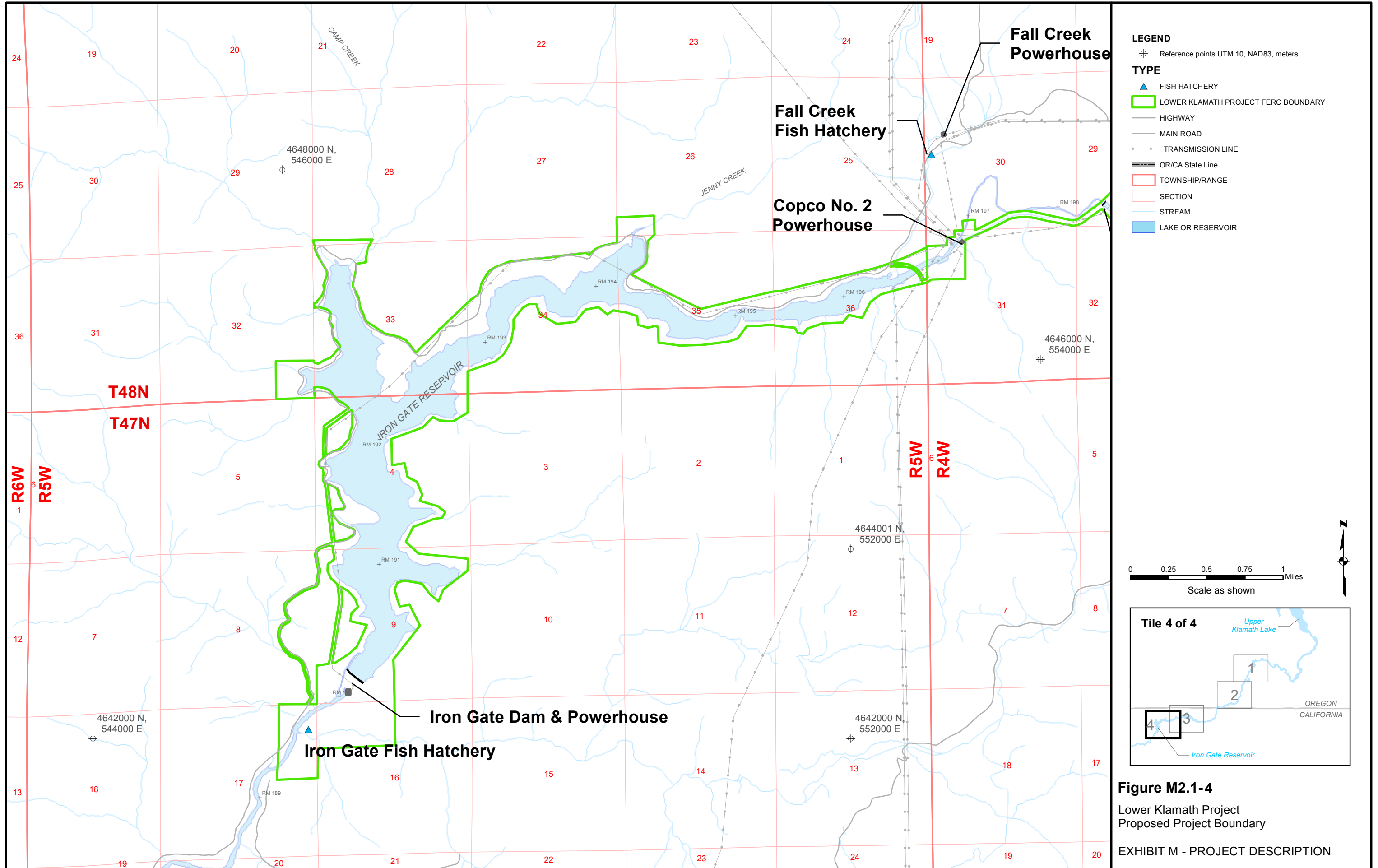
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**Figure M2.1-2**  
 Lower Klamath Project  
 Proposed Project Boundary  
 EXHIBIT M - PROJECT DESCRIPTION

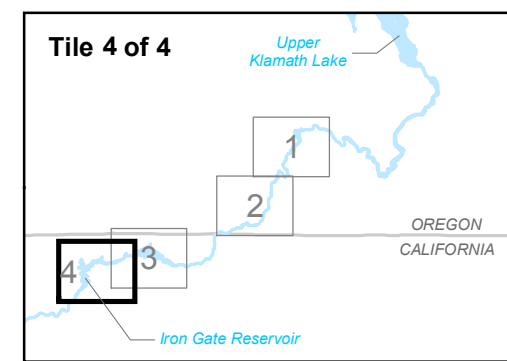
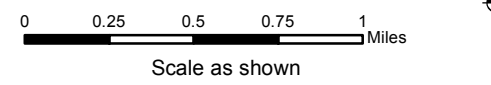


**Figure M2.1-3**  
 Lower Klamath Project  
 Proposed Project Boundary  
 EXHIBIT M - PROJECT DESCRIPTION



**LEGEND**

- ⊕ Reference points UTM 10, NAD83, meters
- TYPE**
- ▲ FISH HATCHERY
- ▭ LOWER KLAMATH PROJECT FERC BOUNDARY
- HIGHWAY
- MAIN ROAD
- TRANSMISSION LINE
- OR/CA State Line
- ▭ TOWNSHIP/RANGE
- ▭ SECTION
- STREAM
- LAKE OR RESERVOIR



**Figure M2.1-4**  
 Lower Klamath Project  
 Proposed Project Boundary  
 EXHIBIT M - PROJECT DESCRIPTION

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Lower Klamath Project  
FERC No. xxxxx

Figure M2.1-2. Transmission network diagram, Oregon/California area.

Transmission network diagrams are considered Critical Energy Infrastructure Information (CEII) and are not contained in this publicly available version of this filing, consistent with Federal Energy Regulatory Commission policies under Order Nos. 702, 630, 630-A, 643, 649 and 683.

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Lower Klamath Project  
FERC No. xxxxx

Figure M2.2-3. Transmission network diagram, Oregon/California area.

Transmission network diagrams are considered Critical Energy Infrastructure Information (CEII) and are not contained in this publicly available version of this filing, consistent with Federal Energy Regulatory Commission policies under Order Nos. 702, 630, 630-A, 643, 649 and 683.

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Lower Klamath Project  
FERC No. xxxxx

Table M2.1-1. Key data regarding the Lower Klamath Project developments.

Item	J.C. Boyle Development	Copco No. 1 Development	Copco No. 2 Development	Iron Gate Development
<b>General Information</b>				
Owner of the Dam	PacifiCorp	PacifiCorp	PacifiCorp	PacifiCorp
Purpose	Hydropower	Hydropower	Hydropower	Hydropower
Completion Date	1958	1918	1925	1962
Dam Location (river mile)	224.7	198.6	198.3	190.1
Powerhouse Location (river mile)	220.4	198.5	196.8	190.0
<b>Structural Features of the Dams</b>				
Dam Type	Earthfill	Concrete	Concrete	Earthfill
Dam Height (ft)	68	126	33	173
Dam Length (ft)	693	415	278	740
Spillway Length (ft)	115	182	130	685
Number of Spill Gates	3	13	5	0
Spill Gate Type	Tainter	Tainter	Tainter	Ungated
Spillway Crest (ft msl)	3781.5	2593.5	2454.0	2328.0
Spillway Apron (ft msl)	3763.5	2483.0	2452.0	2164.0
Gross Head (ft) at Spillway	18	111	21	164
Spillway Energy Dissipaters?	Yes	Yes	No	Yes
Upstream Fish Passage Ladders?	Yes	No	No	No <sup>a</sup>
Juvenile Bypass Facilities?	Yes	No	No	No
<b>Reservoir Information</b>				
Reservoir Common Name	J.C. Boyle Reservoir	Copco Reservoir	Copco No. 2 Reservoir	Iron Gate Reservoir
Distance to Upstream Dam (miles)	5.6	26.1	0.3	8.2
Reservoir Length (miles)	3.6	4.5	0.3	6.8
Maximum Surface Area (acres) <sup>b</sup>	420	1,000	40	944
Normal Maximum Depth (ft) from Normal Maximum Surface Elevation	41.7	115.5	28	162.6
Maximum Depth Elevations (ft msl) from 2001-2002 Study <sup>c</sup>	3,751.8	2,492.0	---	2,165.4
Normal Maximum Operating Surface Elevation (ft msl)	3,793	2,607.5	2,483.0	2,328.0
Normal Minimum Operating Surface Elevation (ft msl)	3,788	2601.0	Data not available	2,324.0
Normal Annual Operating Fluctuation (ft)	5	6.5	Data not available	4.0
Total Storage Capacity (ac-ft) <sup>d</sup>	3,495	46,867	73	58,794

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**Lower Klamath Project  
FERC No. xxxxx

Table M2.1-1. Key data regarding the Lower Klamath Project developments.

<b>Item</b>	<b>J.C. Boyle Development</b>	<b>Copco No. 1 Development</b>	<b>Copco No. 2 Development</b>	<b>Iron Gate Development</b>
Current (2001-2002) Estimate of Gross Storage Capacity <sup>d</sup>	NA	33,724	NA	50,941
Active Storage Capacity (ac-ft)	1,724	6,235	Negligible	3,790
<b>Retention Time (days)</b>				
Average Flow (cfs) <sup>e</sup>	1,511	1,885	1,885	1,852
At Average Flow	1.2	12	0.020	16
At 710 cfs	2.5	32	0.052	42
At 1,500 cfs	1.2	15	0.025	20
At 3,000 cfs	0.6	8	0.012	10
At 10,000 cfs (extreme event)	0.2	2	0.004	3
<b>Power Generation Features</b>				
Fish Screens	Yes; four Rex traveling band screens	None	None	None
Trash Racks	At intake to power canal 4 vertical traveling screens (0.25-mesh). Before tunnel and penstocks, 60 x 17.9 ft with 2-inch bar spacing.	Two 44 x 12.5 ft with 3-inch bar spacing	36.5 x 48 ft with 2-inch bar spacing	At penstock entrance, 17.5 x 45 ft with 4-inch bar spacing
Diversion to Powerhouse	Gated intake to 638-ft steel flow line; 2-mile concrete canal; small forebay; 2 steel penstocks	Three penstocks at the dam	Wood-stave flow line and rock tunnel to two steel penstocks	Gated intake tower to penstock at dam
Number of Turbines	2	2	2	1
Turbine Type	Vertical Francis	Horizontal Francis	Vertical Francis	Vertical Francis
Turbine Generator Nameplate Capacity (MW)	Unit 1: 50 Unit 2: 48	Unit 1: 10 Unit 2: 10	Unit 1: 13.5 Unit 2: 13.5	18
Total Nameplate Generating Capacity (MW)	98	20	27	18
Gross Head (ft) at Powerhouse	463	123	152	158
Total Turbine Hydraulic Capacity (cfs)	Rated: 2,850 Max: 3,000 Min: Unit 1: 344 Unit 2: 407	Rated: 3,200 Max: 3,560 Min: Unit 1: 241 Unit 2: 467	Rated: 3,200 Max: 3,250 Min: 258	Rated: 1,550 Max: 1,735 Min: 296

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Lower Klamath Project  
FERC No. xxxxx

Table M2.1-1. Key data regarding the Lower Klamath Project developments.

<b>Item</b>	<b>J.C. Boyle Development</b>	<b>Copco No. 1 Development</b>	<b>Copco No. 2 Development</b>	<b>Iron Gate Development</b>
Powerhouse Construction	Reinforced concrete structure	Reinforced concrete substructure with a concrete and steel superstructure	Reinforced concrete structure	Reinforced concrete structure
<b>Transmission Lines</b>				
Line Designation	98	15, 26-1, 26-2	19	62
Length (mi)	0.24	1.29, 0.07, 0.07	0.14	6.55
Voltage (kV)	230, 69	69, 69, 69	115	69
Interconnections	This 69 kV line tap is not currently energized. Generation output from JC Boyle plant is delivered to JC Boyle 230 kV substation.	Line 15 from Copco No. 1 switchyard to Copco No. 2 plant, line 26-1 from Copco No. 1 plant to switchyard, line 26-2 from Copco No. 1 plant to switchyard	Copco No. 2 plant to Copco No.2 switch yard	Plant to Copco No. 2

<sup>a</sup> Two fish ladders serve the Iron Gate fish hatchery, but do not allow passage past the dam.

<sup>b</sup> Pool elevations for these values are unknown.

<sup>c</sup> Data from the Final Bathymetry and Sediment Classification of the Klamath Hydropower Project Impoundments, J.M. Eilers and C.P. Gubala of JC Headwaters, Inc. prepared for PacifiCorp, April 2003.

<sup>d</sup> Total storage capacity is at normal full pool.

<sup>e</sup> Data are average daily turbine flows plus spill flows for 1994 through 1997 provided by PacifiCorp.



## M2.2 FERC PROJECT BOUNDARY

The FERC Project boundary is depicted in Figure M2.1-1 of this Exhibit M. The FERC Project boundary encloses those lands necessary for operation and maintenance of Project facilities.

PacifiCorp, the current licensee of the Lower Klamath Project, owns and manages approximately 86.5 percent of the FERC Project boundary area, including the land containing most of the Project powerhouses, portions of the transmission lines, conduits, canals, and dam facilities, and land underlying the Project reservoirs, Klamath River, and tributary streams. Approximately 9.7 percent of the Project boundary area is federally owned, 3.1 percent is owned by the State of Oregon (original bed of the Klamath River in J.C. Boyle reservoir) and there is a small amount of private ownership. Portions of the J.C. Boyle canal and the entire powerhouse are located on BLM land.

Contemporary land use in the Project area and adjacent properties includes hydroelectric generation, livestock grazing, recreation, and timberlands.

## M2.3 LANDS OF THE UNITED STATES

The lands of the United States enclosed by the Project boundary are listed in Table M2.3-1 with township/range/section descriptions and total areas in acres. Acreages were calculated using geographical information system (GIS) ArcInfo® software. It should be noted that the parcel and FERC boundary GIS data used to calculate ownership acreages are not survey accurate and some discrepancies may exist.

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Lower Klamath Project  
 FERC No. xxxxx

Table M2.3-1. Lands of the United States.

<b>Meridian</b>	<b>Township/Range/ Section</b>	<b>Owner</b>	<b>Area (acres)</b>	<b>Project</b>
Willamette	40S /6E/1	BLM	27.52	J.C. Boyle
Willamette	40S/6E/12	BLM	78.08	J.C. Boyle
Willamette	40S/6E/13	BLM	51.42	J.C. Boyle
Willamette	40S/6E/14	BLM	21.93	J.C. Boyle
Willamette	40S/6E/23	BLM	21.19	J.C. Boyle
Willamette	40S/6E/26	BLM	15.21	J.C. Boyle
Willamette	40S/6E/27	BLM	3.27	J.C. Boyle
Willamette	40S/6E/34	BLM	2.56	J.C. Boyle
Willamette	40S/6E/35	BLM	12.18	J.C. Boyle
Willamette	40S/7E/6	BLM	14.58	J.C. Boyle
Willamette	41S/6E/2	BLM	0.31	J.C. Boyle
Willamette	41S/6E/3	BLM	8.25	J.C. Boyle
Willamette	41S/6E/10	BLM	5.65	J.C. Boyle
<b>Total</b>			<b>262.14</b>	<b>J.C. Boyle</b>
Mt. Diablo	47N/5W/4	BLM	47.42	Iron Gate
Mt. Diablo	47N/5W/8	BLM	8.07	Iron Gate
Mt. Diablo	48N/5W/34	BLM	77.46	Iron Gate
<b>Total</b>			<b>132.95</b>	<b>Iron Gate</b>
<b>Totals</b>			<b>395.09</b>	<b>All</b>

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****M3.0 J.C. BOYLE DEVELOPMENT****M3.1 OVERVIEW**

The J.C. Boyle Development consists of a reservoir, a combination embankment and concrete dam, a water conveyance system, and a powerhouse on the Klamath River between about RM 228 and RM 220. The J.C. Boyle Development is downstream of the Keno dam and upstream of the Copco No. 1 dam. The purpose of the J.C. Boyle facility is to generate hydroelectric power.

**M3.2 DAM**

The embankment dam is a 68-foot-tall (at its maximum height above the original streambed) earthfill structure with a 15-foot side crest and a length of 413.5 feet at El. 3,800.0 feet msl. The concrete portion of the dam is 279 feet long and is composed of a spillway section, an intake structure, and a 115-foot-long gravity section of 23 feet maximum height between the intake block and the left abutment.

The spillway is a concrete gravity ogee overflow section with three 36-foot-wide by 12-foot-high radial gates. The spillway crest is at El. 3,781.5 feet msl and normal pool is 0.5 feet below the top of the gates (El. 3,793.5). The spillway bay discharges onto a 13-foot-long concrete apron stepped at three elevations generally following the profile of the bedrock surface. Below the apron is a vertical drop of 15 feet maximum height to the discharge channel, which was excavated in rock. The discharge channel is generally unlined. The estimated spillway capacity at water surface El. 3,793 feet msl with all three gates open is 14,850 cfs.

The intake structure is located to the immediate left of the spillway and consists of a 40-foot-high reinforced concrete tower. It has four 11-foot, 2-inch-wide openings to the reservoir, each of which has a steel trash rack followed by a vertical traveling screen (0.25-inch mesh) with high-pressure spray cleaners. Spray along with any screened fish are collected and diverted downstream of the dam. A fabricated metal building was added to the intake structure in 1989.

Behind the intake traveling screens is an entrance to the 14-foot-diameter steel flowline, the downstream end of which is equipped with a 14-foot by 14-foot automated fixed wheel gate. A bulkhead gate is also provided at the upstream end of the 14-foot flowline.

A 24-inch fish screen bypass pipe provides approximately 20 cfs of instream flow below the dam. An 24-inch instream flow augmentation pipe provides water from the steel flowline to supplement instream flow releases that are primarily comprised of flows from the fish ladder, fish screen bypass, and spill gate leakage at the dam.

A pool and weir fishway approximately 569 feet long with 63 pools is located at the dam for upstream fish passage. The fishway operates over a gross head range of approximately 55 to 60 feet.

The water conveyance infrastructure between the dam and the powerhouse has a total length of 2.56 miles. From the intake structure, the water flows through a 638-foot long, 14-foot-diameter, steel flowline. The flowline is supported on steel frames where it spans the Klamath River and discharges into an open power canal. The power canal is 2 miles long along a bench cut in the

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

Lower Klamath Project  
FERC No. xxxxx

face of the river canyon. Depending on the terrain, the canal is either a double- or single-walled concrete flume. The power canal is provided with overflow structures at the upstream and downstream ends and terminates in a forebay. The forebay overflow section is equipped with float-operated gates, which release water during the hydraulic surge from the canal following any load rejection at the powerhouse. The released water discharges through a short, concrete-lined chute and returns to the bypass reach.

Water for power generation is drawn from the forebay through a 60-foot-wide and 17.9-foot-high trash rack with 2-inch bar spacing before entering a 15.5-foot-diameter, concrete-lined, horseshoe-section tunnel, which is 1,660 feet long. The last 57-foot length of the tunnel before the downstream portal is steel lined with the liner bifurcating into two 10.5-foot-diameter steel penstocks. The bifurcation is encased in a concrete anchor block, and a steel surge tank is mounted on the thrust block. Descending to the powerhouse, the penstocks reduce in two steps to 9 feet in diameter. Each penstock is 956 feet in length and is supported by ring girders seated on concrete footings.

Key information about J.C. Boyle dam is summarized in Table M2.1-1.

### M3.3 RESERVOIR

The J.C. Boyle dam impounds a narrow reservoir of 420 surface acres (J.C. Boyle reservoir). The normal maximum and minimum operating levels are between El. 3,793 feet and El. 3,788 feet msl, a range of 5 feet. The reservoir contains approximately 3,495 acre-feet of total storage capacity and 1,724 acre-feet of active storage capacity.

Key information regarding J.C. Boyle reservoir is summarized in Table M2.1-1.

### M3.4 POWERHOUSE

The conventional outdoor-type reinforced concrete powerhouse is located approximately 4.3 river miles downstream of the dam on the right bank of the river.

There are two vertical-Francis turbines. Both have a rated discharge of 1,425 cfs. Unit 1 turbine is rated 75,700 hp at 440 feet of net head. Unit 2 turbine is rated 63,873 hp at 435 feet of net head. Unit 1 generator is rated at 53,000 kVA at 0.95 power factor (50.35 MW). Unit 2 generator is rated at 51,000 kVA at 0.95 power factor (48.45 MW). Key information about J.C. Boyle powerhouse is summarized in Table M2.1-1.

Two three-phase transformers (Unit 1 46,000 -kVA, 11,000/236,000-V and Unit 2 42,300-kVA, 11,000/236,000-V) step up the generator voltage for transmission interconnection.

### M3.5 TRANSMISSION LINES

The power from the powerhouse is transmitted a very short distance to the J.C. Boyle substation. From there the plant is connected to the Klamath Falls substation via the 230 kV JC Boyle to Klamath Falls line. There is also a second line that pre-dates the substation. This 0.24-mile 69-kV transmission line (PacifiCorp line 98) connects the plant to a tap point on PacifiCorp's Line 18. This line is not currently energized.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****M4.0 COPCO NO. 1 DEVELOPMENT****M4.1 OVERVIEW**

The Copco No. 1 Development consists of a reservoir, dam, spillway, intake, and outlet works and powerhouse located on the Klamath River between approximately RM 204 and RM 198 near the Oregon-California border. Copco No. 1 is downstream of the J.C. Boyle dam and upstream of Copco No. 2 dam. The purpose of the facility is to generate hydroelectric power.

**M4.2 DAM**

The Copco No. 1 dam is a concrete gravity arch structure with a 462-foot radius at the crest. As originally designed, the spillway crest was approximately 115 feet above the original river bed. After construction began, the river gravel was found to be over 100 feet deep at the dam site; this material was excavated and then backfilled with concrete, making the total height of the dam 230 feet, measured from the lowest depth of excavation to the spillway crest, and 250 feet to the top of the spillway deck.

The crest length between the rock abutments is approximately 410 feet. The upstream face of the dam is vertical at the top, then battered at 1 horizontal to 15 vertical. The downstream face is stepped, with risers generally about 6.0 feet in height.

The ogee-type spillway is located on the crest of the dam. It is divided into 13 bays controlled by 14-foot by 14-foot Tainter gates. The spillway crest is located at El. 2,593.5 feet msl. The normal operating reservoir water level is 1.5 feet below the top of the gates at El. 2,606.0 feet msl. The estimated spillway capacity at water surface El. 2,607.5 feet msl with all 13 gates open is 36,764 cfs.

Two intake structures are located at approximately invert El. 2,575.0 feet msl in the dam near the right abutment. The left intake houses four vertical lift gates. Two 10-foot-diameter (reducing to 8-foot-diameter) steel penstocks feed Unit No. 1 in the powerhouse. The right intake houses four vertical-lift gates. A single, 14-foot-diameter (reducing to two 8-foot-diameter) steel penstock feeds Unit No. 2. Facilities exist at the intake for future expansion of the powerhouse, but there are no plans to expand the Project capacity. There are two side-by-side trash racks, which measure 44 feet wide, 12.5 feet high, and have bar spacings of 3 inches, in front of each intake.

The low-level sluice outlet has been abandoned.

Key information about Copco No. 1 dam is summarized in Table M2.1-1.

**M4.3 RESERVOIR**

The Copco No. 1 reservoir is approximately 1,000 acres in extent and contains approximately 15,200 acre-feet of total storage capacity at elevation 2,607.5 and approximately 6,235 acre-feet of active storage capacity. The normal maximum and minimum operating levels are between El. 2,607.5 and El. 2,601.0 feet, respectively, a range of 6.5 feet. Key information about Copco No. 1 reservoir is summarized in Table M2.1-1.

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#### M4.4 POWERHOUSE

The Copco No. 1 powerhouse is a reinforced-concrete substructure with a concrete and steel superstructure enclosed by metal siding located at the base of Copco No. 1 dam on the right bank. The two turbines are double-runner, horizontal-Francis units, each with a rated discharge of 1,180 cfs. Unit 1 turbine is rated at 21,759 hp at a net head of 125 feet. Unit 2 turbine is rated at 18,600 hp at a net head of 125 feet. The generators are rated at 12,500 kVA at 0.8 power factor (10 MW). There are no turbine bypass valves.

Unit 1 has three single-phase, 5,000-kVA, 2,300/72,000-V transformers to step-up the generator voltage for transmission interconnection. Unit 2 has three single-phase, 4,165-kVA, 2,300/72,000-V transformers to step up the generator voltage for transmission interconnection.

Key information about the Copco No. 1 powerhouse is summarized in Table M2.1-1.

#### M4.5 TRANSMISSION LINES

Copco No. 1 plant has four associated 69-kV transmission lines. PacifiCorp Line 15 connects the Copco No. 1 switchyard to Copco No. 2, approximately 1.29 miles to the west. PacifiCorp line 3 approximately 1.66 miles in length connect Copco No 1 switchyard to a tap on the 69 kV line from Fall Creek plant. PacifiCorp lines 26-1 and 26-2, each approximately 0.07 mile in length, connect Copco No. 1 powerhouse to the Copco No. 1 switchyard.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****M5.0 COPCO NO. 2 DEVELOPMENT****M5.1 OVERVIEW**

The Copco No. 2 Development consists of a diversion dam, small impoundment, a water conveyance system, and a powerhouse. The dam is located approximately  $\frac{1}{4}$  mile downstream of Copco No. 1 dam at RM 198.3. The purpose of the Copco No. 2 facilities is to generate hydroelectric power.

**M5.2 DAM**

The Copco No. 2 dam is a concrete gravity structure with an intake to the flowline on the left abutment and a 145-foot-long spillway section with five Tainter gates. The dam is 33 feet high, has an overall crest length of 335 feet and a crest width of 9 feet. The crest elevation is El. 2,493 feet msl. The dam has a 132-foot-long earthen embankment with a gunite cutoff wall. The dam has a manual gate controlling a sluiceway adjacent to the intake. A corrugated metal flume provides approximately 5 cfs of instream flow in the bypass reach. The concrete gravity spillway section crest elevation is 2,473 feet msl. The estimated spillway capacity at water surface El. 2,483 feet msl is 13,060 cfs with the five gates open.

The intake structure incorporates trash racks and a roller-mounted (caterpillar) bulkhead gate. The trash rack is 36.5 feet by 48 feet and has 2-inch bar spacing.

The flow line to the powerhouse consists of portions of 2,440 feet of concrete-lined tunnel, 1,313 feet of wood-stave pipeline, an additional 1,110 feet of concrete-lined tunnel, a surge tank, and two steel penstocks. The diameter of the tunnel and wood stave pipeline sections is a constant 16 feet. The two penstocks, one 405.5 feet long and one 410.6 feet long, range from 16 feet in diameter at the inlet to 8 feet in diameter at the turbine spiral cases.

Key information about Copco No. 2 dam is summarized in Table M2.1-1.

**M5.3 RESERVOIR**

The reservoir created by the Copco No. 2 dam is approximately 1/4-mile long and has a storage capacity of 73 acre-feet. At the normal water surface elevation of El. 2483 feet msl, there is very minimal active storage. El. 2,483 feet msl is both the maximum and minimum normal water surface. As a result, Copco No. 2 generation tracks Copco No. 1 generation.

Key information about Copco No. 2 reservoir is summarized in Table M2.1-1.

**M5.4 POWERHOUSE**

The powerhouse is a reinforced concrete structure that houses two vertical-Francis turbines. Each turbine has a rated discharge of 1,338 cfs. Unit 1 turbine is rated at 26,285 hp at 145 feet of net head and Unit 2 is rated at 20,000 hp at 140 feet of net head. The synchronous generators are rated 15,000 kVA at 0.9 power factor (13.5 MW).

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There is one three-phase, 35-megavolt ampere (MVA), 6,600/115,000-V transformer for each generator to step up the voltage for transmission interconnection.

Key information about Copco No. 2 powerhouse is summarized in Table M2.1-1.

#### M5.5 TRANSMISSION LINES

A 115-kV transmission line (PacifiCorp Line 19) connects Copco No. 2 plant to Copco No. 2 switchyard approximately 0.14 miles to the northwest. The 69-kV bus at the Copco No. 2 powerhouse switchyard includes two 69-kV transmission lines to the PacifiCorp transmission system, a 69-kV transmission line (PacifiCorp Line 15) to the Copco No. 1 switchyard approximately 1.29 miles to the east, and a 69-kV transmission line (PacifiCorp Line 62) to the Iron Gate plant approximately 6.55 miles to the southwest.



**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED****M6.0 IRON GATE DEVELOPMENT****M6.1 OVERVIEW**

The Iron Gate Development consists of a reservoir, an earth embankment dam, an ungated side-channel spillway, intakes for the diversion tunnel and penstock, a steel penstock from the dam to the powerhouse, and the powerhouse. It is located on the Klamath River between approximately RM 196.8 and RM 190, approximately 20 miles northeast of Yreka, California. It is the farthest downstream hydroelectric facility of the Lower Klamath Project. The purpose of the Iron Gate facilities is to generate hydroelectric power.

**M6.2 DAM**

Iron Gate dam is a zoned earthfill embankment. The dam has a height of 189 feet from the rock foundation to the dam crest at El. 2,343.0 feet msl. The crest is 20 feet wide and approximately 740 feet long. It has a central, vertical-asymmetrical clay core. The dam is founded on a sound basalt rock foundation. There is a grout curtain in the bedrock beneath the impervious core.

There are fish trapping and holding facilities located on the random fill area at the dam toe. The top of the random fill area is at El. 2,189.0 feet msl. High- (El. 2,310.0 feet msl) and low-level (El. 2,250 feet msl) intakes for the fish facility water are incorporated into the dam.

In 2003, modifications were made to Iron Gate Dam to raise the dam crest elevation from El. 2343 feet msl to El. 2348 feet msl. The modifications included construction of a concrete wall extension along the dam crest, anchored into the existing dam structure. Additional riprap materials were placed on the upstream face of the dam to protect those areas inundated by the higher reservoir elevations. This work included shotcrete protection at the top of the spillway and spillway chute.

The spillway is excavated in rock at the right dam abutment. It is an ungated chute spillway with a side channel entrance. The spillway crest is at El. 2,328.0 feet msl, 15 feet below the dam crest. The spillway crest is 727 feet long and consists of a concrete ogee and slab placed over the excavated rock ridge. The upper part of the channel is partly lined with concrete. At the end of the chute, a flip-bucket terminal structure is located approximately 2,150 feet downstream of the toe of the dam. Key information about Iron Gate dam is summarized in Table M2.1-1.

The diversion tunnel used during construction was driven through bedrock in the right abutment and is still in place. The tunnel terminates in a reinforced concrete outlet structure at the downstream toe of the dam. Control of the flow in the tunnel is provided by a slide gate approximately 112 feet upstream of the dam axis. The gate is housed in a reinforced concrete tower accessible by bridge from the dam crest. The intake is a reinforced concrete structure equipped with trash racks and is submerged on the floor of the reservoir approximately 380 feet upstream from the dam axis. Operation of the gate controlling flow through the tunnel is limited to emergency use during high flow events. If needed for such purposes, the tunnel can pass up to approximately 5,000 cfs.

The intake structure for the powerhouse is a 45-foot-high, free-standing, reinforced-concrete tower, located in the reservoir immediately upstream of the left dam abutment. It is accessed by a

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foot bridge from the abutment. It houses a 14-foot by 17-foot slide gate, which controls the flow into a 12-foot-diameter, welded-steel penstock. The penstock is concrete-encased where it penetrates the dam approximately 35 feet below the normal maximum reservoir level. The penstock is supported on concrete supports down the dam abutment. There is a trash rack at the penstock entrance, which is 17.5 feet by 45 feet with 4-inch bar spacing.

### M6.3 RESERVOIR

The reservoir formed upstream of the Iron Gate dam is approximately 944 surface acres and contains approximately 58,794 acre-feet of total storage capacity (at El. 2,328.0 feet msl) and 3,790 acre-feet of active storage capacity. The normal maximum and minimum operating levels are between El. 2,328.0 feet msl and El. 2,324.0 feet msl, respectively, a range of 4 feet.

Key information about Iron Gate reservoir is summarized in Table M2.1-1.

### M6.4 POWERHOUSE

The powerhouse is located at the base of the dam on the left bank.

The Iron Gate powerhouse consists of a single vertical Francis turbine. The turbine has a rated discharge capacity 1,735 cfs, with a rated output of 25,000 at a rated net head of 154 feet. The synchronous generator is rated 18,947 kVA at 0.95 power factor (18 MW). In the event of a turbine shutdown, a synchronized Howell-Bunger bypass valve located immediately upstream of the turbine diverts water around the turbine to maintain flows downstream of the dam.

There is a single three-phase, 18,947-kVA, 6,600/69,000-V step-up transformer at the powerhouse to interconnect the PacifiCorp transmission system.

Key information about Iron Gate powerhouse is summarized in Table M2.1-1.

### M6.5 TRANSMISSION LINES

Iron Gate plant has one associated 69-kV transmission line. Line 62 runs along the north side of Iron Gate reservoir for approximately 6.55 miles, to the Copco No. 2 switchyard.

### M6.6 IRON GATE FISH HATCHERY

The Iron Gate fish hatchery was constructed in 1966 and is located downstream of Iron Gate dam, adjacent to the Bogus Creek tributary. The hatchery complex includes an office, incubator building, rearing ponds, fish ladder with trap, visitor information center, and employee residences. Up to 50 cfs is diverted from the Iron Gate reservoir to supply the 32 raceways and fish ladder.

The hatchery produces Chinook salmon, steelhead trout, and coho salmon. Annual production goals are 6 million Chinook, 200,000 steelhead, and 75,000 coho. The hatchery is operated by the California Department of Fish and Wildlife. Per the license, eighty percent of operations and maintenance costs are required to be funded by PacifiCorp, but PacifiCorp currently funds 100 percent of those costs pursuant to the Klamath Hydroelectric Settlement Agreement.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**M7.0 INFORMATION SOURCES**

Eilers, J.M. and C.P. Gubala. 2003. Final Bathymetry and Sediment Classification of the Klamath Hydropower Project Impoundments. Prepared for PacifiCorp by JC Headwaters. April 2003.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Joint Application for Approval of License Amendment and License Transfer**

## **Attachment D**

### **Klamath Hydroelectric Project Exhibit Drawings and Maps List**

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

Current Exhibits Summary

**PacifiCorp Klamath Hydroelectric Project  
FERC License No. 2082 (Issued January 28, 1954)**

Exhibit#	Drawing No.	Development (if applicable)	Title	Action and Cite	DI#	Filed Date	Approved Date	See it:	Status
J	2082-2	KL-ALL	"Hydro Development, Klamath River in Oregon & California - Profile & Topographic Map" (FPC 2082-2) Sheet 2	Original: (Order Issuing License (Major), Klamath River Project No. 2082 (October 17, 1956)	3	10/17/1956			*
J	2082-196	KL-ALL	"General Map" (FPC 2082-196) Sheet 1	(Order Amending License (Major) and Dismissing Application for New License (Transmission Line), Klamath River Project No. 2082, 44 FPC 1065 (September 25, 1970)	48	9/25/1970			*
K-8	2082-176	Keno	"Keno Development, Except Insofar As It Shows Tunnel, Canal, Flume, Penstock and Powerhouse" (FPC 2082-176) Sheet 1	(Order Further Amending License (Major), Klamath River Project No. 2082, 34 FPC 1387 (November 29, 1965)	40	11/29/1965			*
K-9	2082-228	Transmission	"Fall Creek Development Plan" (FPC 2082-228) Sheet 1	(Order Amending License and Revising Annual Charges, Klamath River Project No. 2082, 12 FERC ¶62,123 (August 22, 1980))	59	8/22/1980			*
L	2082-78	Eastside	"East Side Development" (FPC 2082-78) Sheet 1	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959)	16	9/23/1959			*
L	2082-79	Eastside	"East Side Development" (FPC 2082-79) Sheet 2	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959)	16	9/23/1959			*
L	2082-80	Eastside	"East Side Development" (FPC 2082-80) Sheet 3	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959)	16	9/23/1959			*
L	2082-81	Eastside	"East Side Development" (FPC 2082-81) Sheet 4	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959)	16	9/23/1959			*
L	2082-82	Eastside	"East Side Development" (FPC 2082-82) Sheet 5	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959)	16	9/23/1959			*
L	2082-83	Eastside	"East Side Development" (FPC 2082-83) Sheet 6	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959)	16	9/23/1959			*
L	2082-84	Westside	"West Side Development" (FPC 2082-84) Sheet 8	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959)	16	9/23/1959			*
L	2082-85	Westside	"West Side Development" (FPC 2082-85) Sheet 9	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959)	16	9/23/1959			*
L	2082-86	Westside	"West Side Development" (FPC 2082-86) Sheet 10	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959)	16	9/23/1959			*
L	2082-87	Westside	"West Side Development" (FPC 2082-87) Sheet 11	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959)	16	9/23/1959			*
L	2082-88	Westside	"West Side Development" (FPC 2082-88) Sheet 12	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959)	16	9/23/1959			*
L	2082-89	Westside	"West Side Development" (FPC 2082-89) Sheet 13	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959)	16	9/23/1959			*
L	2082-90	Westside	"West Side Development" (FPC 2082-90) Sheet 14	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959)	16	9/23/1959			*
L-22	2082-168	Keno	"Keno Development" (FPC 2082-168) Sheet 2	(Order Further Amending License (Major), Klamath River Project No. 2082, 34 FPC 1387 (November 29, 1965)	40	11/29/1965			*
L-22	2082-184	Keno	"Keno Dam and Spillway" (FPC 2082-184) Sheet 1	(Order Approving Revised Exhibit L Drawings for Project and Deleting Superseded Exhibits, Klamath River Project No. 2082, 41 FPC 393 (March 21, 1969)	46	3/21/1969			*
L-22	2082-186	Keno	"Profile and Sections of Channel Improvements - River Miles 234.6 - 236" (FPC 2082-186) Sheet 5	(Order Approving Revised Exhibit L Drawings for Project and Deleting Superseded Exhibits, Klamath River Project No. 2082, 41 FPC 393 (March 21, 1969)	46	3/21/1969			*
L-22	2082-200	Keno	"Plan of Channel Improvement - River Miles 234.6 - 236" (FPC 2082-200) Sheet 4	(Order Approving Revised Exhibit L Drawings for Project and Deleting Superseded Exhibits, Klamath River Project No. 2082, 41 FPC 393 (March 21, 1969)	46	3/21/1969			*
L-22	2082-201	Keno	"Channel Improvement River Miles 236 - 242" (FPC 2082-201) Sheet 6	(Order Approving Revised Exhibit L Drawings for Project and Modifying License, Klamath River Project No. 2082, 41 FPC 824 (June 20, 1969)	47	6/20/1969			*
L-22	2082-202	Keno	"Channel Improvement River Miles 242 - 250" (FPC 2082-202) Sheet 7	(Order Approving Revised Exhibit L Drawings for Project and Modifying License, Klamath River Project No. 2082, 41 FPC 824 (June 20, 1969)	47	6/20/1969			*
L-24	2082-199	Fall Creek	"Fall Creek Powerhouse" (FPC 2082-199) Sheet 2	(Order Amending License (Major) and Dismissing Application for New License (Transmission Line), Klamath River Project No. 2082, 44 FPC 1065 (September 25, 1970)	48	9/25/1970			*
L-24	2082-204	Fall Creek	"Fall Creek Development Diversion Structures" (FPC 2082-204) Sheet 1	(Order Modifying License, Granting Extension of Time to File Revised Exhibits, and Approving Revised Exhibit L, Klamath River Project No. 2082, 51 FPC 1850 (June 6, 1974)	51	6/6/1974			*
M		KL-ALL	"General Description and Specifications of Equipment"	(Order Issuing License (Major), Klamath River Project No. 2082 (October 17, 1956))	3	10/17/1956			*

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Current Exhibits Summary

**PacifiCorp Klamath Hydroelectric Project  
FERC License No. 2082 (Issued January 28, 1954)**

Exhibit#	Drawing No.	Development (if applicable)	Title	Action and Cite	DI#	Filed Date	Approved Date	See it:	Status
M-10		Fall Creek	"Revised Fall Creek Development Description of Equipment"	(Order Amending License and Revising Annual Charges, Klamath River Project No. 2082, 12 FERC ¶62,123 (August 22, 1980))	59	8/22/1980			*
R	2082-221	Keno	"Keno Development Recreation Site Plan" (FPC 2082-221)	(Order Approving Revised Exhibit R Drawings, Klamath River Project No. 2082, 56 FPC 1900 (September 29, 1976))	54	9/29/1976			*
R	2082-222	Link River	"Link River Development General Plan" (FPC 2082-222) Sheet 9	(Order Approving Revised Exhibit R Drawings, Klamath River Project No. 2082, 56 FPC 1900 (September 29, 1976))	54	9/29/1976			*

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Joint Application for Approval of License Amendment and License Transfer**

## **Attachment E**

### **Lower Klamath Project Exhibit Drawings and Maps List**

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

Current Exhibits Summary  
**Lower Klamath Project**  
**FERC License No. \_\_\_\_ (Issued \_\_\_\_\_)**

Exhibit#	Drawing No.	Development (if applicable)	Title	Action and Cite	DI#	Filed Date	Approved Date	See it:	Status
J	2082-2	KL-ALL	"Hydro Development, Klamath River in Oregon & California - Profile & Topographic Map" (FPC 2082-2) Sheet 2	Original: (Order Issuing License (Major), Klamath River Project No. 2082 (October 17, 1956)	3	10/17/1956			*
J	2082-196	KL-ALL	"General Map" (FPC 2082-196) Sheet 1	(Order Amending License (Major) and Dismissing Application for New License (Transmission Line), Klamath River Project No. 2082, 44 FPC 1065 (September 25, 1970)	48	9/25/1970			*
J-4	2082-46	JC Boyle (Big Bend)	"General Map Supplementing Exhibit J-1" (FPC 2082-46) Sheet 1	Original: (Order Approving Revised Exhibits, Further Amending the License and Prescribing Annual Charge, Klamath River Project No. 2082, 22 FPC 496 (September 15, 1959)	15	9/15/1959			*
J-7	2082-134	Iron Gate	"General Map" (FPC 2082-134) Sheet 1	J-7 established by (Order Approving Revised Project Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082, 28 FPC 856 (November 21, 1962)	26	11/21/1962			*
K	2082-3	JC Boyle (Big Bend #2)	Topographic Map, Big Bend No. 2 (Sheet 1)	(Order Issuing License (Major), Klamath River Project No. 2082 (October 17, 1956))	3	10/17/1956			*
K	2082-121	Iron Gate	"Untitled Drawing re: Project Area" (FPC 2082-121)	(Order Approving Project Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082 (June 21, 1962))	24	6/21/1962			*
K	2082-124	Iron Gate	"Untitled Drawing re: Project Area" (FPC 2082-124)	(Order Approving Project Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082 (June 21, 1962))	24	6/21/1962			*
K	2082-125	Iron Gate	"Untitled Drawing re: Project Area" (FPC 2082-125)	(Order Approving Project Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082 (June 21, 1962))	24	6/21/1962			*
K-4	2082-48	JC Boyle (Big Bend)	"Access Road Location" (FPC 2082-48) , Sheet 2	(Order Approving Revised Exhibits, Further Amending the License, and Prescribing Annual Charge, Klamath River Project No. 2082, 22 FPC 496 (September 15, 1959))	15	9/15/1959			*
K-4	2082-49	JC Boyle (Big Bend)	"Access Road Location" (FPC 2082-49) , Sheet 3	(Order Approving Revised Exhibits, Further Amending the License, and Prescribing Annual Charge, Klamath River Project No. 2082, 22 FPC 496 (September 15, 1959))	15	9/15/1959			*
K-4	2082-50	JC Boyle (Big Bend)	"Access Road Location" (FPC 2082-50) , Sheet 4	(Order Approving Revised Exhibits, Further Amending the License, and Prescribing Annual Charge, Klamath River Project No. 2082, 22 FPC 496 (September 15, 1959))	15	9/15/1959			*
K-4	2082-51	JC Boyle (Big Bend)	"Topographic Map of Conduit, Forebay, Tunnel, Penstock, Powerhouse, Dan, Reservoir, Access Road and Transmission Line Locations" (FPC 2082-51) Sheet 5	(Order Approving Revised Exhibits, Further Amending the License, and Prescribing Annual Charge, Klamath River Project No. 2082, 22 FPC 496 (September 15, 1959))	15	9/15/1959			*
K-4	2082-54	JC Boyle (Big Bend)	"Topographic Map of Conduit, Forebay, Tunnel, Penstock, Powerhouse, Dan, Reservoir, Access Road and Transmission Line Locations" (FPC 2082-54) Sheet 8	(Order Approving Revised Exhibits, Further Amending the License, and Prescribing Annual Charge, Klamath River Project No. 2082, 22 FPC 496 (September 15, 1959))	15	9/15/1959			*
K-4	2082-55	JC Boyle (Big Bend)	"Topographic Map of Conduit, Forebay, Tunnel, Penstock, Powerhouse, Dan, Reservoir, Access Road and Transmission Line Locations" (FPC 2082-55) Sheet 9	(Order Approving Revised Exhibits, Further Amending the License, and Prescribing Annual Charge, Klamath River Project No. 2082, 22 FPC 496 (September 15, 1959))	15	9/15/1959			*
K-7	2082-135	Iron Gate	"Project Boundary, Areas and Ownerships, Reservoir Area Capacity Curves" (FPC 2082-135) Sheet 1	(Order Approving Revised Project Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082, 28 FPC 856 (November 21, 1962))	26	11/21/1962			*
K-7	2082-136	Iron Gate	"Project Boundary, Areas and Ownerships" (FPC 2082-136) Sheet 2	(Order Approving Revised Project Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082, 28 FPC 856 (November 21, 1962))	26	11/21/1962			*
K-7	2082-137	Iron Gate	"Project Boundary, Areas and Ownerships" (FPC 2082-137) Sheet 3	(Order Approving Revised Project Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082, 28 FPC 856 (November 21, 1962))	26	11/21/1962			*
K-7	2082-138	Iron Gate	"Project Boundary, Areas and Ownerships" (FPC 2082-138) Sheet 4	(Order Approving Revised Project Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082, 28 FPC 856 (November 21, 1962))	26	11/21/1962			*
K-7	2082-139	Iron Gate	"Project Boundary, Areas and Ownerships" (FPC 2082-139) Sheet 5	(Order Approving Revised Project Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082, 28 FPC 856 (November 21, 1962))	26	11/21/1962			*
K-7	2082-140	Iron Gate	"Project Boundary, Areas and Ownerships" (FPC 2082-140) Sheet 6	(Order Approving Revised Project Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082, 28 FPC 856 (November 21, 1962))	26	11/21/1962			*



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Current Exhibits Summary  
**Lower Klamath Project**  
**FERC License No. \_\_\_\_ (Issued \_\_\_\_\_)**

Exhibit#	Drawing No.	Development (if applicable)	Title	Action and Cite	DI#	Filed Date	Approved Date	See it:	Status
K-7	2082-141	Iron Gate	"Project Boundary, Areas and Ownerships" (FPC 2082-141) Sheet 7	(Order Approving Revised Project Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082, 28 FPC 856 (November 21, 1962))	26	11/21/1962			*
L	2082-95	Copco 1	"Copco No. 1 Development" (FPC 2082-95) Sheet 24	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959))	16	9/23/1959			*
L	25:00:00	Copco 1	"Copco No. 1 Development" (FPC 2082-96) Sheet 25	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959))	16	9/23/1959			*
L	2082-97	Copco 1	"Copco No. 1 Development" (FPC 2082-97) Sheet 26	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959))	16	9/23/1959			*
L	2082-98	Copco 1	"Copco No. 1 Development" (FPC 2082-98) Sheet 27	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959))	16	9/23/1959			*
L	2082-99	Copco 1	"Copco No. 1 Development" (FPC 2082-99) Sheet 28	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959))	16	9/23/1959			*
L	2082-100	Copco 1	"Copco No. 1 Development" (FPC 2082-100) Sheet 29	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959))	16	9/23/1959			*
L	2082-101	Copco 1	"Copco No. 1 Development" (FPC 2082-101) Sheet 30	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959))	16	9/23/1959			*
L	2082-102	Copco 1	"Copco No. 1 Development" (FPC 2082-102) Sheet 31	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959))	16	9/23/1959			*
L	2082-103	Copco 2	"Copco No. 2 Development" (FPC 2082-103) Sheet 32	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959))	16	9/23/1959			*
L	2082-104	Copco 2	"Copco No. 2 Development" (FPC 2082-104) Sheet 33	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959))	16	9/23/1959			*
L	2082-110	Copco 2	"Copco No. 2 Development" (FPC 2082-110) Sheet 32A	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959))	16	9/23/1959			*
L	2082-105	Copco 2	"Copco No. 2 Development" (FPC 2082-105) Sheet 34	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959))	16	9/23/1959			*
L	2082-106	Copco 2	"Copco No. 2 Development" (FPC 2082-106) Sheet 35	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959))	16	9/23/1959			*
L	2082-107	Copco 2	"Copco No. 2 Development" (FPC 2082-107) Sheet 36	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959))	16	9/23/1959			*
L	2082-108	Copco 2	"Copco No. 2 Development" (FPC 2082-108) Sheet 37	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959))	16	9/23/1959			*
L	2082-109	Copco 2	"Copco No. 2 Development" (FPC 2082-109) Sheet 38	(Upon Application for Amendment of License Under the Federal Power Act, Klamath River Project No. 2082 (September 23, 1959))	16	9/23/1959			*
L-4	2082-56	JC Boyle (Big Bend)	"Revised: Diversion Dam - Plan, Section Details and Fish Protection Arrangements" (FPC 2082-56) Sheet 1	(Order Reapproving Revised Exhibit L Drawings for Project, Klamath River Project No. 2082, 37 FPC 329 (February 16, 1967))	43	2/16/1967			*
L-4	2082-57	JC Boyle (Big Bend)	"Tunnel, Penstock and Surge Tank Profile and Details" (FPC 2082-57) Sheet 2	(Order Approving Revised Exhibits, Further Amending the License and Prescribing Annual Charges, Klamath River Project No. 2082, 22 FPC 496 (September 15, 1959))	15	9/15/1959			*
L-4	2082-58	JC Boyle (Big Bend)	"Forebay, Spillway, Deer Escape, Flume Plan, Sections and Details" (FPC 2082-58) Sheet 3	(Order Approving Revised Exhibits, Further Amending the License and Prescribing Annual Charges, Klamath River Project No. 2082, 22 FPC 496 (September 15, 1959))	15	9/15/1959			*
L-4	<del>FPC</del> 2082-59	JC Boyle (Big Bend #2)	"Powerhouse Plan and Section" (FPC 2082-59) Sheet 4	(Order Approving Revised Exhibits, Further Amending the License and Prescribing Annual Charges, Klamath River Project No. 2082, 22 FPC 496 (September 15, 1959))	15	9/15/1959			*
L-4	2082-60	JC Boyle (Big Bend #2)	"14' 0" Diameter Pipe Line - Profile and Section, Pipe Line Outlet and Spillway - Plan and Section, Deer Escape and Equipment Ramp - Plan and Section" (FPC 2082-60) Sheet 5	(Order Approving Revised Exhibits, Further Amending the License and Prescribing Annual Charges, Klamath River Project No. 2082, 22 FPC 496 (September 15, 1959))	15	9/15/1959			*
L-4	2082-61	JC Boyle (Big Bend #2)	"Diversion Dam Grouting Record" (FPC 2082-61) Sheet 6	(Order Approving Revised Exhibits, Further Amending the License and Prescribing Annual Charges, Klamath River Project No. 2082, 22 FPC 496 (September 15, 1959))	15	9/15/1959			*
L-10	2082-142	Iron Gate	"Iron Gate Development Plan and Sections of Dam" (FPC 2082-142) Sheet 1	(Order Approving Revised Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082, 28 FPC 856 (November 21, 1962))	26	11/21/1962			*

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Current Exhibits Summary  
**Lower Klamath Project**  
**FERC License No. \_\_\_\_ (Issued \_\_\_\_\_)**

Exhibit#	Drawing No.	Development (if applicable)	Title	Action and Cite	DI#	Filed Date	Approved Date	See it:	Status
L-10A	2082-178	Iron Gate	"Dam Crest Modifications" (FPC 2082-178) Exhibit L-10A, Supplementing L-10	(Order Approving Revised Exhibit L Drawings, Klamath River Project No. 2082, 36 FPC 462 (August 17, 1966))	56	8/17/1966			*
L-11	2082-143	Iron Gate	"Iron Gate Development Powerhouse Sections" (FPC 2082-143) Sheet 1	(Order Approving Revised Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082, 28 FPC 856 (November 21, 1962))	26	11/21/1962			*
L-11	2082-144	Iron Gate	"Iron Gate Development Powerhouse Plan and Sections" (FPC 2082-144) Sheet 2	(Order Approving Revised Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082, 28 FPC 856 (November 21, 1962))	26	11/21/1962			*
L-12	2082-145	Iron Gate	"Iron Gate Development Fish Facilities - Plans, Sections and Details" (FPC 2082-145) Sheet 1	(Order Approving Revised Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082, 28 FPC 856 (November 21, 1962))	26	11/21/1962			*
L-12	2082-146	Iron Gate	"Iron Gate Development Fish Facilities - Water Supply Piping" (FPC 2082-146) Sheet 2	(Order Approving Revised Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082, 28 FPC 856 (November 21, 1962))	26	11/21/1962			*
L-12	2082-147	Iron Gate	"Iron Gate Development Fish Facilities - Fish Ladder, Plan and Sections" (FPC 2082-147) Sheet 3	(Order Approving Revised Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082, 28 FPC 856 (November 21, 1962))	26	11/21/1962			*
L-13	2082-148	Iron Gate	"Iron Gate Development, Spillway Trash Sluice Gate - Plan and Sections" (FPC 2082-148) Sheet 1	(Order Approving Revised Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082, 28 FPC 856 (November 21, 1962))	26	11/21/1962			*
L-14	2082-149	Iron Gate	"Revised: Iron Gate Development, Penstock - Plan, Profile, Sections and Details" (FPC 2082-149) Sheet 1	(Order Reapproving Revised Exhibit L Drawings for Project, Klamath River Project No. 2082, 37 FPC 329 (February 16, 1967))	43	2/16/1967			*
L-14	2082-150	Iron Gate	"Revised: Iron Gate Development, Penstock - Concrete Encasement, Plan and Profile; Bypass Plan - Sections and Details" (FPC 2082-150) Sheet 2	(Order Reapproving Revised Exhibit L Drawings for Project, Klamath River Project No. 2082, 37 FPC 329 (February 16, 1967))	43	2/16/1967			*
L-15	2082-151	Iron Gate	"Iron Gate Development, Spillway - Plan, Profile and Sections" (FPC 2082-151) Sheet 1	(Order Approving Revised Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082, 28 FPC 856 (November 21, 1962))	26	11/21/1962			*
L-15	2082-179	Iron Gate	"Spillway Modifications" (FPC 2082-179) Sheet 1A	(Order Approving Revised Exhibit L Drawings, Klamath River Project No. 2082, 36 FPC 462 (August 17, 1966))	42	8/17/1966			*
L-16	2082-152	Iron Gate	"Iron Gate Development, Sluice and Diversion Tunnel, Gate Structure in Rock - Plan, Sections and Details" (FPC 2082-152) Sheet 1	(Order Approving Revised Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082, 28 FPC 856 (November 21, 1962))	26	11/21/1962			*
L-16	2082-153	Iron Gate	"Iron Gate Development, Sluice and Diversion Tunnel, Gate Structure Above Rock - Plan and Sections" (FPC 2082-153) Sheet 2	(Order Approving Revised Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082, 28 FPC 856 (November 21, 1962))	26	11/21/1962			*
L-16	2082-154	Iron Gate	"Iron Gate Development, Sluice and Diversion Tunnel, Gate Structure - Closure, Gates Section" (FPC 2082-154) Sheet 3	(Order Approving Revised Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082, 28 FPC 856 (November 21, 1962))	26	11/21/1962			*
L-17	2082-155	Iron Gate	"Iron Gate Development, Power Conduit Intake, Structure - Plan and Sections" (FPC 2082-155) Sheet 1	(Order Approving Revised Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082, 28 FPC 856 (November 21, 1962))	26	11/21/1962			*
L-18	2082-156	Iron Gate	"Iron Gate Development, Sluice and Diversion Tunnel - Plan and Profile, Outlet Structure Plan, Elevations and Section" (FPC 2082-156) Sheet 1	(Order Approving Revised Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082, 28 FPC 856 (November 21, 1962))	26	11/21/1962			*
L-18	2082-157	Iron Gate	"Iron Gate Development, Sluice and Diversion Tunnel, Intake Structure - Plan, Section and Details" (FPC 2082-157) Sheet 2	(Order Approving Revised Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082, 28 FPC 856 (November 21, 1962))	26	11/21/1962			*
L-23	2082-180	Iron Gate	"Fish Hatchery Location and Plot Plan" (FPC 2082-180) Sheet 1	(Order Approving Exhibit L Drawings Depicting Fish Hatchery as Constructed, Klamath River Project No. 2082, 38 FPC 309 (August 9, 1967))	44	8/9/1967			*
L-23	2082-181	Iron Gate	"Fish Hatchery Rearing Ponds, Building, Aerator and Piping" (FPC 2082-181) Sheet 2	(Order Approving Exhibit L Drawings Depicting Fish Hatchery as Constructed, Klamath River Project No. 2082, 38 FPC 309 (August 9, 1967))	44	8/9/1967			*
M		KL-ALL	"General Description and Specifications of Equipment"	(Order Issuing License (Major), Klamath River Project No. 2082 (October 17, 1956))	3	10/17/1956			*
M-4		J.C. Boyle (Big Bend)	"Description and Specifications of Equipment"	(Order Approving Revised Exhibits, Further Amending the License, and Prescribing Annual Charge, Klamath River Project No. 2082, 22 FPC 496 (September 15, 1959))	15	9/15/1959			*
M-8		Iron Gate	"Revised General Description & Specifications for the Iron Gate Development"	(Order Approving Revised Project Exhibits and Adjusting Annual Charges, Klamath River Project No. 2082, 28 FPC 856 (November 21, 1962))	26	11/21/1962			*
R	2082-192	Copco No. 1 & No. 2	"Copco No. 1 and No. 2 Developments Recreation Plan" (FPC 2082-192) Sheet 6	(Order Approving Exhibit R, Klamath River Project No. 2082, 54 FPC 1279 (September 18, 1975))	53	9/18/1975			*

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Current Exhibits Summary  
**Lower Klamath Project**  
**FERC License No. \_\_\_\_ (Issued \_\_\_\_)**

Exhibit#	Drawing No.	Development (if applicable)	Title	Action and Cite	DI#	Filed Date	Approved Date	See it:	Status
R	2082-218	Iron Gate	"Iron Gate Development Recreation Plan" (FPC 2082-218)	(Order Approving Revised Exhibit R Drawings, Klamath River Project No. 2082, 56 FPC 1900 (September 29, 1976))	54	9/29/1976			*
R	2082-219	Iron Gate	"Iron Gate Development Recreation Sites" (FPC 2082-219)	(Order Approving Revised Exhibit R Drawings, Klamath River Project No. 2082, 56 FPC 1900 (September 29, 1976))	54	9/29/1976			*
R	2082-220	JC Boyle	"John C. Boyle Development Recreation Plan (FPC 2082-220)	(Order Approving Revised Exhibit R Drawings, Klamath River Project No. 2082, 56 FPC 1900 (September 29, 1976))	54	9/29/1976			*
R	2082-223	Iron Gate	"Iron Gate Development Additional Recreation Sites" (FPC 2082-223) Sheet 10	(Order Approving Revised Exhibit R Drawings, Klamath River Project No. 2082, 56 FPC 1900 (September 29, 1976))	54	9/29/1976			*

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**Joint Application for Approval of License Amendment and License Transfer**

**Attachment F**

**Proposed Klamath Hydroelectric Project Revised  
License Articles**

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Klamath Hydroelectric Project  
FERC Project No. 2082

*FERC Form Articles L-6 (Dec.15, 1953)*

**TERMS AND CONDITIONS OF LICENSE  
FOR UNCONSTRUCTED MAJOR PROJECT AFFECTING  
NAVIGABLE WATERS AND LANDS OF THE UNITED STATES  
12 FPC 1267 (1953)**

**Article 1.** The entire project, as described in the order of the Commission, shall be subject to all the provisions, terms, and conditions of the license.

**Article 2.** No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, that if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval amended, supplemental, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

**Article 3.** Said project works shall be constructed in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works under the license without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in the project works or divergence from such approved exhibits may be made if such changes will not result in decrease in efficiency, in material increase in cost, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may from time to time prescribe for the protection of life, health, or property.

**Article 4.** The construction, operation, and maintenance of the project and any work incident to additions or alterations, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The licensee shall furnish to said representative such information as he may require concerning

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the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

**Article 5.** Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised maps, plans, specifications, and statements insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the maps, plans, specifications, and statements approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variations in or divergence from the approved maps, plans, specifications, and statements. Such revised maps, plans, specifications, and statements shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

**Article 6.** For the purpose of determining the stage and flow of the stream or streams from which water is to be diverted for the operation of the project works, the amount of water held in and withdrawn from storage, and the effective head on the turbines, the Licensee shall install and thereafter maintain such gages and stream-gaging stations as the Commission may deem necessary and best adapted to the requirements; and shall provide for the required readings of such gages and for the adequate rating of such stations. The Licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission and may be altered from time to time if necessary to secure adequate determinations, but such alteration shall not be made except with the approval of the Commission or upon the specific direction of the Commission. The installation of gages, the ratings of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of said project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient record of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

**Article 7.** So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of

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which may, in appropriate circumstances, be subject to payment of rent to the Licensee in a reasonable amount: Provided, that the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and Provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities.

**Article 8.** In the construction and maintenance of the project, the location and standards of roads and trails, and other land uses, including the location and condition of quarries, borrow pits, spoil disposal areas, and sanitary facilities, shall be subject to the approval of the department or agency of the United States having supervision over the lands involved.

**Article 9.** Insofar as any material is dredged or excavated in the prosecution of any work authorized under the license, or in the maintenance of the project, such material shall be removed and deposited so it will not interfere with navigation, and will be to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

**Article 10.** In the construction and maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines, and telegraph, telephone, and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling and obstructing traffic and endangering life on highways, streets, or railroads.

**Article 11.** The Licensee shall make provision, or shall bear the reasonable cost, as determined by the agency of the United States affected, of making provision for avoiding inductive interference between any project transmission line or other project facility constructed, operated, or maintained under the license, and any radio installation, telephone line, or other communication facility installed or constructed before or after construction of such project transmission line or other project facility and owned, operated, or used by such agency of the United States in administering the lands under its jurisdiction. None of the provisions of this article is intended to relieve the Licensee from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

**Article 12.** The Licensee shall clear such portions of transmission line rights-of-way across lands of the United States as are designated by the officer of the United States in charge of the lands; shall keep the areas so designated clear of new growth, all refuse, and inflammable material to the satisfaction of such officer; shall trim all branches of trees in contact with or liable to contact the transmission line; shall cut and remove all dead or leaning trees which might fall in contact with the transmission line; and shall take such other precautions against fire as may be required by such officer. No fires for the burning of waste material shall be set except with the prior written consent of the officer of the United States in charge of the lands as to time and place.

**Article 13.** Timber on lands of the United States cut, used or destroyed in the construction and maintenance of the project works or in the clearing of said lands shall be paid for in accordance

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with the requirements of and at the current stumpage rates applicable to the sale of similar timber by the agency of the United States having jurisdiction over said lands; and all slash and debris resulting from the cutting or destruction of such timber shall be disposed of as the officer of such agency may direct.

**Article 14.** The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon request of officers of the agency of the United States concerned, to prevent, make advanced preparations for suppression, and suppress fires on or near lands occupied under the license.

**Article 15.** Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and its rights-of-way and such right of passage through its dams or other structures, and permit such control of pools as may be required to complete and maintain such navigation facilities.

**Article 16.** The Licensee shall furnish free of cost to the United States power for the operation and maintenance of navigation facilities at the voltage and frequency required by such facilities and at a point adjacent thereto, whether said facilities are constructed by the Licensee or by the United States.

**Article 17.** The operation of any navigation facilities, which may be constructed as a part of or in connection with any dam or diversion structure constituting a part of the project works, shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army. Such rules and regulations may include the construction, maintenance, and operation by the Licensee, at its own expense, of such lights and signals as may be directed by the Secretary of the Army.

**Article 18.** The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

**Article 19.** The Licensee shall interpose no objection to, and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for fire



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suppression from any stream, conduit or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license, or to the use by said parties of water for sanitary and domestic purposes from any stream or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license.

**Article 20.** The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license. Arrangements to meet such liability, either by compensation for such injury or destruction, or by reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

**Article 21.** The Licensee shall allow any agency of the United States, without charge, to construct or permit to be constructed on, through, and across the project lands, conduits, chutes, ditches, railroads, roads, trails, telephone lines, and other means of transportation and communication not inconsistent with the enjoyment of said lands by the Licensee for the purposes stated in the license. This article shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of the lands of the United States other than for the construction, operation, and maintenance of the project as stated in the license.

**Article 22.** There is reserved to the appropriate department or agency of the United States, or of the State or county involved, the right to take over, maintain, and supervise the use of any project road after construction of the project works is completed.

**Article 23.** The actual legitimate original cost of the original project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Act and the Commission's rules and regulations thereunder.

**Article 24.** After the first twenty (20) years of operation of the project under the license, six (6) percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves, pursuant to Section 10 (d) of the Act; one-half of the project surplus earnings, if any, accumulated after the first twenty years of operation under the license, in excess of six (6) percent per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year, provided that, if and to the extent that there is a deficiency of project earnings below six (6) percent per annum for any fiscal year or years after the first twenty years of operation under the license, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and one-half of the remaining surplus earnings, if any, thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained therein until further order of the Commission. *This Article is effective through July 12, 1976. (Amendment of License Article No. 24 and Addition of Article No. 28 to the License for Project No. 2071, Yale Project No. 2071, Letter Order Project No. 2071 (November 3, 1976))*

**Article 25.** No lease of the project or part thereof whereby the lessee is granted the exclusive

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occupancy, possession, or use of project works for purposes of generating, transmitting, or distributing power shall be made without the prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of the license, of the Act, and of the rules and regulations of the Commission shall be applicable to such lease and to such property so leased to the same extent as if the lessee were the Licensee: Provided, that the provisions of this article shall not apply to parts of the project or project works which may be used by another jointly with the Licensee under a contract or agreement whereby the Licensee retains the occupancy, possession, and control of the property so used and receives adequate consideration for such joint use, or to leases of land while not required for purposes of generating, transmitting, or distributing power, or to buildings or other property not built or used for said purposes or to minor parts of the project or project works, the leasing of which will not interfere with the usefulness or efficient operation of the project by the Licensee for such purposes.

**Article 26.** The Licensee, its successors and assigns will, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and that none of such properties necessary or useful to the project and to the development transmission, and distribution of power therefrom will be voluntarily sold, transferred, abandoned, or otherwise disposed of without the approval of the Commission: Provided, that a mortgage or trust deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article. In the event the project is taken over by the United States upon the termination of the license, as provided in Section 14 of the Act, or is transferred to a new licensee under the provisions of Section 15 of the Act, the Licensee, its successors and assigns will be responsible for and will make good any defect of title to or of right of user in any of such project property which is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and will pay and discharge, or will assume responsibility for payment and discharge, of all liens or incumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, that the provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear, or to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to or right of user in any of such project property than was necessary to acquire for its own purposes as Licensee.

**Article 27.** The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

~~**Article 28.** The Licensee, having commenced construction of the Iron Gate Development, shall continue to prosecute such construction and complete the Iron Gate Development not later than December 31, 1961. (Order Further Amending License, FERC Project No. 2082, 25 FPC 579 (March 27, 1961)); not pertinent to Klamath Hydroelectric Project~~

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**Article 29.** The Licensee shall, prior to flooding, clear all lands in the bottoms and margins of reservoirs up to high-water level, clear and keep clear to an adequate width lands of the United States along open conduits, and shall dispose of all temporary structures, unused timber, brush, refuse, or inflammable material resulting from the clearing of the lands or from the construction and maintenance of the project works. In addition, all trees along margins of reservoirs which may die during operation of the project shall be removed. The clearing of the lands and the disposal of the material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission. (Order Further Amending Order Issuing License, FERC Project No. 2082, 18 FPC 364 (September 25, 1957))

**Article 30.** The Commission reserves the right to determine at a later date which additional transmission lines and facilities, if any, shall be included in the license as part of the project works. (Order Further Amending License, FERC Project No. 2082, 25 FPC 579 (March 27, 1961))

~~**Article 31.** The Licensee shall file for Commission approval revised Exhibits F and K for the Iron Gate Development within one year following completion of construction of such development. (Order Further Amending License, FERC Project No. 2082, 25 FPC 579 (March 27, 1961)); *not pertinent to Klamath Hydroelectric Project*~~

~~**Article 32.** The Licensee shall construct, operate and maintain fishways at the Big Bend diversion dam, screens at the intake for the Big Bend conduit, and deer escape facilities in and around the open portions of the Big Bend conduit. Plans for fishways, screens and deer escape facilities shall be submitted in advance of construction of these facilities for approval by the Commission with advice of the Secretary of the Interior and the Oregon State Game Commission. (Order Further Amending Order Issuing License, FERC Project No. 2082, 18 FPC 364 (September 25, 1957)); *not pertinent to Klamath Hydroelectric Project*~~

~~**Article 33.** The licensee shall replace the egg taking station on the Klamath River at the mouth of Spencer Creek as may be prescribed hereafter by the Commission upon the recommendation of the Oregon State Game Commission. (Order Further Amending Order Issuing License, FERC Project No. 2082, 18 FPC 364 (September 25, 1957)); *not pertinent to Klamath Hydroelectric Project*~~

~~**Article 34.** The Licensee shall for the protection of fishlife maintain in the natural channel of the Klamath River immediately below the diversion dam a reasonable minimum flow consistent with the primary purpose of the project to be fixed hereafter by the Commission after notice to interested parties and opportunity for hearing. (Order Further Amending Order Issuing License, FERC Project No. 2082, 18 FPC 364 (September 25, 1957)); *not pertinent to Klamath Hydroelectric Project*~~

**Article 35.** The Licensee shall pay to the United States the following annual charges:  
(a) For the purpose of reimbursing the United States for the cost of administering Part I of the Federal Power Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is ~~168,973~~ 6,000 kW, effective May 31, 2005 (date of commencement of construction of

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the upgrade). (Order Amending License and Revising Annual Charges under Article 35; Klamath Hydroelectric Project, FERC No. 2082: 117 FERC ¶ 62,252: December 19, 2006)

(b) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, exclusive of those used for transmission line right-of-way, \$1,043.62. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965))

(c) Effective January 1, 1981, for the purpose of recompensing the United States for use, occupancy, and enjoyment of 5.75 acres of its lands for transmission line right-of-way, a reasonable amount as determined in accordance with the provisions of the Commission's regulation in effect from time to time. (Order Amending License and Revising Annual Charges, FERC Project No. 2082, 13 FERC ¶62,172 (November 18, 1980))

(d) For the purpose of recompensing the United States for the East Side and West Side developments' use of surplus water or water power from Link River Dam, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. (Order Establishing Annual Charges, Amending License, and Giving Notice of Headwater Benefits Investigation; Klamath Hydroelectric Project, FERC No. 2082: 115 FERC ¶61,104: April 25, 2006)

**Article 36.** ~~The Big Bend Development shall be so operated as to increase or decrease gradually the rise or fall of the river at a rate not to exceed nine (9) inches per hour at a point one half (1/2) mile below the Big Bend powerhouse, subject to conditions beyond the control of the Licensee; provided, that the permissible limits and rate of change will be subject to review and adjustment by the Commission from time to time, after notice and opportunity for hearing.~~ (Order Further Amending Order Issuing License, FERC Project No. 2082, 18 FPC 364 (September 25, 1957)); *not pertinent to Klamath Hydroelectric Project*

**Article 37.** The Licensee shall guarantee continuing access to and across lands of the United States within the project area for legitimate business and shall allow the use by any agency of the United States or its permittees of any access road or roads, constructed in connection with the project for the purpose of removing forest products with the understanding that the user of such road or roads for such purpose shall make appropriate arrangements with the Licensee to provide for any extraordinary road maintenance, that would be required as a result of that use. (Order Further Amending Order Issuing License, FERC Project No. 2082, 18 FPC 364 (September 25, 1957))

**Article 38.** No Klamath water as defined in the contract dated January 31, 1956, between the Licensee and the United States of America, and filed herein on February 13, 1956, shall be used by the Licensee when needed or required for use for domestic, municipal or irrigation purposes on lands other than "project land", as defined in said contract, within the Upper Klamath River Basin as that basin is defined in said contract; **provided, that** nothing herein shall curtail or interfere with the water rights of the Licensee having a priority earlier than May 19, 1905; provided further, that all drainage and return flows from lands in the Upper Klamath River Basin, other than those defined as "project land" in said contract shall be returned to the Klamath River above Keno. (Order Further Amending Order Issuing License, FERC Project No. 2082, 18

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FPC 364 (September 25, 1957))

[Article No. 39 was subsequently deleted.] (Order Amending License and Revising Annual Charges, Klamath Project No. 2082, 13 FERC ¶62,172 (November 18, 1980))

[Articles No. 40-43 were subsequently deleted.] (Order Further Amending License, Klamath Project No. 2082, 25 FPC 579 (March 27, 1961))

~~**Article 44.** Prior to the construction and operation of the Iron Gate Development, the Licensee shall, to the extent of conditions within its control, operate its existing Copeco No. 1 and Copeco No. 2 plants so as to limit fluctuation of the surface of the Klamath River at a recording station located one-half (1/2) mile below the lower of said plants to a maximum of nine (9) inches per hour increase or decrease, and so that the minimum flow of said river at said point is 500 cubic feet per second. (Order Further Amending License, FERC Project No. 2082, 25 FPC 579 (March 27, 1961)); *not pertinent to Klamath Hydroelectric Project*~~

~~**Article 45.** The Licensee shall communicate with the California Archeological Surveys, Department of Archeology, University of California, Berkeley, California, to determine the most satisfactory means of accomplishing any necessary archeological reconnaissance and salvage at the Iron Gate site. (Decision Upon Application for Amendment of License Under Federal Power Act, FERC Project No. 2082, 23 FPC 59 (September 23, 1959)); *not pertinent to Klamath Hydroelectric Project*~~

~~**Article 46.** The Licensee shall consult with the California Department of Natural Resources, Division of Beaches and Parks, Sacramento, California, to determine means for protecting and enhancing recreational values at the Iron Gate site. (Decision Upon Application for Amendment of License Under Federal Power Act, FERC Project No. 2082, 23 FPC 59 (September 23, 1959)); *not pertinent to Klamath Hydroelectric Project*~~

**Article 47.** The actual legitimate original cost, estimated were not known, and the accrued depreciation of the parts of the project completed prior to the effective date of the license shall be determined by the Commission as of such effective date, in accordance with the Act, and the rules and regulations of the Commission, and such cost less such accrued depreciation, so determined, shall be the net investment in the project as of such effective date. (Decision Upon Application for Amendment of License Under Federal Power Act, FERC Project No. 2082, 23 FPC 59 (September 23, 1959))

**Article 48.** The actual legitimate original cost of the parts of the project to be completed after the effective date of the license, and of any addition to or betterment of the project, shall be determined by the Commission in accordance with the Act and the rules and regulations of the Commission thereunder. (Decision Upon Application for Amendment of License Under Federal Power Act, FERC Project No. 2082, 23 FPC 59 (September 23, 1959))

~~**Article 49.** The Licensee shall construct or arrange for the construction, at its expense, of a fish hatchery at Iron Gate Development, together with supplemental structures and ancillary equipment as detailed in the agreement filed with the Commission on August 17, 1962, by the~~

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~~State of California Department of Fish and Game and the Licensee, of a size and capacity to annually hatch and rear 200,000 yearling steelhead trout to a total weight not to exceed 20,000 pounds, 75,000 yearling silver salmon to a total weight not to exceed 5,000 pounds, 6,000,000 fingerling king salmon to a total weight not to exceed 20,000 pounds, and 5,500,000 king salmon swimup fry; provided not more than 12,800,000 king salmon eggs shall be required to be accommodated in any one year at the Iron Gate hatchery facility; and provided further that if the total number of king salmon eggs taken at the Iron Gate egg collection facility in any one year is equal to or less than 15,800,000, the fish hatchery facilities described herein shall not be required to accommodate more than 81 percent of the total king salmon eggs taken during the year. Plans for the aforesaid facility shall be prepared by Licensee, in cooperation with the State of California Department of Fish and Game and the U.S. Fish and Wildlife Service, Department of the Interior, and shall be submitted to the Commission for approval no later than October 15, 1963. The facility shall be constructed within one year from the date of approval of the plans by the Commission. (Opinion and Order on Rehearing and Denial of Motion for Stay, FERC Project No. 2082, 30 FPC 499 (August 19, 1963)); not pertinent to Klamath Hydroelectric Project~~

~~**Article 50.** Licensee shall reimburse the State of California Department of Fish and Game for 80 percent of the combined annual cost of operation and maintenance of the facilities and appurtenances constructed pursuant to Article 49 and of the permanent fish trapping, collecting, holding, and spawn-taking facilities and appurtenances constructed at Iron Gate Dam. Should Licensee and the State of California Department of Fish and Game fail to agree on the amount to be paid by the Licensee for this purpose, the Commission reserves the right to determine the amount of such annual payment, after notice and opportunity for hearing. (Opinion and Order on Petition to Require Licensee to Construct, Operate, and Maintain a Fish Hatchery, Amending License, and Directing Revised Filings, FERC Project No. 2082, 29 FPC 478 (March 14, 1963)); not pertinent to Klamath Hydroelectric Project~~

~~**Article 51.** The Licensee shall, concurrently with or prior to the construction of Iron Gate Development, construct temporary fish and wildlife protective facilities and devices together with appurtenant works including, but not limited to, those required to trap and transport adult and young of both salmon and steelhead trout past the damsite or otherwise accommodate such fish during the construction period, the type of such facilities and devices to conform to plans and specifications as prescribed hereafter by the Commission upon the recommendation of the Secretary of the Interior and California Department of Fish and Game, after notice and opportunity for hearing. (Order Further Amending License, FERC Project No. 2082, 25 FPC 579 (March 27, 1961)); not pertinent to Klamath Hydroelectric Project~~

~~**Article 52.** The Licensee shall release to the streambed below Iron Gate Dam not less than the flows specified in the following schedule:~~

<del>Periods</del>	<del>Flows, second-feet</del>
<del>September 1-April 30</del>	<del>1,300</del>
<del>May 1-May 31</del>	<del>1,000</del>
<del>June 1-July 31</del>	<del>710</del>
<del>August 1-August 31</del>	<del>1,000</del>

~~Provided that Licensee shall not be responsible for conditions beyond its control nor required to~~

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~~release more water than it has lawful right to use for hydroelectric purposes, and Provided further that Licensee shall restrict the changes of release rates to not more than 250 second feet per hour or a 3 inch change in river stage per hour whichever produces the least change in stage as measured at a gage located not less than 0.5 mile downstream from Iron Gate Dam. (Order Further Amending License, FERC Project No. 2082, 25 FPC 579 (March 27, 1961)); not pertinent to Klamath Hydroelectric Project~~

**Article 53.** The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of permanent wildlife facilities and protective devices including, but not limited to, deer protective fences, and comply with such reasonable modifications in project structures and operation in the interest of wildlife as may be prescribed hereafter by the Commission upon the recommendation of the Secretary of the Interior, and the California Department of Fish and Game, after notice and opportunity for hearing. (Order Further Amending License, FERC Project No. 2082, 25 FPC 579 (March 27, 1961))

**Article 54.** The construction, operation, and maintenance of the project and any work incident to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, San Francisco, California, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project. Construction of the project works or any feature thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965))

**Article 55.** The Licensee shall enter into a formal agreement with the United States Bureau of Reclamation for the purpose of regulating the level of Lake Ewauna and the Klamath River between Keno Dam and Lake Ewauna, and in the event that the Licensee and the Bureau fail to reach agreement, the Commission will prescribe the terms of such regulation after notice and opportunity for hearing. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965))

**Article 56.** In order to prevent, or to minimize to the extent reasonably possible, deleterious effects to fish and wildlife caused by construction activities during the construction of the first stage of the Keno development, the licensee shall, in consultation with the Oregon State Game Commission, Oregon State Sanitary Authority, the Bureau of Sport Fisheries and Wildlife, and the Federal Water Pollution Control Administration, schedule and supervise the construction

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activities so as to: (a) minimize turbidity, siltation or other water pollution, (b) prevent the destruction of water-fowl nesting areas from deposition of spoil from channel improvement activities, and (c) avoid disturbing water-fowl nesting areas during the nesting season: **Provided**, That the Commission on its own motion or upon the motion of the Oregon State Game Commission, the Oregon State Sanitary Authority, the Bureau of Sport Fisheries and Wildlife and the Federal Water Pollution Control Administration may prescribe measures reasonably necessary to accomplish these objectives. (Order Approving Revised Exhibit L Drawings for Project and Modifying License, FERC Project No. 2082, 41 FPC 824 (June 20, 1969))

**Article 57.** The Licensee shall, prior to construction of Stage 2 of the Keno development, cooperate with the Oregon State Game Commission, U.S. Forest Service, and Bureau of Sport Fisheries and Wildlife in conducting additional studies to determine effects construction of the second stage of the Keno development would have on fish and wildlife resources. The Licensee shall incorporate into project plans measures found necessary to mitigate and compensate for the loss and damage to existing fish and wildlife resources. Cost of such measures shall be borne by the Licensee. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965))

**Article 58.** The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior, Oregon State Game Commission, or California Department of Fish and Game, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965))

**Article 59.** Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965))

**Article 60.** The Licensee shall, within one year from the date of the Commission order authorizing the construction of the Keno development, file with the Commission for approval an Exhibit R conforming to Section 4.41 of Commission Regulations under the Federal Power Act. The plan shall be prepared after consultation with appropriate Federal, State, and local agencies,



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and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965))

**Article 61.** The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965))

**Article 62.** So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: **Provided, that** the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and Provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965))

[Article No. 63 was subsequently deleted.] (Amendment of License for Project No. 2082 by Adding Article 73 and Deleting Article 63, Klamath Project No. 2082, Letter from Licensee for Project No. 2082 to FERC (March 19, 1981))

**Article 64.** On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply for steam-electric, irrigation, industrial, municipal or similar purposes, consistent with the primary objective of the project. The Licensee shall receive such reasonable compensation as may be appropriate for use of its reservoirs or other project works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between the Licensee and the party or parties benefiting or by the Commission in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidenced cannot be submitted,

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and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965))

**Article 65.** The Licensee shall install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965))

**Article 66.** The Licensee shall submit in accordance with the Commission's rules and regulations, revised Exhibit L drawings showing final design for channel improvement in the Klamath River from river mile 236 to 254, inclusive, and shall not begin construction of such work until the Commission approves the exhibit. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965))

**Article 67.** Licensee shall remove the existing Keno Regulating Dam as soon as the new Keno Dam to replace it is in service and Licensee shall request the exhibits which show the existing Keno Regulating Dam and the description of same to be eliminated from the license. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965))

**Article 68.** Licensee shall rehabilitate the Fall Creek diversion dam within one year from the date of issuance of this amendment of license. (Order Amending License and Dismissing Application for New License, FERC Project No. 2082, 44 FPC 1065 (September 25, 1970))

**Article 69.** Licensee shall discharge a minimum flow of 0.5 cfs at all times from the Fall Creek diversion dam into Fall Creek, and shall maintain a 15 cfs continuous flow in Fall Creek (or a quantity equal to the natural flow of the stream, whichever is less) at the outlet of the powerplant tailrace: **Provided, that** such flows may be modified by operating emergencies and other emergencies beyond the control of the Licensee, and for short periods of time in the interest of recreation and protection of fishery resources upon mutual agreement between the Licensee and appropriate State(s) conservation departments: **Provided, further** that such flows may be adjusted by further order of the Commission upon its own motion or upon recommendation of the appropriate State(s) conservation departments, the Secretary of the Interior, or Licensee, after notice and opportunity for hearing. (Order Amending License and Dismissing Application for New License, FERC Project No. 2082, 44 FPC 1065 (September 25, 1970))

**Article 70.** The Commission reserves the right to determine at a later date what, if any, additional facilities shall be included in the license as part of the Fall Creek Development. (Order Amending License and Dismissing Application for New License, FERC Project No. 2082, 44 FPC 1065 (September 25, 1970))

**Article 71.** Licensee shall file, within one year from the date of this order, revised Exhibits F, J, K, and M showing the 69 kv transmission line for the Fall Creek Development. (Order Amending License and Dismissing Application for New License, FERC Project No. 2082, 44 FPC 1065 (September 25, 1970))

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**Article 72.** Pursuant to Section 10(d) of the Act, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. One-half of the project surplus earnings, if any, accumulated in excess of the specified rate of return per annum on the net investment, shall be set aside in a project amortization reserve account at the end of each fiscal year. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year the amount of that deficiency shall be deducted from the amount of any surplus earnings subsequently accumulated, until absorbed. One-half of the remaining surplus earnings, if any, cumulatively computed, shall be set aside in the project amortization reserve account. The amounts established in the project amortization reserved account shall be maintained until further order of the Commission.

The annual specified reasonable rate of return shall be the sum of the annual weighted costs of long-term debt, preferred stock, and common equity, as defined below. The annual weighted cost for each component of the reasonable rate of return is the product of its capital ratio and cost rate. The annual capital ratio for each component of the rate of return shall be calculated based on an average of 13 monthly balances of amounts properly includable in the licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rates for long-term debt and preferred stock shall be their respective weighted average costs for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10-year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

(Amendment of License Article No. 24 and Addition of Article No. 72 to the License for Project No. 2082, Klamath Project No. 2082, Letter Order for Project No. 2082 (October 21, 1976))

**Article 73.** (a) In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and water for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) noncommercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more

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than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings; and (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The licensee may convey easements or rights-of-way across, or leases of, project lands for: (1) replacement, expansion, realignment, or maintenance of bridges and roads for which all necessary state and federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir. No later than January 31 of each year, the licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in

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any calendar year. At least 45 days before conveying any interest in project lands under this paragraph (d), the licensee must submit a letter to the Director, Office of Hydropower Licensing, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraph (c) or (d) of this article:

(1) Before conveying the interest, the licensee shall consult with federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include covenants running with the land adequate to ensure that: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; and (ii) the grantee shall take all reasonable precautions to insure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project.

(4) The Commission reserves the right to require the licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G or K drawings would be filed for approval for other purposes. (Amendment of License for Project No. 2082 by Adding Article 73 and Deleting Article 63, Klamath Project No. 2082, Letter from Licensee for Project No. 2082 to FERC (March 19, 1981))

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**Joint Application for Approval of License Amendment and License Transfer**

# **Attachment G**

## **Proposed Lower Klamath Project License Articles**

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Lower Klamath Project  
FERC Project No. \_\_\_\_\_

*FERC Form Articles L-6 (Dec.15, 1953)*

**TERMS AND CONDITIONS OF LICENSE  
FOR UNCONSTRUCTED MAJOR PROJECT AFFECTING  
NAVIGABLE WATERS AND LANDS OF THE UNITED STATES  
12 FPC 1267 (1953)**

**Article 1.** The entire project, as described in the order of the Commission, shall be subject to all the provisions, terms, and conditions of the license.

**Article 2.** No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, that if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval amended, supplemental, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

**Article 3.** Said project works shall be constructed in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works under the license without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in the project works or divergence from such approved exhibits may be made if such changes will not result in decrease in efficiency, in material increase in cost, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may from time to time prescribe for the protection of life, health, or property.

**Article 4.** The construction, operation, and maintenance of the project and any work incident to additions or alterations, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The licensee shall furnish to said representative such information as he may require concerning

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the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

**Article 5.** Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised maps, plans, specifications, and statements insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the maps, plans, specifications, and statements approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variations in or divergence from the approved maps, plans, specifications, and statements. Such revised maps, plans, specifications, and statements shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

**Article 6.** For the purpose of determining the stage and flow of the stream or streams from which water is to be diverted for the operation of the project works, the amount of water held in and withdrawn from storage, and the effective head on the turbines, the Licensee shall install and thereafter maintain such gages and stream-gaging stations as the Commission may deem necessary and best adapted to the requirements; and shall provide for the required readings of such gages and for the adequate rating of such stations. The Licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission and may be altered from time to time if necessary to secure adequate determinations, but such alteration shall not be made except with the approval of the Commission or upon the specific direction of the Commission. The installation of gages, the ratings of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of said project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient record of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

**Article 7.** So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of



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which may, in appropriate circumstances, be subject to payment of rent to the Licensee in a reasonable amount: Provided, that the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and Provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities.

**Article 8.** In the construction and maintenance of the project, the location and standards of roads and trails, and other land uses, including the location and condition of quarries, borrow pits, spoil disposal areas, and sanitary facilities, shall be subject to the approval of the department or agency of the United States having supervision over the lands involved.

**Article 9.** Insofar as any material is dredged or excavated in the prosecution of any work authorized under the license, or in the maintenance of the project, such material shall be removed and deposited so it will not interfere with navigation, and will be to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

**Article 10.** In the construction and maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines, and telegraph, telephone, and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling and obstructing traffic and endangering life on highways, streets, or railroads.

**Article 11.** The Licensee shall make provision, or shall bear the reasonable cost, as determined by the agency of the United States affected, of making provision for avoiding inductive interference between any project transmission line or other project facility constructed, operated, or maintained under the license, and any radio installation, telephone line, or other communication facility installed or constructed before or after construction of such project transmission line or other project facility and owned, operated, or used by such agency of the United States in administering the lands under its jurisdiction. None of the provisions of this article is intended to relieve the Licensee from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

**Article 12.** The Licensee shall clear such portions of transmission line rights-of-way across lands of the United States as are designated by the officer of the United States in charge of the lands; shall keep the areas so designated clear of new growth, all refuse, and inflammable material to the satisfaction of such officer; shall trim all branches of trees in contact with or liable to contact the transmission line; shall cut and remove all dead or leaning trees which might fall in contact with the transmission line; and shall take such other precautions against fire as may be required by such officer. No fires for the burning of waste material shall be set except with the prior written consent of the officer of the United States in charge of the lands as to time and place.

**Article 13.** Timber on lands of the United States cut, used or destroyed in the construction and maintenance of the project works or in the clearing of said lands shall be paid for in accordance

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with the requirements of and at the current stumpage rates applicable to the sale of similar timber by the agency of the United States having jurisdiction over said lands; and all slash and debris resulting from the cutting or destruction of such timber shall be disposed of as the officer of such agency may direct.

**Article 14.** The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon request of officers of the agency of the United States concerned, to prevent, make advanced preparations for suppression, and suppress fires on or near lands occupied under the license.

**Article 15.** Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and its rights-of-way and such right of passage through its dams or other structures, and permit such control of pools as may be required to complete and maintain such navigation facilities.

**Article 16.** The Licensee shall furnish free of cost to the United States power for the operation and maintenance of navigation facilities at the voltage and frequency required by such facilities and at a point adjacent thereto, whether said facilities are constructed by the Licensee or by the United States.

**Article 17.** The operation of any navigation facilities, which may be constructed as a part of or in connection with any dam or diversion structure constituting a part of the project works, shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army. Such rules and regulations may include the construction, maintenance, and operation by the Licensee, at its own expense, of such lights and signals as may be directed by the Secretary of the Army.

**Article 18.** The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

**Article 19.** The Licensee shall interpose no objection to, and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for fire

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suppression from any stream, conduit or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license, or to the use by said parties of water for sanitary and domestic purposes from any stream or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license.

**Article 20.** The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license. Arrangements to meet such liability, either by compensation for such injury or destruction, or by reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

**Article 21.** The Licensee shall allow any agency of the United States, without charge, to construct or permit to be constructed on, through, and across the project lands, conduits, chutes, ditches, railroads, roads, trails, telephone lines, and other means of transportation and communication not inconsistent with the enjoyment of said lands by the Licensee for the purposes stated in the license. This article shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of the lands of the United States other than for the construction, operation, and maintenance of the project as stated in the license.

**Article 22.** There is reserved to the appropriate department or agency of the United States, or of the State or county involved, the right to take over, maintain, and supervise the use of any project road after construction of the project works is completed.

**Article 23.** The actual legitimate original cost of the original project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Act and the Commission's rules and regulations thereunder.

**Article 24.** After the first twenty (20) years of operation of the project under the license, six (6) percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves, pursuant to Section 10 (d) of the Act; one-half of the project surplus earnings, if any, accumulated after the first twenty years of operation under the license, in excess of six (6) percent per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year, provided that, if and to the extent that there is a deficiency of project earnings below six (6) percent per annum for any fiscal year or years after the first twenty years of operation under the license, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and one-half of the remaining surplus earnings, if any, thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained therein until further order of the Commission. *This Article is effective through July 12, 1976. (Amendment of License Article No. 24 and Addition of Article No. 28 to the License for Project No. 2071, Yale Project No. 2071, Letter Order Project No. 2071 (November 3, 1976))*

**Article 25.** No lease of the project or part thereof whereby the lessee is granted the exclusive

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occupancy, possession, or use of project works for purposes of generating, transmitting, or distributing power shall be made without the prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of the license, of the Act, and of the rules and regulations of the Commission shall be applicable to such lease and to such property so leased to the same extent as if the lessee were the Licensee: Provided, that the provisions of this article shall not apply to parts of the project or project works which may be used by another jointly with the Licensee under a contract or agreement whereby the Licensee retains the occupancy, possession, and control of the property so used and receives adequate consideration for such joint use, or to leases of land while not required for purposes of generating, transmitting, or distributing power, or to buildings or other property not built or used for said purposes or to minor parts of the project or project works, the leasing of which will not interfere with the usefulness or efficient operation of the project by the Licensee for such purposes.

**Article 26.** The Licensee, its successors and assigns will, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and that none of such properties necessary or useful to the project and to the development transmission, and distribution of power therefrom will be voluntarily sold, transferred, abandoned, or otherwise disposed of without the approval of the Commission: Provided, that a mortgage or trust deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article. In the event the project is taken over by the United States upon the termination of the license, as provided in Section 14 of the Act, or is transferred to a new licensee under the provisions of Section 15 of the Act, the Licensee, its successors and assigns will be responsible for and will make good any defect of title to or of right of user in any of such project property which is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and will pay and discharge, or will assume responsibility for payment and discharge, of all liens or incumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, that the provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear, or to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to or right of user in any of such project property than was necessary to acquire for its own purposes as Licensee.

**Article 27.** The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

**Article 28.** The Licensee, having commenced construction of the Iron Gate Development, shall continue to prosecute such construction and complete the Iron Gate Development not later than December 31, 1961. (Order Further Amending License, FERC Project No. 2082, 25 FPC 579 (March 27, 1961))

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**Article 29.** The Licensee shall, prior to flooding, clear all lands in the bottoms and margins of reservoirs up to high-water level, clear and keep clear to an adequate width lands of the United States along open conduits, and shall dispose of all temporary structures, unused timber, brush, refuse, or inflammable material resulting from the clearing of the lands or from the construction and maintenance of the project works. In addition, all trees along margins of reservoirs which may die during operation of the project shall be removed. The clearing of the lands and the disposal of the material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission. (Order Further Amending Order Issuing License, FERC Project No. 2082, 18 FPC 364 (September 25, 1957))

**Article 30.** The Commission reserves the right to determine at a later date which additional transmission lines and facilities, if any, shall be included in the license as part of the project works. (Order Further Amending License, FERC Project No. 2082, 25 FPC 579 (March 27, 1961))

**Article 31.** The Licensee shall file for Commission approval revised Exhibits F and K for the Iron Gate Development within one year following completion of construction of such development. (Order Further Amending License, FERC Project No. 2082, 25 FPC 579 (March 27, 1961))

**Article 32.** The Licensee shall construct, operate and maintain fishways at the Big Bend diversion dam, screens at the intake for the Big Bend conduit, and deer escape facilities in and around the open portions of the Big Bend conduit. Plans for fishways, screens and deer escape facilities shall be submitted in advance of construction of these facilities for approval by the Commission with advice of the Secretary of the Interior and the Oregon State Game Commission. (Order Further Amending Order Issuing License, FERC Project No. 2082, 18 FPC 364 (September 25, 1957))

**Article 33.** The licensee shall replace the egg-taking station on the Klamath River at the mouth of Spencer Creek as may be prescribed hereafter by the Commission upon the recommendation of the Oregon State Game Commission. (Order Further Amending Order Issuing License, FERC Project No. 2082, 18 FPC 364 (September 25, 1957))

**Article 34.** The Licensee shall for the protection of fishlife maintain in the natural channel of the Klamath River immediately below the diversion dam a reasonable minimum flow consistent with the primary purpose of the project to be fixed hereafter by the Commission after notice to interested parties and opportunity for hearing. (Order Further Amending Order Issuing License, FERC Project No. 2082, 18 FPC 364 (September 25, 1957))

**Article 35.** The Licensee shall pay to the United States the following annual charges:  
(a) For the purpose of reimbursing the United States for the cost of administering Part I of the Federal Power Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is ~~168,973~~ 162,980 kW, effective May 31, 2005 (date of commencement of construction of the upgrade). (Order Amending License and Revising Annual Charges under Article 35; Klamath Hydroelectric Project, FERC No. 2082: 117 FERC ¶ 62,252; December 19, 2006)

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~~(b) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, exclusive of those used for transmission line right-of-way, \$1,043.62. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965)); not pertinent to the Lower Klamath Project~~

(c) Effective January 1, 1981, for the purpose of recompensing the United States for use, occupancy, and enjoyment of 5.75 acres of its lands for transmission line right-of-way, a reasonable amount as determined in accordance with the provisions of the Commission's regulation in effect from time to time. (Order Amending License and Revising Annual Charges, FERC Project No. 2082, 13 FERC ¶62,172 (November 18, 1980))

~~(d) For the purpose of recompensing the United States for the East Side and West Side developments' use of surplus water or water power from Link River Dam, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. (Order Establishing Annual Charges, Amending License, and Giving Notice of Headwater Benefits Investigation; Klamath Hydroelectric Project, FERC No. 2082: 115 FERC ¶61,104: April 25, 2006); not pertinent to the Lower Klamath Project~~

**Article 36.** The Big Bend Development shall be so operated as to increase or decrease gradually the rise or fall of the river at a rate not to exceed nine (9) inches per hour at a point one-half (1/2) mile below the Big Bend powerhouse, subject to conditions beyond the control of the Licensee; **provided, that** the permissible limits and rate of change will be subject to review and adjustment by the Commission from time to time, after notice and opportunity for hearing. (Order Further Amending Order Issuing License, FERC Project No. 2082, 18 FPC 364 (September 25, 1957))

**Article 37.** The Licensee shall guarantee continuing access to and across lands of the United States within the project area for legitimate business and shall allow the use by any agency of the United States or its permittees of any access road or roads, constructed in connection with the project for the purpose of removing forest products with the understanding that the user of such road or roads for such purpose shall make appropriate arrangements with the Licensee to provide for any extraordinary road maintenance, that would be required as a result of that use. (Order Further Amending Order Issuing License, FERC Project No. 2082, 18 FPC 364 (September 25, 1957))

~~**Article 38.** No Klamath water as defined in the contract dated January 31, 1956, between the Licensee and the United States of America, and filed herein on February 13, 1956, shall be used by the Licensee when needed or required for use for domestic, municipal or irrigation purposes on lands other than "project land", as defined in said contract, within the Upper Klamath River Basin as that basin is defined in said contract; **provided, that** nothing herein shall curtail or interfere with the water rights of the Licensee having a priority earlier than May 19, 1905; provided further, that all drainage and return flows from lands in the Upper Klamath River Basin, other than those defined as "project land" in said contract shall be returned to the Klamath River above Keno. (Order Further Amending Order Issuing License, FERC Project No. 2082, 18~~

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FPC 364 (September 25, 1957 *not pertinent to the Lower Klamath Project*)

[Article No. 39 was subsequently deleted.] (Order Amending License and Revising Annual Charges, Klamath Project No. 2082, 13 FERC ¶62,172 (November 18, 1980))

[Articles No. 40-43 were subsequently deleted.] (Order Further Amending License, Klamath Project No. 2082, 25 FPC 579 (March 27, 1961))

**Article 44.** Prior to the construction and operation of the Iron Gate Development, the Licensee shall, to the extent of conditions within its control, operate its existing Copco No. 1 and Copco No. 2 plants so as to limit fluctuation of the surface of the Klamath River at a recording station located one-half (1/2) mile below the lower of said plants to a maximum of nine (9) inches per hour increase or decrease, and so that the minimum flow of said river at said point is 500 cubic feet per second. (Order Further Amending License, FERC Project No. 2082, 25 FPC 579 (March 27, 1961))

**Article 45.** The Licensee shall communicate with the California Archeological Surveys, Department of Archeology, University of California, Berkeley, California, to determine the most satisfactory means of accomplishing any necessary archeological reconnaissance and salvage at the Iron Gate site. (Decision Upon Application for Amendment of License Under Federal Power Act, FERC Project No. 2082, 23 FPC 59 (September 23, 1959))

**Article 46.** The Licensee shall consult with the California Department of Natural Resources, Division of Beaches and Parks, Sacramento, California, to determine means for protecting and enhancing recreational values at the Iron Gate site. (Decision Upon Application for Amendment of License Under Federal Power Act, FERC Project No. 2082, 23 FPC 59 (September 23, 1959))

**Article 47.** The actual legitimate original cost, estimated were not known, and the accrued depreciation of the parts of the project completed prior to the effective date of the license shall be determined by the Commission as of such effective date, in accordance with the Act, and the rules and regulations of the Commission, and such cost less such accrued depreciation, so determined, shall be the net investment in the project as of such effective date. (Decision Upon Application for Amendment of License Under Federal Power Act, FERC Project No. 2082, 23 FPC 59 (September 23, 1959))

**Article 48.** The actual legitimate original cost of the parts of the project to be completed after the effective date of the license, and of any addition to or betterment of the project, shall be determined by the Commission in accordance with the Act and the rules and regulations of the Commission thereunder. (Decision Upon Application for Amendment of License Under Federal Power Act, FERC Project No. 2082, 23 FPC 59 (September 23, 1959))

**Article 49.** The Licensee shall construct or arrange for the construction, at its expense, of a fish hatchery at Iron Gate Development, together with supplemental structures and ancillary equipment as detailed in the agreement filed with the Commission on August 17, 1962, by the State of California Department of Fish and Game and the Licensee, of a size and capacity to annually hatch and rear 200,000 yearling steelhead trout to a total weight not to exceed 20,000

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pounds, 75,000 yearling silver salmon to a total weight not to exceed 5,000 pounds, 6,000,000 fingerling king salmon to a total weight not to exceed 20,000 pounds, and 5,500,000 king salmon swimup fry; provided not more than 12,800,000 king salmon eggs shall be required to be accommodated in any one year at the Iron Gate hatchery facility; and provided further that if the total number of king salmon eggs taken at the Iron Gate egg collection facility in any one year is equal to or less than 15,800,000, the fish hatchery facilities described herein shall not be required to accommodate more than 81 percent of the total king salmon eggs taken during the year. Plans for the aforesaid facility shall be prepared by Licensee, in cooperation with the State of California Department of Fish and Game and the U.S. Fish and Wildlife Service, Department of the Interior, and shall be submitted to the Commission for approval no later than October 15, 1963. The facility shall be constructed within one year from the date of approval of the plans by the Commission. (Opinion and Order on Rehearing and Denial of Motion for Stay, FERC Project No. 2082, 30 FPC 499 (August 19, 1963))

**Article 50.** Licensee shall reimburse the State of California Department of Fish and Game for 80 percent of the combined annual cost of operation and maintenance of the facilities and appurtenances constructed pursuant to Article 49 and of the permanent fish trapping, collecting, holding, and spawn-taking facilities and appurtenances constructed at Iron Gate Dam. Should Licensee and the State of California Department of Fish and Game fail to agree on the amount to be paid by the Licensee for this purpose, the Commission reserves the right to determine the amount of such annual payment, after notice and opportunity for hearing. (Opinion and Order on Petition to Require Licensee to Construct, Operate, and Maintain a Fish Hatchery, Amending License, and Directing Revised Filings, FERC Project No. 2082, 29 FPC 478 (March 14, 1963))

**Article 51.** The Licensee shall, concurrently with or prior to the construction of Iron Gate Development, construct temporary fish and wildlife protective facilities and devices together with appurtenant works including, but not limited to, those required to trap and transport adult and young of both salmon and steelhead trout past the damsite or otherwise accommodate such fish during the construction period, the type of such facilities and devices to conform to plans and specifications as prescribed hereafter by the Commission upon the recommendation of the Secretary of the Interior and California Department of Fish and Game, after notice and opportunity for hearing. (Order Further Amending License, FERC Project No. 2082, 25 FPC 579 (March 27, 1961))

**Article 52.** The Licensee shall release to the streambed below Iron Gate Dam not less than the flows specified in the following schedule:

<b>Periods</b>	<b>Flows, second-feet</b>
September 1-April 30	1,300
May 1-May 31	1,000
June 1-July 31	710
August 1-August 31	1,000

Provided that Licensee shall not be responsible for conditions beyond its control nor required to release more water than it has lawful right to use for hydroelectric purposes, and Provided further that Licensee shall restrict the changes of release rates to not more than 250 second-feet per hour or a 3-inch change in river stage per hour whichever produces the least change in stage as



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measured at a gage located not less than 0.5 mile downstream from Iron Gate Dam. (Order Further Amending License, FERC Project No. 2082, 25 FPC 579 (March 27, 1961))

**Article 53.** The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of permanent wildlife facilities and protective devices including, but not limited to, deer protective fences, and comply with such reasonable modifications in project structures and operation in the interest of wildlife as may be prescribed hereafter by the Commission upon the recommendation of the Secretary of the Interior, and the California Department of Fish and Game, after notice and opportunity for hearing. (Order Further Amending License, FERC Project No. 2082, 25 FPC 579 (March 27, 1961))

**Article 54.** The construction, operation, and maintenance of the project and any work incident to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, San Francisco, California, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project. Construction of the project works or any feature thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965))

~~**Article 55.** The Licensee shall enter into a formal agreement with the United States Bureau of Reclamation for the purpose of regulating the level of Lake Ewauna and the Klamath River between Keno Dam and Lake Ewauna, and in the event that the Licensee and the Bureau fail to reach agreement, the Commission will prescribe the terms of such regulation after notice and opportunity for hearing. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965)); *not pertinent to the Lower Klamath Project*~~

~~**Article 56.** In order to prevent, or to minimize to the extent reasonably possible, deleterious effects to fish and wildlife caused by construction activities during the construction of the first stage of the Keno development, the licensee shall, in consultation with the Oregon State Game Commission, Oregon State Sanitary Authority, the Bureau of Sport Fisheries and Wildlife, and the Federal Water Pollution Control Administration, schedule and supervise the construction activities so as to: (a) minimize turbidity, siltation or other water pollution, (b) prevent the destruction of water fowl nesting areas from deposition of spoil from channel improvement activities, and (c) avoid disturbing water fowl nesting areas during the nesting season: **Provided,**~~

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~~That the Commission on its own motion or upon the motion of the Oregon State Game Commission, the Oregon State Sanitary Authority, the Bureau of Sport Fisheries and Wildlife and the Federal Water Pollution Control Administration may prescribe measures reasonably necessary to accomplish these objectives. (Order Approving Revised Exhibit L Drawings for Project and Modifying License, FERC Project No. 2082, 41 FPC 824 (June 20, 1969)); not pertinent to the Lower Klamath Project~~

~~**Article 57.** The Licensee shall, prior to construction of Stage 2 of the Keno development, cooperate with the Oregon State Game Commission, U.S. Forest Service, and Bureau of Sport Fisheries and Wildlife in conducting additional studies to determine effects construction of the second stage of the Keno development would have on fish and wildlife resources. The Licensee shall incorporate into project plans measures found necessary to mitigate and compensate for the loss and damage to existing fish and wildlife resources. Cost of such measures shall be borne by the Licensee. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965)); not pertinent to the Lower Klamath Project~~

**Article 58.** The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior, Oregon State Game Commission, or California Department of Fish and Game, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965))

**Article 59.** Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965))

~~**Article 60.** The Licensee shall, within one year from the date of the Commission order authorizing the construction of the Keno development, file with the Commission for approval an Exhibit R conforming to Section 4.41 of Commission Regulations under the Federal Power Act. The plan shall be prepared after consultation with appropriate Federal, State, and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide. (Order Further Amending License, FERC Project~~

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No. 2082, 34 FPC 1387 (November 29, 1965)); *not pertinent to the Lower Klamath Project*

**Article 61.** The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965))

**Article 62.** So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: **Provided, that** the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and Provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965))

[Article No. 63 was subsequently deleted.] (Amendment of License for Project No. 2082 by Adding Article 73 and Deleting Article 63, Klamath Project No. 2082, Letter from Licensee for Project No. 2082 to FERC (March 19, 1981))

**Article 64.** On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply for steam-electric, irrigation, industrial, municipal or similar purposes, consistent with the primary objective of the project. The Licensee shall receive such reasonable compensation as may be appropriate for use of its reservoirs or other project works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between the Licensee and the party or parties benefiting or by the Commission in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidenced cannot be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters. (Order Further

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Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965))

**Article 65.** The Licensee shall install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965))

~~**Article 66.** The Licensee shall submit in accordance with the Commission's rules and regulations, revised Exhibit L drawings showing final design for channel improvement in the Klamath River from river mile 236 to 254, inclusive, and shall not begin construction of such work until the Commission approves the exhibit. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965)); *not pertinent to the Lower Klamath Project*~~

~~**Article 67.** Licensee shall remove the existing Keno Regulating Dam as soon as the new Keno Dam to replace it is in service and Licensee shall request the exhibits which show the existing Keno Regulating Dam and the description of same to be eliminated from the license. (Order Further Amending License, FERC Project No. 2082, 34 FPC 1387 (November 29, 1965)); *not pertinent to the Lower Klamath Project*~~

~~**Article 68.** Licensee shall rehabilitate the Fall Creek diversion dam within one year from the date of issuance of this amendment of license. (Order Amending License and Dismissing Application for New License, FERC Project No. 2082, 44 FPC 1065 (September 25, 1970)); *not pertinent to the Lower Klamath Project*~~

~~**Article 69.** Licensee shall discharge a minimum flow of 0.5 cfs at all times from the Fall Creek diversion dam into Fall Creek, and shall maintain a 15 cfs continuous flow in Fall Creek (or a quantity equal to the natural flow of the stream, whichever is less) at the outlet of the powerplant tailrace: **Provided, that** such flows may be modified by operating emergencies and other emergencies beyond the control of the Licensee, and for short periods of time in the interest of recreation and protection of fishery resources upon mutual agreement between the Licensee and appropriate State(s) conservation departments: **Provided, further** that such flows may be adjusted by further order of the Commission upon its own motion or upon recommendation of the appropriate State(s) conservation departments, the Secretary of the Interior, or Licensee, after notice and opportunity for hearing. (Order Amending License and Dismissing Application for New License, FERC Project No. 2082, 44 FPC 1065 (September 25, 1970)); *not pertinent to the Lower Klamath Project*~~

~~**Article 70.** The Commission reserves the right to determine at a later date what, if any, additional facilities shall be included in the license as part of the Fall Creek Development. (Order Amending License and Dismissing Application for New License, FERC Project No. 2082, 44 FPC 1065 (September 25, 1970)); *not pertinent to the Lower Klamath Project*~~

~~**Article 71.** Licensee shall file, within one year from the date of this order, revised Exhibits F, J, K, and M showing the 69 kv transmission line for the Fall Creek Development. (Order~~

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Amending License and Dismissing Application for New License, FERC Project No. 2082, 44 FPC 1065 (September 25, 1970)); *not pertinent to the Lower Klamath Project*

**Article 72.** Pursuant to Section 10(d) of the Act, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. One-half of the project surplus earnings, if any, accumulated in excess of the specified rate of return per annum on the net investment, shall be set aside in a project amortization reserve account at the end of each fiscal year. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year the amount of that deficiency shall be deducted from the amount of any surplus earnings subsequently accumulated, until absorbed. One-half of the remaining surplus earnings, if any, cumulatively computed, shall be set aside in the project amortization reserve account. The amounts established in the project amortization reserved account shall be maintained until further order of the Commission.

The annual specified reasonable rate of return shall be the sum of the annual weighted costs of long-term debt, preferred stock, and common equity, as defined below. The annual weighted cost for each component of the reasonable rate of return is the product of its capital ratio and cost rate. The annual capital ratio for each component of the rate of return shall be calculated based on an average of 13 monthly balances of amounts properly includable in the licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rates for long-term debt and preferred stock shall be their respective weighted average costs for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10-year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

(Amendment of License Article No. 24 and Addition of Article No. 72 to the License for Project No. 2082, Klamath Project No. 2082, Letter Order for Project No. 2082 (October 21, 1976))

**Article 73.** (a) In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

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(b) The type of use and occupancy of project lands and water for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) noncommercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings; and (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The licensee may convey easements or rights-of-way across, or leases of, project lands for: (1) replacement, expansion, realignment, or maintenance of bridges and roads for which all necessary state and federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir. No later than January 31 of each year, the licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five

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acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 45 days before conveying any interest in project lands under this paragraph (d), the licensee must submit a letter to the Director, Office of Hydropower Licensing, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraph (c) or (d) of this article:

(1) Before conveying the interest, the licensee shall consult with federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include covenants running with the land adequate to ensure that: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; and (ii) the grantee shall take all reasonable precautions to insure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project.

(4) The Commission reserves the right to require the licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G or K drawings would be filed for approval for other purposes. (Amendment of License for Project No. 2082 by Adding Article 73 and

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Deleting Article 63, Klamath Project No. 2082, Letter from Licensee for Project No. 2082 to FERC (March 19, 1981))



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**Joint Application for Approval of License Amendment and License Transfer**

## **Attachment H**

# **Klamath River Renewal Corporation Articles of Incorporation**

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ARTICLES OF INCORPORATION  
OF  
KLAMATH RIVER RENEWAL CORPORATION

FILED *DM*  
Secretary of State  
State of California *JK*

ARTICLE I  
NAME

100 FEB 29 2016

The name of the corporation (hereinafter referred to as the "Corporation") shall be KLAMATH RIVER RENEWAL CORPORATION.

ARTICLE II  
PURPOSES

Section 1. The Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public and charitable purposes. The Corporation is formed and shall be operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, to lessen the burdens of government by facilitating the implementation of the Klamath Hydroelectric Settlement Agreement, dated February 18, 2010, between and among the United States Department of the Interior, the United States Department of Commerce's National Marine Fisheries Service, PacifiCorp, the California Department of Fish and Wildlife, the California Natural Resources Agency, the Oregon Department of Environmental Quality, the Oregon Department of Fish and Wildlife, the Oregon Water Resources Department, and various other parties, as it may be amended from time to time ("KHSA"), and the implementation of any related agreements among the same or similar parties with respect to the Klamath Basin, all in a manner determined by the Corporation's Board of Directors.

Section 2. In furtherance of the purposes set forth in Section 1 above and as necessary or desirable in order to accomplish such purposes, the Corporation shall have the power to:

- (a) acquire or transfer, by deed, lease or otherwise, ownership or possession of real and personal property, improvements and facilities;
- (b) maintain, operate, modify, remove and restore real and personal property, improvements and facilities;
- (c) seek, obtain and administer funding (including gifts, grants, borrowings or other sources);
- (d) seek, obtain, hold, transfer, or surrender such governmental and other approvals, permits and licenses;
- (e) engage the services of such consultants, advisors, attorneys and other persons; and

(f) in general, perform any and all acts and things and exercise any and all powers that may now or hereafter be lawful for the Corporation to do or exercise under and pursuant to the laws of the State for the purpose of accomplishing any of the foregoing purposes and functions of the Corporation and any other purpose or function ancillary to, or supportive of, the foregoing purposes and functions.

### ARTICLE III SPECIAL PROVISIONS AND LIMITATIONS

Section 1. The Corporation shall exist until the date that is one year after it has completed its purposes and functions in connection with the KHSA, as determined by a majority of the Corporation's Board of Directors, at which time it shall be dissolved in accordance with Article IV of these Articles of Incorporation and applicable law. The Corporation shall not be liquidated, dissolved, or merged or combined with any other business entity prior to the foregoing date without the affirmative vote of a majority of the members of the Board of Directors of the Corporation.

Section 2. The Corporation shall not engage in any activities not permitted to be carried on by an organization exempt from federal income tax pursuant to Section 501(c)(3) of Internal Revenue Code of 1986 ("Code"), as amended, and the regulations promulgated thereunder, or the corresponding section of any future tax code;

Section 3. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation and the Corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office; provided that the Corporation shall have the power to make an election under Code Section 501(h). Likewise; no substantial part of the activities of the Corporation shall be the provision of "commercial type insurance" within the meaning of Section 501(m) of the Code. Furthermore, the Corporation shall not engage in any activities that are unlawful under applicable federal, state or local laws; and

Section 4. The property of the Corporation is irrevocably dedicated to charitable purposes. No part of the income or earnings of the Corporation shall inure to the benefit or profit of, nor shall any distribution of its property or assets be made to, any director or officer of the Corporation, or private person, corporate or individual, or to any other private interest; provided, however, that the Corporation shall be authorized and empowered to pay reasonable compensation for services actually rendered to it and reimbursement of expenses, and to make reasonable payments and distributions in furtherance of the purposes of the Corporation.

### ARTICLE IV ASSET DISTRIBUTION ON DISSOLUTION

Upon the dissolution of the Corporation or the winding up of its affairs, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the Corporation, and after compliance with Chapters 15, 16 and 17 of the California Nonprofit Public Benefit Corporation Law, distribute all of the remaining assets and property of the

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Corporation for charitable or public purposes among such entities as the Board determines in its discretion, all to the extent permitted under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, and other applicable law.

ARTICLE V  
DIRECTORS

Section 1. The number of Directors shall be as determined from time to time pursuant to the Bylaws of the Corporation.

Section 2. The Directors of the Corporation shall have no liability for dues or assessments. There shall be no members of the Corporation.

ARTICLE VI  
MISCELLANEOUS

Section 1. The name and address of the Corporation's initial agent for service of process is:

National Corporate Research Ltd.

Section 2. The initial address of the Corporation shall be:

28 Liberty Street, 42<sup>nd</sup> Floor  
New York, New York 10005  
Attn: Eric Petersen

IN WITNESS WHEREOF, for the purposes of forming the corporation under the laws of the State of California, the undersigned has executed these Articles of Incorporation this 29<sup>th</sup> day of February, 2016.



\_\_\_\_\_  
Lloyd S. Lowy  
Incorporator

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**Joint Application for Approval of License Amendment and License Transfer**

# **Attachment I**

## **Klamath River Renewal Corporation Bylaws**

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**BYLAWS  
OF  
KLAMATH RIVER RENEWAL CORPORATION**

**ARTICLE I  
NAME, PURPOSE AND PRINCIPAL OFFICE**

Section 1.1. Name. The name of the Corporation shall be: KLAMATH RIVER RENEWAL CORPORATION (the “Corporation”).

Section 1.2. Purposes. The charitable purposes of the Corporation shall be as set forth in its Articles of Incorporation, related to the implementation of the Klamath Hydroelectric Settlement Agreement, as amended (hereafter, “KHSA”).

Section 1.3. Principal Office. The principal office of the Corporation for the transaction of business may be established at any place or places within or without the State of California. The principal office may be changed from time to time by the Board of Directors (the “Board”).

**ARTICLE II  
MEMBERSHIP**

Section 2.1. Members. The Corporation shall have no members. Any action which would otherwise require the approval of members shall require only the approval of the Board. All rights which would otherwise vest in the members shall vest in the Board.

**ARTICLE III  
BOARD OF DIRECTORS**

Section 3.1. Management by Board. The affairs of the Corporation shall be managed by its Board of Directors, which may exercise all powers of the Corporation and do all lawful acts and things necessary or appropriate to carry out the purposes of the Corporation, subject to any limitations set forth in the Articles of Incorporation, these Bylaws or relevant provisions of the California Nonprofit Public Benefit Corporation Law. The Board may delegate the management of the activities of the Corporation to any person or persons, a management company, or committees, however composed, provided that the activities and affairs of the Corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

Section 3.2. Number of Directors.

(a) The Board shall have at least one and no more than two directors until July 15, 2016. One initial director shall be appointed by the Governor of Oregon, or the Oregon Governor’s designee, and one director shall be appointed by the Governor of California, or the California Governor’s designee. The period of time prior to July 15, 2016 is referred to as the “Initial Directors Period.”

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(b) After the Initial Directors Period, the Board shall have at least two and no more than 15 directors comprised of the following: the two initial directors; four additional directors appointed by the Governor of California or the California Governor's designee; three additional directors appointed by the Governor of Oregon or the Oregon Governor's designee, one director appointed by the Karuk Tribe; one director appointed by the Yurok Tribe; one director appointed by the Klamath Tribes; two directors appointed by the entities listed in part A of Exhibit 1; and one director appointed by the entities listed in Part B of Exhibit 1; provided that, only parties to the KHSA may participate in the foregoing appointment authority. Appointing authorities shall make their appointments by providing written notice of the appointment and its effective date, in advance, to the Board. In the case of the appointments by the entities in Exhibit 1, the respective notices of appointment shall be executed on behalf of a majority of the entities appearing in part A of Exhibit 1, and on behalf of both of the entities appearing in Part B of Exhibit 2.

Section 3.3. Selection and Term of Office. Unless earlier removed as provided hereunder, each director shall hold office for six years and shall serve until a successor has been appointed, except as provided in Sections 3.4 and 3.5. Upon the expiration of the term of any director, that director's successor shall be appointed in the same manner as that director whose term expired. There shall be no limits on the number of consecutive full or partial terms a director may serve on the Board. The Board may provide for staggered terms by resolution.

Section 3.4. Vacancies.

(a) Subject to the provisions of Section 5226 of the California Nonprofit Corporation Law, any director may resign by giving written notice to the Secretary and to the entity that appointed the director, which resignation shall be effective upon the Secretary's receipt thereof, unless the notice specifies a later time for the effectiveness of such resignation. Promptly after receiving any notice of resignation by a director, the Secretary shall notify the Board and the appointing authority that appointed the resigning director. If the resignation is effective at a future time, a successor may be selected before such time, to take office when the resignation becomes effective. If the Secretary is the resigning director then the notice of resignation notice shall go to the President, who shall provide the foregoing notices to the Board and the appointing authority.

(b) Each vacancy in the Board shall be filled in the same manner as the director whose office is vacant was selected. Each director so selected shall hold office until the expiration of the term of the replaced director and until a successor has been selected and qualified, except for directors removed pursuant to Section 3.5 of this Article III, whose terms shall expire upon removal.

(c) A vacancy or vacancies in the Board shall be deemed to exist in case of the death, resignation, or removal of any director, or if the authorized number of directors is increased.

Section 3.5. Removal.

(a) The Board may by resolution declare vacant the office of a director who has been declared of unsound mind by an order of court, or convicted of a felony, or found by final order or judgment of any court to have breached a duty arising under Article 3 of Chapter 2 of Part 2 of the California Nonprofit Corporation Law.

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(b) A director may be removed for cause by a majority vote of the directors then in office. Such cause shall be at the sole discretion of the Board.

(c) A director may be removed at any time by the appointing authority for that director, in its sole discretion, by notice to the Secretary that meets the requirements for an appointment notice under Section 3.2(b).

Section 3.6. Place of Meetings. Meetings of the Board may be held at any place within or outside the State of California that has been designated from time to time by resolution of the Board. In the absence of such designation, regular meetings shall be held at the principal office of the Corporation.

Section 3.7. Annual Meetings. The Board shall hold an annual meeting for the purpose of organization, selection of officers and the transaction of other business.

Section 3.8. Other Regular Meetings. Other regular meetings of the Board shall be held on such dates and at such times as may be fixed by the Board.

Section 3.9. Special Meetings. Special meetings of the Board for any purpose or purposes may be called at any time by the President of the Board or at the request of not less than by 25% of the directors then in office. The Board shall adopt policies relating to holding informational meetings that are open to the public at least once each year.

Section 3.10. Notice.

(a) Notice of the time, place and agenda for a regular meeting of the Board shall be provided to each member of the Board at least seven (7) calendar days before the date of such meeting by telephone, including a voice messaging system or other system of technology designed to record and communicate messages, facsimile, U.S. mail, hand-delivery, electronic mail, or other electronic means. Notice of the time, place and agenda for a special meeting of the Board shall be provided to each member of the Board with at least four (4) days' notice by first-class mail or 48 hours' notice given personally or by telephone, including a voice messaging system or other system of technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means. Any such notice shall be addressed or delivered to each director at such director's address as it is shown upon the records of the Corporation by the director for purposes of notice or, if such address is not shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held.

(b) Notice by mail shall be deemed to have been given at the time a written notice is deposited in the United States mails, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient. Oral notice shall be deemed to have been given at the time it is communicated, in person or by telephone or wireless, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the receiver. The notice shall signify the time and place of the special meeting and the business to be transacted.



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Section 3.11. Quorum. Presence of a majority of the number of directors then in office at a meeting of the Board constitutes a quorum for the transaction of business, except as otherwise provided in these Bylaws. During the Initial Directors Period the presence of the first director appointed shall constitute a quorum.

Section 3.12. Conduct of Meeting. The President or, in the President's absence, the Vice President, shall preside. If neither the President nor a Vice President is present at a meeting then such meeting shall be chaired by a director selected by a majority of the directors present.

Section 3.13. Participation in Meetings by Conference Telephone. Members of the Board may participate in a meeting through use of conference telephone or similar communications equipment, so long as all members participating in such meeting can hear one another. Any director so participating shall be deemed to be present in person at such meeting.

Section 3.14. Waiver of Notice. Notice of a meeting need not be given to any director who signs a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting, without protesting, prior thereto or at its commencement, the lack of notice to such director. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 3.15. Adjournment. A majority of the directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place. If the meeting is adjourned for 24 hours or less, notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place is fixed at the meeting adjourned. If the meeting is adjourned for more than 24 hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

Section 3.16. Action Without Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

Section 3.17. Rights of Inspection. Every director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of the Corporation of which such person is a director.

Section 3.18. Fees and Compensation. Directors shall not be compensated for their services but may receive reimbursement for expenses reasonably incurred in performance of duties as may be fixed or determined by the Board.

**ARTICLE IV  
COMMITTEES**

Section 4.1. Executive Committee.

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(a) The Board may designate an Executive Committee. The Executive Committee shall be charged with the general supervision of the Corporation's activities, policies, financial resources and investments. The Executive Committee shall have and exercise all of the powers of the Board during the interim between meetings of the Board except to amend the Articles of Incorporation or Bylaws or to convey real property of the Corporation.

(b) The Executive Committee shall be comprised of the officers designated pursuant to Section 5.1 and at least one director who is not an officer. Non-officer members of the Executive Committee shall be appointed by the Board.

(c) The Executive Committee shall meet at least monthly. The regular meetings of the Executive Committee shall be scheduled by the President. In special cases or emergencies the President may convene a meeting of the Executive Committee upon such notice as is reasonably available and necessary to advise the members of the Executive Committee.

(d) The Minutes of the Executive Committee shall be provided to the Board prior to the next Board meeting.

Section 4.2. Audit Committee. The Board shall appoint an audit committee who shall act pursuant to procedures adopted by the Board from time to time.

Section 4.3. Advisory Council. Not later than 30 days after the date as of which at least 12 directors have been appointed, the Board shall appoint an Advisory Council to advise the Board in its activities. The Advisory Council shall consist of such persons as the Board shall appoint from time to time in its sole discretion to provide advice and reflect the views of communities, groups and other interests that may be affected by or interested in the activities of the Corporation, provided that the Board shall invite each of the U.S. Department of Interior, the U.S. Department of Commerce, the Oregon Department of Fish and Wildlife, the California Department of Fish and Wildlife, the Oregon Governor's Natural Resources Office, and the California Natural Resources Agency (collectively the "permanent Advisory Council members") to designate a representative to serve on the Advisory Council. The Board shall have the right, with or without cause and at any time, to add a member to or remove a member from the Advisory Council, except that the Board shall not remove a representative of a permanent Advisory Council member. The Advisory Council shall meet at least annually and at such other time(s) as is determined by the Board. The Board shall call a meeting of the Advisory Council if (i) one-third or more of the Advisory Council's members make a request to the President for such a meeting, or (ii) the representative of any permanent Advisory Council member makes such a request. The Board shall send a representative to meetings of the Advisory Council, or may, in its discretion, meet directly with the Advisory Council. The Advisory Council shall make recommendations to the Board on matters referred to the Advisory Council by the Board, and may make recommendations on matters that the Advisory Council determines are relevant to the Corporation's activities. Individual members of the Advisory Council may decline to participate in particular recommendations of the Advisory Council. The designated representatives of the permanent Advisory Council members shall be given notice of each meeting of the Board in accordance with Section 3.10 hereunder, and shall be invited to attend each such meeting unless it is to be held in executive session.

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Section 4.4. Other Committees. Other standing or temporary committees may be established from time to time by the Board. These committees' membership may consist of directors only, both directors and non-directors, or non-directors only (each, a "Board Committee"). Except for the Executive Committee, Board Committees have no legal authority to act for the Corporation except and to the extent that the Board authorizes a Board Committee or member thereof to take a specific action on behalf of the Board. Board Committees shall report their findings and recommendations to the Executive Committee and the Board.

Section 4.5. Acts of a Board Committee. Each Board Committee shall act pursuant to procedures adopted by the Board; provided, however, that when the Board has by resolution authorized a Board Committee to take a specific action on behalf of the Board, such Board Committee shall follow the same decision-making procedures adopted by the Board for acts of the full Board or any other decision-making procedures adopted by the Board for such committee.

Section 4.6. Fees and Compensation. Members of Board Committees may receive reasonable compensation of up to an amount to be determined by the Board. Reimbursement for expenses incurred in performance of duties may be fixed or determined by the Board.

ARTICLE V  
**OFFICERS, EMPLOYEES AND AGENTS OF THE CORPORATION**

Section 5.1. Officers. The officers of the Corporation shall be a President, a Vice President, a Secretary, and a Treasurer, each of whom shall be a director. Any number of such offices may be held by the same person, except as provided in the Articles or in these Bylaws and except that, other than during the Initial Directors Period, neither the Secretary nor the Treasurer may serve concurrently as the President of the Board.

Section 5.2. Election. The officers of the Corporation shall be elected annually by a majority of the directors then in office, and each shall serve at the pleasure of the Board.

Section 5.3. Subordinate Officers. The Board may appoint, by a majority vote of the directors then in office, such additional officers, who need not be directors, as the business of the Corporation may require, each of whom shall have the title, hold office for the period, have the authority, and perform the duties specified in the Bylaws or determined from time to time by the Board.

Section 5.4. Removal and Resignation.

(a) Any officer may be removed from such office, with or without cause, at any time, by a majority vote of the directors then in office. The officer in question, if a director, shall not be included when determining the quantity of votes required for a majority vote.

(b) Any officer may resign at any time by giving written notice to the Board. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective.

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Section 5.5. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled only in the manner prescribed in these Bylaws for regular election or appointment to that office, provided that such vacancies shall be filled as they occur and not on an annual basis.

Section 5.6. Employees and Other Agents. The Board may from time to time appoint such employees and other agents as it shall deem necessary, each of whom shall hold office at the pleasure of the Board, and shall have such authority and perform such duties and receive such compensation, if any, as the Board may from time to time determine. To the fullest extent allowed by law, the Board may delegate to any employee or agent any powers possessed by the Board and may prescribe their respective title, terms of office, authorities and duties.

Section 5.7. President. Subject to the control of the Board, the President shall supervise the Corporation's activities, affairs, and officers. Subject to Section 3.12, the President shall preside at all Board meetings. The President shall have such other powers and duties as the Board or the Bylaws may prescribe.

Section 5.8. Vice President. In the absence or disability of the President, the Vice President shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice President shall have such other powers and perform such other duties as from time to time may be prescribed for the Vice President by the Board or by the Bylaws.

Section 5.9. Secretary. The Secretary shall attend to the following:

(a) Book of minutes. The Secretary shall keep or cause to be kept, at the principal executive office or such other place as the Board may direct, a book of minutes of all meetings and actions of directors and Board Committees, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice given, the names of those present at such meetings and the proceedings of such meetings.

(b) Notices, seal and other duties. The Secretary shall give, or cause to be given, notice of all meetings of the Board required by the Bylaws to be given. The Secretary shall keep the seal of the Corporation in safe custody. The Secretary shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

Section 5.10. Treasurer. The Treasurer shall attend to the following:

(a) Books of account. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and other matters customarily included in financial statements. The books of account shall be open to inspection by any director at all reasonable times.

(b) Deposit and disbursement of money and valuables. The Treasurer shall deposit all money and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board; shall disburse the funds of the Corporation as may

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be ordered by the Board; shall render to the directors, whenever they request it, an account of all transactions as Treasurer and of the financial condition of the Corporation; and shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

Section 5.11. Compensation. Officers shall not be compensated for their services but may receive reimbursement for expenses incurred in the performance of their duties as may be fixed or determined by the Board.

**ARTICLE VI  
EXPENDITURES**

Section 6.1. Corporation Expenditures. The Board shall adopt appropriate financial and accounting procedures for its expenditures, including criteria for reimbursement of expenditures by committee members or any director for the costs of outside experts, consultants or advisors involved in implementing the KHSA or any other purpose of the Corporation, or for costs charged by a governmental entity with authority over any applications to dispose of property pursuant to Section 851 of the California Public Utilities Code (“Section 851”) or the resulting transactions.

**ARTICLE VII  
RECORDS AND REPORTS**

Section 7.1. Corporate Records. The Corporation shall keep:

- (a) Adequate and correct books and records of accounts;
- (b) Written minutes of the proceedings of its Board and Board Committees; and
- (c) The original or a copy of the Articles and Bylaws, as amended, to date.

Section 7.2. Annual Report.

(a) Financial statements shall be prepared as soon as reasonably practicable after the close of the fiscal year. The financial statements shall contain in appropriate detail the following:

- (1) The assets and liabilities, including trust funds, of the Corporation as of the end of the fiscal year;
- (2) The principal changes in assets and liabilities, including trust funds, during the fiscal year;
- (3) The revenue or receipts of this Corporation, both unrestricted and restricted to particular purposes, for the fiscal year;
- (4) The expenses or disbursements of the Corporation, for both general and restricted purposes during the fiscal year;

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(5) Any transaction during the previous fiscal year to which the Corporation or a subsidiary was a party and in which any directors or officers of the Corporation or subsidiary had or has a direct or indirect material financial interest. The report must disclose the names of the interested persons involved in such transaction, stating such person's relationship to the Corporation, the nature of such person's interest in the transaction and, where practicable, the amount of such interest; and

(6) The amount and circumstances of any indemnification or advances paid during the fiscal year to any officer or director of the Corporation.

(b) Such financial statements shall be accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the Corporation that such statements were prepared without audit from the books and records of the Corporation.

(c) To the extent required by law, a report including the financial statements prescribed above shall be furnished annually to all directors of the Corporation.

#### ARTICLE VIII OTHER PROVISIONS

Section 8.1. Endorsement of Documents; Contracts. Subject to the provisions of applicable law, any note, mortgage, evidence of indebtedness, contract, conveyance, or other instrument in writing and any assignment or endorsement thereof executed or entered into between the Corporation and any other person, when signed by the President, the Treasurer, or such other officer as is delegated such authority by the Board, shall be valid and binding on the Corporation in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the same. Any such instruments may be signed by any other person or persons and in such manner as from time to time shall be determined by the Board, and, unless so authorized by the Board, no agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or amount. The Corporation is under no obligation to enter into contracts for goods and services with any individual or other entity that may have created or sponsored it.

Section 8.2. Construction and Definitions. Unless the context otherwise requires, the general provisions, rules of construction, and definitions contained in the General Provisions of the California Nonprofit Corporation Law and in the California Nonprofit Public Benefit Corporation Law shall govern the construction of these Bylaws.

Section 8.3. Amendments. These Bylaws may be amended or repealed or new Bylaws adopted by a majority vote of the directors then in office, provided that the Bylaws may not be amended in such a way to cause the corporation to lose its status as a corporation which is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Code.

Section 8.4. Fiscal Year. The fiscal year of the Corporation shall be determined by resolution of the Board.

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Section 8.5. Corporate Seal. The Corporation may have a seal which shall be specified by resolution of the Board.

ARTICLE IX  
**DEDICATION OF ASSETS**

The property of the Corporation is irrevocably dedicated to charitable and public purposes and no part of the net earnings or assets of the Corporation shall inure to the benefit of (or be distributable to) any director or officer of the Corporation or other private person, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its charitable and public purposes. Upon any dissolution of the Corporation, the disposition of any assets that originated as public funds shall, to the extent permitted under applicable law, including Section 501(c)(3) of the Internal Revenue Code or any corresponding section of any future federal tax code, be governed by the agreement which disbursed such funds to the Corporation.

ARTICLE X  
**LIABILITY: INDEMNIFICATION**

Section 10.1. Directors, Agents, and appointing entity. The Corporation is solely liable for all its debts and obligations. The individual property of the directors, officers, employees, or agents of the Corporation, and the entities that appointed the directors, shall not be held liable for the debts or obligations of the Corporation.

Section 10.2. Indemnification of Directors and Officers. To the fullest extent permitted by law, the Corporation shall in all cases indemnify any existing or former director or officer of the Corporation who was or is a party (or is threatened to be made a party) to any threatened or pending action, suit, or other proceeding by reason of the fact that he or she is or was a director or officer of the Corporation, or by reason of his or her conduct in any such capacity, against expenses (including, without limitation, costs of investigation and attorneys' fees, judgments, fines, penalties, and amounts paid in settlement) actually and reasonably incurred by him or her in connection with such proceeding.

Section 10.3. Indemnification of Employees and Agents. The Corporation may indemnify any other person who was or is a party (or is threatened to be made a party) to any threatened or pending action, suit, or other proceeding by reason of the fact that he or she is or was an employee or agent of the Corporation (or is or was serving at the request of the Corporation as a director, officer, trustee, employee, partner, fiduciary, or agent of another entity), or by reason of his or her conduct in any such capacity, against expenses actually and reasonably incurred by him or her in connection with such proceeding. Such indemnification shall be subject to any restrictions imposed by applicable law or by the Board in its discretion.

Section 10.4. Advance Payment of Expenses. In its discretion the Board may, to the extent permitted by applicable law and on such conditions as it deems appropriate, authorize the Corporation to pay or reimburse costs of investigation, attorneys' fees, and other expenses incurred by a person entitled to reimbursement under this Article, even in advance of the final disposition of the proceeding in question.

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Section 10.5. Nonexclusive Remedy; Benefit. The rights provided by this Article shall not be deemed exclusive of any other right of indemnification or payment provided by contract, the Articles, vote of directors, or otherwise. Any right of indemnity or payment arising under this Article shall continue as to a person who has ceased to hold the office or position in which such right arose; shall inure to the benefit of his or her heirs, executors, and administrators; and shall survive any subsequent amendment of this Article.

Section 10.6. Insurance. The Corporation may, at the discretion of the Board, purchase and maintain insurance on behalf of the persons described in Sections 10.2 and 10.3 against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify such person under the laws of the State of California.

## ARTICLE XI CONFLICTS OF INTEREST

Section 11.1. Fiduciary Obligation. In conducting the affairs of the Corporation, each director shall owe a fiduciary obligation exclusively to the Corporation, and not to any other person or entity, including the entity that appointed such director to the Board of the Corporation.

Section 11.2. Statement of Potential Conflicts. Prior to taking his or her position on the Board, and annually thereafter, each director shall submit in writing to the President of the Board a list of all businesses and other organizations of which he or she is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), a shareholder (other than a *de minimis* ownership interest), employee or agent with which the Corporation has, or might be expected to have, a relationship or a transaction in which the director might have an interest conflicting with the fiduciary obligation stated in Section 11.1. The statements shall be made available to all directors.

Section 11.3. Conduct of Meetings of the Board of Directors When a Conflict Exists. At such time as any matter comes before the Board which involves or may involve a conflict of interest, the affected director shall make known the potential conflict, whether disclosed by his or her written statement or not. Such director shall answer any questions that might be asked of him or her and shall disclose all material facts. At the request of the President, or the request of the Vice-President if the director with a conflict is the President, such director shall withdraw from the meeting for so long as the matter shall continue under discussion. If by withdrawing there is no longer a quorum, consideration of the matter shall be rescheduled until such time when there is a quorum despite the withdrawn director.

Section 11.4. Effect of Conflict. A director may be interested, directly or indirectly, in any contract, transaction or act relating to or incidental to the operations conducted by the Corporation, and may freely make contracts, enter into transactions, or otherwise act for or on behalf of the Corporation in such matters; provided that (i) the direct or indirect interest of the director in the proposed contract, transaction or act shall first be disclosed to and approved by the Board, (ii) any director directly or indirectly interested in the contract, transaction or act shall refrain from voting on the matter, and (iii) no contract, transaction or act shall be entered into or



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taken on behalf of the Corporation if such contract, transaction or act would jeopardize the Corporation's tax-exempt status under Section 501(c)(3) of the Code.

\* \* \* \* \*

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**CERTIFICATE OF SECRETARY**

I, the undersigned, certify that I am the presently elected and acting Secretary of KLAMATH RIVER RENEWAL CORPORATION, a California nonprofit corporation, and the above Bylaws, consisting of \_\_\_ pages (not including this page) are the Bylaws of the Corporation effective \_\_\_\_\_ 2016 as adopted by the Board of the Corporation on \_\_\_\_\_ 2016.

DATED: \_\_\_\_\_, 2016

\_\_\_\_\_  
[\_\_\_\_\_] , Secretary

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**EXHIBIT 1**

- A. The following entities may appoint two directors as provided in Section 3.2(b) of the Bylaws.

American Rivers  
California Trout  
Klamath Riverkeeper  
Northern California Council, Federation of Fly Fishers  
Salmon River Restoration Council  
Sustainable Northwest  
Trout Unlimited

- B. The following entities may appoint one director as provided in Section 3.2(b) of the Bylaws.

Institute for Fisheries Resources  
Pacific Coast Federation of Fishermen's Associations

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**Joint Application for Approval of License Amendment and License Transfer**

## **Attachment J**

# **Klamath River Renewal Corporation Certificate of Good Standing**

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State of California  
Secretary of State

CERTIFICATE OF STATUS

ENTITY NAME:

KLAMATH RIVER RENEWAL CORPORATION

FILE NUMBER: C3879848  
FORMATION DATE: 02/29/2016  
TYPE: DOMESTIC NONPROFIT CORPORATION  
JURISDICTION: CALIFORNIA  
STATUS: ACTIVE (GOOD STANDING)

I, ALEX PADILLA, Secretary of State of the State of California,  
hereby certify:

The records of this office indicate the entity is authorized to  
exercise all of its powers, rights and privileges in the State of  
California.

No information is available from this office regarding the financial  
condition, business activities or practices of the entity.



IN WITNESS WHEREOF, I execute this certificate  
and affix the Great Seal of the State of  
California this day of September 16, 2016.

A handwritten signature in black ink, appearing to read "Alex Padilla".

ALEX PADILLA  
Secretary of State

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**Joint Application for Approval of License Amendment and License Transfer**

## **Attachment K.1**

**Order No. 10-364, Docket No. UE 219 (Or. Pub.  
Util. Comm'n, Sept. 16, 2010)**

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

ORDER NO. 10-364

Entered 09/16/2010

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UE 219

In the Matter of

PACIFICORP, dba PACIFIC POWER

ORDER

Application to Implement the Provisions of  
Senate Bill 76.

DISPOSITION: SURCHARGES AFFIRMED

**I. INTRODUCTION****A. Overview**

The 2009 Oregon Legislative Assembly passed Senate Bill 76 (SB 76) which requires, among other things, that PacifiCorp, dba Pacific Power (Pacific Power or the Company) file a copy of the Klamath Hydroelectric Settlement Agreement (KHSA) within 30 days after the document's execution, along with analyses of rate-related costs, benefits and risks to customers of relicensing. SB 76 also requires Pacific Power to concurrently file tariffs for the collection of two non-bypassable surcharges to pay costs associated with removing dams within the Klamath Hydroelectric Project (Klamath Project or the Project).

Pursuant to this legislation, Pacific Power filed an Application to Implement Provisions of SB 76 (Application) along with Schedule 199 to institute the surcharges (KHSA surcharges), as well as supporting economic analyses of the costs and benefits of removing Project dams under the KHSA versus continuing to pursue relicensing of the dams.

Based on the results of the analyses, the Company asks the Commission to find the surcharges filed in Advice No. 10-008 result in fair, just, and reasonable rates. The Company also requests the Commission grant final approval of Pacific Power's Schedule 199, remove refund language in Schedule 199, approve the Company's proposed method for evaluating collections under Schedule 199 on an annual basis, and conditionally approve the transfer of the Project to the Dam Removal Entity (DRE) as contemplated in the KHSA. Staff and other parties raised certain issues regarding the calculation of the KHSA surcharges. The Industrial Customers of Northwest Utilities (ICNU) also challenged whether the KHSA surcharges should be suspended until funding of the KHSA by California becomes certain.

**1. *The Klamath Project***

Pacific Power owns and operates the Klamath Project, which Pacific Power describes as follows:

The Project is a 169 megawatt hydroelectric facility on the Klamath River in southern Oregon and northern California. It consists of eight developments including seven powerhouses, four mainstem hydroelectric dams on the Klamath River (Iron Gate, Copco No. 1, Copco No. 2, and J.C. Boyle), as well as two small diversion dams on Spring Creek and Fall Creek, a tributary to the Klamath River. The Project as currently licensed includes the East Side and West Side generating facilities which use water diverted by the Link River Dam, a facility owned by the Bureau of Reclamation that regulates the elevation and releases of water from Upper Klamath Lake and which is not included in the Project. The Project also includes Keno Dam, which has no hydroelectric generation facilities, but which serves to regulate water levels in Keno Reservoir as required by the Project license. The Company operates all developments under one Federal Energy Regulatory Commission (FERC) license (FERC Project No. 2082). The Project is partially located on federal lands administered by the Bureau of Land Management and the Bureau of Reclamation.<sup>1</sup>

Pacific Power describes the licensing and relicensing process for the Project, as follows:

Under the Federal Power Act (FPA), FERC has exclusive authority to license nonfederal hydropower projects on navigable waterways. Original licenses are issued for a term of 50 years. FERC may issue subsequent licenses for a term of between 30 and 50 years. FERC regulations require that a licensee file a Notice of Intent to apply for a new license five and a half years prior to license expiration. A licensee must file an application for a new license two years prior to expiration of an existing license. On average, licensing takes eight to ten years, and some applications have taken as long as 30 years. During the relicensing process, FERC typically allows projects to continue operating on annual license extensions under the same terms and conditions once the old license has expired. Such is the case with the Project at this time, as the Project license expired in 2006.<sup>2</sup>

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<sup>1</sup> See PPL/100, Brockbank/2, ll. 6-20. (Direct Testimony of Dean S. Brockbank, Mar 18, 2010).

<sup>2</sup> *Id.* at 3, ll 12-23; See also PPL/100, Brockbank/4.



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The Klamath Project is currently operating under an annual license, as the original license expired in 2006.<sup>3</sup> Pacific Power filed a Notice of Intent to relicense the Project on December 15, 2000.<sup>4</sup> Pacific Power initially pursued a collaborative approach to relicensing, significantly involving stakeholders in the relicensing process even before submitting plans to FERC.<sup>5</sup> Pacific Power filed a final license application with FERC in February 2004.<sup>6</sup> The application proposed changes to the Project in order to avoid the imposition of mitigation measures unrelated to the operation of the hydroelectric facilities.<sup>7</sup>

In March 2006, the Company submitted applications to California and Oregon for Clean Water Act (CWA) Section 401 water quality certifications of the Project, a prerequisite to FERC licensing.<sup>8</sup> The same month, four federal agencies that were parties to the relicensing proceeding (National Marine Fisheries Service, U.S. Fish and Wildlife Service, the Bureau of Reclamation, and the Bureau of Land Management) issued draft terms and conditions for a new license for the Klamath Project.<sup>9</sup> Conditions were proposed that would require implementation of protection, mitigation, and enhancement (PM&E) measures associated with fish passage and other environmental benefits.<sup>10</sup> Pacific Power indicates that these measures would likely reduce power generation at the Klamath Project and increase the costs of a new license.<sup>11</sup> Pacific Power challenged the proposed terms and conditions in a formal administrative proceeding, and the agencies issued modified terms and conditions in accordance with an administrative law judge's findings in that proceeding.<sup>12</sup> These terms and conditions are set forth in the FERC's final environmental impact statement.<sup>13</sup>

Pacific Power initiated settlement discussions in October 2004 with stakeholders and held settlement meetings in 2005 and 2006.<sup>14</sup> During settlement discussions, representatives of the federal government and the states of Oregon and California expressed strong preferences for removing the dams.<sup>15</sup> As a result of these settlement meetings, on November 13, 2008, Pacific Power, the states of Oregon and California and the United States Department of Interior (DOI) entered into the Klamath Agreement in Principle (AIP).<sup>16</sup> The AIP provided a framework to decommission and remove the four mainstem hydroelectric dams in the Project: J.C. Boyle, Copco No. 1, Copco No. 2 and Iron Gate (the Klamath dams).<sup>17</sup> Pacific Power indicates that the AIP

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<sup>3</sup> PPL/100, Brockbank/3-4.

<sup>4</sup> *Id.* at 6.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 10.

<sup>8</sup> *Id.* at 5, 7. Since the execution of the KHSA, the applications for water quality certification of the Project have been held in abeyance. PPL/100, Brockbank/13.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 8.

<sup>13</sup> PPL/300, Scott/4-5 (Direct Testimony of Cory E. Scott, Mar 18, 2010).

<sup>14</sup> PPL/100, Brockbank/10-11.

<sup>15</sup> PPL/200, Kelly/10-11 (Direct Testimony of Andrea L. Kelly, Mar 18, 2010).

<sup>16</sup> PPL/100, Brockbank/11; Preamble to SB76.

<sup>17</sup> PPL/100, Brockbank/11.

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reflected the preliminary view of its parties that the benefits of removing the Klamath dams outweighed the costs.<sup>18</sup>

After execution of the AIP, Pacific Power pursued further negotiations with an expanded group of stakeholders, government agencies and interested persons.<sup>19</sup> The negotiations culminated in execution of the KHSA on February 18, 2010.<sup>20</sup>

On July 14, 2009, the Oregon Legislature passed SB 76 to facilitate removal of the Klamath dams pursuant to an agreement in principle, the KHSA, among the states of Oregon and California, the United States DOI, and Pacific Power. SB 76 establishes procedures to implement the KHSA. Review by the Commission of rates resulting from implementation of the KHSA is included among the procedures.

## **2. *The Klamath Hydroelectric Settlement Agreement***

On February 18, 2010, the AIP parties and other stakeholders signed the KHSA.<sup>21</sup> (The KHSA is attached to this order as Appendix A.) The KHSA provides a framework for removal of the Klamath dams after transfer to a DRE no earlier than 2020, contingent on certain actions, including Congressional approval and a scientific assessment by the Secretary of the Interior confirming that removal is in the public interest.<sup>22</sup> The KHSA conditions also include passage of federal legislation to authorize implementation of the KHSA and provide liability protection for Pacific Power and its customers.<sup>23</sup>

If the Secretary of the Interior makes an affirmative determination, the states of California and Oregon have 60 days to concur. If the Secretary makes a negative determination, the KHSA terminates, unless the parties agree to cure the termination or amend the KHSA.<sup>24</sup>

The KHSA sets a \$450 million cost cap for facilities removal. Customer contributions are capped at \$200 million, prorated between Pacific Power's customers in Oregon (up to \$184 million) and California (up to \$16 million).<sup>25</sup> The state of California is also obligated to provide the remaining \$250 million, either through the issuance of a bond or some other means.<sup>26</sup>

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<sup>18</sup> Pacific Power's Opening Brief on Surcharge Issues (Surcharge Opening Brief) at 4 (Aug 9, 2010); *See* Preamble of SB 76.

<sup>19</sup> PPL/100, Brockbank/12.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> PPL/200, Kelly/2. The Secretary of the Interior will use best efforts to make this determination by March 31, 2010. *See also* PPL/103, Brockbank/1-2.

<sup>23</sup> PPL/103, Brockbank/2.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 2-3.

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**3. Senate Bill 76**

SB 76 requires Pacific Power to file a copy of the KHSA with the Commission within 30 days after execution, along with complete copies of any analyses and studies of rate-related costs, benefits and risks to customers of removing versus relicensing the Klamath River dams reviewed by the Company during evaluation of the KHSA.<sup>27</sup>

SB 76 requires Pacific Power to also file “tariffs for the collection of two non-bypassable surcharges from its customers for the purpose of paying the costs of removing Klamath River dams.”<sup>28</sup> As specified by the statute, one surcharge should be designed to collect removal costs for the J.C. Boyle Dam and the other surcharge should collect removal costs for the other three dams.<sup>29</sup> Removal costs may include costs related to: (1) physical removal of the dams; (2) site remediation and restoration; (3) avoiding downstream impacts of dam removal; (4) downstream impacts of dam removal; (5) permits required for the removal; (6) removal and disposal of sediment, debris and other materials; and (7) compliance with environmental laws.<sup>30</sup> SB 76 directs the Commission to allow Pacific Power to begin collecting the surcharges on the date the KHSA final agreement is filed with the analyses and tariffs.<sup>31</sup>

SB 76 mandates two caps on the amount collected by the surcharges. Total collection may not exceed \$200 million (calculated as Oregon’s share of the costs) and yearly collection may not exceed more than two percent of Pacific Power’s annual revenue requirement, as determined by the Company’s last general rate case pursuant to ORS 757.210 as of January 1, 2010.<sup>32</sup> In addition, the surcharges must be of a specified amount per kilowatt-hour billed to retail customers, as determined by the Commission.<sup>33</sup> SB 76 provides that all amounts collected under the surcharges are to be remitted into specially created trust accounts.<sup>34</sup>

Within six months of the filing of the KHSA, analyses, and tariffs by Pacific Power, SB 76 requires the Commission to conduct a hearing pursuant to ORS 757.210 and enter an order making a determination as to whether the surcharges result in fair, just, and reasonable rates.<sup>35</sup>

If one or more of the dams will not be removed, the Commission will direct Pacific Power, under SB 76, to terminate all or part of the surcharges.<sup>36</sup> The Commission

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<sup>27</sup> ORS 757.736 (1).

<sup>28</sup> ORS 757.736 (2).

<sup>29</sup> *Id.*

<sup>30</sup> ORS 757.736(11).

<sup>31</sup> ORS 757.736 (2).

<sup>32</sup> ORS 757.736 (11).

<sup>33</sup> ORS 757.736 (7).

<sup>34</sup> ORS 757.736 (8); ORS 757.738 (1).

<sup>35</sup> ORS 757.736 (5). ORS 757.734 (1) also requires the Commission to enter an order establishing an accelerated depreciation schedule for the Project within six months of the date of execution of the KHSA. On August 18, 2010, the Commission entered Order No. 10-325.

<sup>36</sup> ORS 757.736 (10).

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will also “direct the trustee of the appropriate trust account under ORS 757.738 (Surcharge trust accounts related to removal of Klamath River dams) to apply any excess balances in the accounts to Oregon’s allocated share of prudently incurred costs to implement relicensing requirements.”<sup>37</sup> Remaining excess amounts in the trust accounts after this application shall be refunded to customers or otherwise used for the benefit of customers.<sup>38</sup>

**II. PROCEDURAL HISTORY**

On March 18, 2010, within 30 days of the execution of the KHSA, Pacific Power filed an Application to Implement Provisions of Senate Bill 76 and supporting testimony with the Commission. Pacific Power concurrently filed Advice No. 10-008 implementing surcharges filed in the Application through Schedule 199, effective March 18, 2010.

Schedule 199 spreads the surcharges among customer classes based on each class’ share of generational revenues, while ensuring that no customer class increase exceeded two percent or was less than 1.5 percent.<sup>39</sup> Staff addressed Advice No. 10-008 in a Public Meeting Memo, dated March 22, 2010. Staff recommended that the Commission allow Schedule 199 to remain in effect. At the Public Meeting held on March 30, 2010, the Commission allowed Schedule 199 to remain in effect pending further investigation.

Special protective orders for confidential and highly confidential information filed in this proceeding were entered on April 19, 2010 (Order No. 10-148), and April 21, 2010 (Order No. 10-152).

On May 26, 2010, the following parties filed direct testimony: Staff<sup>40</sup>; the Citizens’ Utility Board of Oregon (CUB); ICNU; the Oregon Department of Fish and Wildlife; the Oregon Water Resources Department; and the Oregon Department of Environmental Quality. (The three intervening state agencies are collectively the Intervenor State Agencies.) Three parties, American Rivers, California Trout and Trout Unlimited (collectively the Joint Parties), filed joint testimony. Pacific Power filed reply testimony on June 21, 2010.

On July 2, 2010, a bench request directed Pacific Power to file Highly Confidential work papers that had been informally provided to Staff and signatories to Special Protective Order No. 10-148. On July 9, 2010, Pacific Power filed the requested information.

On July 23, 2010, the Commission held a workshop. Pacific Power, Staff, CUB and Trout Unlimited made technical presentations and answered questions regarding cost-benefit analyses of decommissioning the dams pursuant to the KHSA versus relicensing

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> PPL/200, Kelly/9.

<sup>40</sup> Staff filed direct testimony pertaining to depreciation issues only on June 4, 2010. *See* Staff/200, Ping.

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the Project. Technical questions with regard to the other issues in this case were also addressed.

Opening briefs were filed on August 9, 2010. Opening and reply briefs were filed by the Joint Parties, Intervenor State Agencies, Staff and other intervening parties.

**III. DISCUSSION****A. Issues****1. *What is the Standard of Review for the KHSA Surcharges?*****a. *Positions of the Parties***

The legislature, Pacific Power states, delegated broad authority to the Commission to evaluate whether the KHSA surcharges produce rates that are fair, just, and reasonable.<sup>41</sup> Under the fair, just, and reasonable standard, Pacific Power asserts that the Commission must evaluate whether the rates—as opposed to the methodologies used to calculate the rates—are fair, just, and reasonable. Pacific Power observes that the Commission “has previously found that its duty under the just, and reasonable standard is to ‘balance the interest of the customer and the utility under ORS 756.040.’”<sup>42</sup> Customers’ interests include adequate and safe service at a just, and reasonable price, Pacific Power observes. Pacific Power argues that the Commission should review the surcharges in context of the Company’s overall rates, “including the fact that the surcharges are a relatively modest rate increase to base rates approved by the Commission within the past year.”<sup>43</sup>

CUB argues, however, that “[t]he size of an increase, no matter how small, or how modest, is an improper test for determining whether a rate is fair, just and reasonable.”<sup>44</sup> Rather, CUB asserts that rates are fair, just, and reasonable if they reflect costs that are “prudently incurred and are necessary to provide adequate services to customers.”<sup>45</sup> CUB argues that the Commission should review KHSA surcharges under a prudence standard.<sup>46</sup>

Pacific Power responds that SB 76 applies the prudence standard to the Company’s recovery of investment, operational costs and replacement power, but applies a fair, just, and reasonable standard to the review of the surcharges.<sup>47</sup> In any case, the Company observes that the Commission need not resolve the issue, as CUB finds the surcharges to be prudent as well as fair, just, and reasonable.

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<sup>41</sup> Pacific Power’s Surcharge Opening Brief at 13-14.

<sup>42</sup> Pacific Power’s Surcharge Opening Brief at 14, citing *In Re Portland Gen. Elec. Co.*, Order No. 08-487 at 63.

<sup>43</sup> *Id.* at 14.

<sup>44</sup> CUB’s Opening Brief at 4. (Aug 9, 2010).

<sup>45</sup> *Id.*

<sup>46</sup> CUB/100, Feighner/4 (Direct Testimony of Gordon Feighner, May 26, 2010).

<sup>47</sup> Pacific Power’s Surcharge Opening Brief at 15.

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*b. Resolution*

SB 76 defines the scope of the Commission's review of the surcharges for funding the costs of removing the Klamath River dams. Pursuant to ORS 757.736(4), we must determine, using the information contained in the rate-related analyses and studies filed by Pacific Power with the KHSA, whether the imposition of surcharges under the terms of the KHSA results in rates that are fair, just, and reasonable.

Our general ratemaking function is to determine an overall level of rates that are just, and reasonable, and to do so, we traditionally balance the competing interests of a utility and its customers. This balance conventionally means that customers receive adequate service at fair and reasonable rates, and the serving utility has an opportunity to collect sufficient revenue to recover reasonable operating expenses and earn a reasonable return on investments made to provide service.<sup>48</sup> Typically, we apply this standard with regard to a utility's overall service, investments, and earnings.

This proceeding is unique, however, as it focuses on service and investments related to the Klamath Project only. It is also unique because the 2009 Legislative Assembly directs us to consider only the "rate-related costs, benefits and risks for customers of removing or relicensing [the] Klamath River dams."<sup>49</sup> In this proceeding, we have the unique opportunity to compare two competing rate scenarios to evaluate what scenario we believe will likely be in the best of interests of customers, resulting in rates that are fair, just, and reasonable.<sup>50</sup>

**2. Do the Surcharges Result in Fair, Just, and Reasonable Rates?***a. Positions of the Parties*

ORS 757.736(2) provides for surcharges to fund the costs of removing the Klamath dams pursuant to the KHSA. Pacific Power asserts that the surcharges are fair, just, and reasonable because they implement the KHSA, a settlement agreement negotiated for the economic benefit of customers.

Negotiation of the KHSA was guided, the Company claims, by four core principles: (1) protect customers from uncertain costs of removal of the Klamath dams; (2) transfer the dams to a third party for removal; (3) protect customers from liabilities of dam removal; and (4) ensure that customers continue to benefit from the low-cost power of the dams until the dams are removed.<sup>51</sup> Pacific Power represents that the KHSA delivers on each of these principles, thereby benefiting customers. With regard to the first principle, Pacific Power states that the KHSA protects customers from uncertain costs related to dam removal by putting a \$200 million cap on the Company's Oregon customer contribution to

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<sup>48</sup> Order No. 08-487 at. 6-7.

<sup>49</sup> See ORS 757.736(1).

<sup>50</sup> All costs are estimated, however. Unlike a prudency review, we do not compare actual expenditures with other estimated scenarios.

<sup>51</sup> PPL/200, Kelly/10-11.

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the total costs of dam removal.<sup>52</sup> As to the second principle, the KHSA requires designation of a DRE.<sup>53</sup> The third principle is addressed by the requirement of federal legislation providing liability protection to Pacific Power and its customers.<sup>54</sup> As the Klamath dams will continue to operate until 2020, Pacific Power claims that the fourth principle is also met.<sup>55</sup>

Pacific Power assessed and compared the relative costs of implementing the KHSA versus relicensing the Klamath project to evaluate whether the KHSA was in the economic best interests of ratepayers.<sup>56</sup> The Company filed such analysis with the KHSA.

Pacific Power estimates that relicensing would incur costs in excess of \$400 million in capital costs (majority of costs result from implementation of aquatic resource PM&E measures) and \$60 million in operations and maintenance costs over a 40-year license term.<sup>57</sup> (The relicensing scenario includes a reduction in energy production by twenty percent that would be replaced with renewable, non-carbon emitting resources.<sup>58</sup>) Pacific Power asserts that costs estimated for the baseline relicensing scenario are conservative, and could go much higher.<sup>59</sup> Pacific Power asserts that one of the greatest benefits of the KHSA is that it protects customers from any additional risks and liabilities potentially associated with relicensing, including escalating PM&E costs, litigation and the possibility that the Project would not ever be relicensed.<sup>60</sup>

In comparison, the Company estimates capital costs of approximately \$9 million (involving interim water quality and hatchery improvements) and operations and maintenance (O&M) costs of approximately \$70 million to implement the KHSA.<sup>61</sup> Operating and maintaining the hatcheries, monitoring water quality and enhancing the aquatic habitat are examples of O&M costs that would be incurred until decommissioning.<sup>62</sup> The Company estimates \$3 million to decommission the East Side and West Side developments and a \$172 million dam removal surcharge. Assuming generation at the Project would end as of December 31, 2019, KHSA costs also include renewable replacement power costs.<sup>63</sup>

To evaluate the costs and benefits of relicensing versus decommissioning the Project, the Company compared the Present Value Revenue Requirement (PVRR) of a 40-year relicense to the PVRR of the KHSA over a 44-year period beginning in 2010.<sup>64</sup>

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<sup>52</sup> PPL/104, Brockbank, § 4.1.1.C.

<sup>53</sup> PPL/104, Brockbank, 4.

<sup>54</sup> PPL/104, Brockbank, § 2.1.1.E.

<sup>55</sup> PPL/104, Brockbank § 7.3.3.

<sup>56</sup> To estimate costs of relicensing, the Company relied on costs and data developed as part of the 2007 Final Environmental Impact Statement (FEIS). PPL/200, Kelly/14. The Company also included potential CWA Section 401 water quality certifications from California and Oregon. PPL/300, Scott/8.

<sup>57</sup> PPL/300, Scott/6; PPL/301 (Confidential).

<sup>58</sup> PPL/200, Kelly/15.

<sup>59</sup> *Id.* at 14.

<sup>60</sup> PPL/300, Scott/10; PPL/200, Kelly/16.

<sup>61</sup> PPL/300, Scott/8.

<sup>62</sup> *Id.*

<sup>63</sup> PPL/200, Kelly/15; Tr. at 9, ll 7-9.

<sup>64</sup> *Id.* at 14-15. The Company detailed costs in confidential and highly confidential analyses.

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Pacific Power reports that the economic analysis shows the KHSA PVRR is less than the relicensing PVRR.<sup>65</sup> Pacific Power also indicates that the KHSA specifically provides Oregon customers with a PVRR benefit over the costs of relicensing.<sup>66</sup>

Staff and all parties, other than ICNU, agree that KHSA costs are likely lower than Project relicensing costs, particularly given the significant escalation risk for relicensing costs. Staff and all parties conclude that surcharges to implement the KHSA are fair, just, and reasonable.

Staff thoroughly reviewed Pacific Power's analysis of the costs and risks associated with relicensing versus dam removal, finding the Company's estimates to be reasonable.<sup>67</sup> Staff finds it significant that mitigation measures, which are difficult to estimate and likely to escalate over time, are the largest cost associated with relicensing, while the greatest KHSA costs, absent dam removal costs, are replacement power costs.<sup>68</sup> Staff observes that the Company's estimates of mitigation costs are supported by independent analysis by the California Energy Commission, in cooperation with the U. S. DOI.<sup>69</sup> Staff concludes that Pacific Power has demonstrated that customer costs under the KHSA are capped below projected costs to relicense and continue operation of the Klamath dams.<sup>70</sup> In consideration of the significant risk that relicensing costs will escalate in the future, Staff determines that the KHSA is the less risky option for ratepayers, and urges the Commission to determine that the KHSA surcharges result in rates that are fair, just, and reasonable.<sup>71</sup>

The Intervenor State Agencies observe that the reasonableness of the surcharges are evident "when the unbounded costs and risks to customers of relicensing the hydroelectric project are compared to dam removal under the KHSA, which caps customer costs and liabilities."<sup>72</sup> The Intervenor State Agencies testify that relicensing can be expected to cost \$4,182,750 and \$406,600, respectively, for state hydro fee and rental payments (over a 50-year license term).<sup>73</sup> The Intervenor State Agencies caution that water quality certification proceedings pending before the Oregon and California water quality agencies are particularly subject to uncertainty about cost and outcome.<sup>74</sup>

The Joint Parties assert that the KHSA manages ratepayer risks better than relicensing. The KHSA offers capped costs and fixed benefits versus the numerous and

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<sup>65</sup> Id. at 15.

<sup>66</sup> Tr. 31, ll 22-25; Confidential Attachment to Bench Request 1-4.

<sup>67</sup> Staff's Opening Brief on Surcharge Issues (Staff Surcharge Opening Brief), p. 3. (Aug 9, 2010).

<sup>68</sup> Staff/100, Brown/8-15. (Direct Testimony of Kelcey Brown, May 26, 2010).

<sup>69</sup> Staff's Surcharge Opening Brief at 2-3. The two agencies commissioned a study regarding "Economic Modeling of Relicensing and Decommissioning Options for the Klamath Basin Hydroelectric Project." Staff indicates that estimates by Pacific Power and the study of relicensing mitigation costs are comparable in 2009 dollars.

<sup>70</sup> Staff's Surcharge Opening Brief at 4.

<sup>71</sup> Id.

<sup>72</sup> Intervenor State Agencies' Brief on Dam Removal Surcharges 2. (Aug 9, 2010).

<sup>73</sup> WRD/1, Graine, 3-5 (Oregon Department of Water Resources' Direct Testimony of Mary Graine, May 26, 2010; ODFW/2, Pustis, pp. 4-5 (Oregon Department of Fish and Wildlife's Direct Testimony of Nancy Pustis, May 26, 2010).

<sup>74</sup> DEQ/1, Stine/5. (Direct Testimony of Chris Stine, May 26, 2010).



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significant contingencies associated with the relicensing effort that are not fully quantifiable in terms of cost, schedule or legal liability, the Joint Parties observe.<sup>75</sup> In contrast, the Joint Parties observe that “the KHSA and the Surcharges incorporate procedures and requirements to manage all contingencies associated with dam removal.”<sup>76</sup> The Joint Parties explain that these procedures and requirements:

- (i) avoid almost all capital investment in the project facilities;
- (ii) permit existing power operations largely to continue until 2020;
- (iii) cap PacifiCorp’s investment in dam removal at \$200 million, including \$172 million subject to this application; and (iv) exempt PacifiCorp from any liability for damages associated with dam removal once the facilities are transferred for that purpose.<sup>77</sup>

At the July 23, 2010 Commission workshop, Steve Rothert spoke on behalf of the Joint Parties about their perspective on the risks associated with relicensing. Observing that the process started in 2000 and has no projected end date, he called the relicensing proceeding “one of the most contentious and difficult such proceedings in the 75-year history of the Federal Power Act.”<sup>78</sup>

CUB took note of this testimony when assessing risks associated with relicensing the Project.<sup>79</sup> After performing a financial analysis of its own, and considering the prudence, as well as the fairness and reasonableness of the KHSA, CUB supports the settlement and the rates resulting from surcharges established under it. CUB states:

Continuing to operate the Klamath River dams until 2020 provides substantial benefits to customers, especially when potential carbon costs are taken into consideration. The guarantee of limited financial liability to Oregon customers makes the settlement preferable to the lack of certainty that would accompany the FERC relicensing process. CUB’s analysis of [Pacific Power]’s financial work papers confirms the Company’s own assertion that the rate increase associated with the KHSA is prudent and is, therefore, fair, just and reasonable.<sup>80</sup>

CUB made this determination despite recognition that the cost to Oregon customers of is large and disproportionate—as typically the costs of relicensing would be allocated across Pacific Power’s entire service territory spanning six states.<sup>81</sup> CUB concluded:

CUB’s analysis of the dam removal project’s costs has determined that the portion of the project’s costs incurred by the Oregon customers of [Pacific Power] while large is acceptable given the expected benefits

<sup>75</sup> Joint Opening Brief on Surcharge Issues at 4-6. (Aug 9, 2010).

<sup>76</sup> *Id.* at 6.

<sup>77</sup> *Id.* at 6-7. See PPL/104; *Sees also* ORS 757.736(3); KHSA §4.1.1.C.

<sup>78</sup> Tr. 72-73.

<sup>79</sup> CUB’s Opening Brief at 6-7. (Aug 9, 2010).

<sup>80</sup> *Id.* at 7 (internal citations omitted).

<sup>81</sup> *Id.* at 5.

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of the project as compared to the quantity of financial risks that will be assumed by customers. The SB 76 legislation which provides that the overall contribution be limited to \$200 million (184 million to Oregon customers) provides adequate assurances that ratepayers will not be responsible for cost overruns or other unanticipated charges. The predicted costs of decommissioning compare favorably with the costs associated with relicensing the dams, and decommissioning poses significantly fewer risks to [Pacific Power] and other project stakeholders.<sup>82</sup>

ICNU is the only party that expresses caution with regard to costs under the KHSA to remove the Klamath Dams, “the total cost to Oregon is higher than would be the case, absent SB 76.”<sup>83</sup> ICNU’s comparison point is different than all the other parties. ICNU estimates that if the Klamath Dams were removed under ordinary ratemaking treatment the total annual revenue requirement that would be assigned to Oregon ratepayers would be 30 percent less than it is under the funding mechanism and other requirements of SB 76.<sup>84</sup> Pacific Power responds that ICNU’s conclusion is faulty because it considers removal costs and not the totality of costs associated with removal of the Klamath dams without the KHSA, as traditional ratemaking requires.<sup>85</sup> Pacific Power observes that ICNU did not review the full economic analysis supporting the KHSA and has not produced quantitative evidence of its position.

*b. Resolution*

Ratepayers will be responsible for significant future costs for the Klamath Project (regardless of the disposition of the dams). The nature and scope of these costs has been unclear, however, since 2000 when Pacific Power first provided notice of the Company's need to seek federal relicensing of the Project. We are persuaded that continued pursuit of the relicensing option would pose significant risks to ratepayers. The nature and scope of the costs involved with relicensing would remain uncertain and subject to significant escalation for a considerable period of time.

The KHSA in contrast, offers a more certain path for the Project's future, providing a timeline for continued operation until December 31, 2010, followed by transfer of the facilities to a third party responsible for removing the dams. The KHSA also caps customer costs and liabilities for Klamath dam removal and the environmental restoration of the Klamath River at a reasonable level, while providing customers with renewable replacement power. Further, we believe that Pacific Power has reasonably estimated the cost of replacement power if the Klamath dams are decommissioned. Due to significant tangible and intangible benefits associated with the KHSA, we conclude it is in the best interest of customers and find the KHSA surcharges to be fair, just and reasonable.

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<sup>82</sup> *Id.* at 5-6 (internal citations omitted).

<sup>83</sup> ICNU/100, Falkenberg/4 (Direct Testimony of Randall Falkenberg, May 26, 2010).

<sup>84</sup> PPL/203, Kelly/3.

<sup>85</sup> See Pacific Power’s Reply Brief on Surcharge Issues (Surcharge Reply Brief) (Aug 9, 2010).

We reviewed the detailed economic studies of the KHSA surcharges, we analyzed the projected costs of both relicensing and decommissioning of the dams, and we asked specific questions of Pacific Power, Staff and the parties at a workshop. We considered both the quantifiable and unquantifiable benefits and risks of the KHSA and relicensing options.

We are persuaded that Pacific Power carefully analyzed the nature and scope of projected costs for both futures for the dams. As Staff and others do, we believe that there are substantial unquantified risks associated with continued pursuit of a FERC license that is not captured in the economic analysis. Pacific Power and parties deeply involved in the relicensing process, such as the Intervenor State Agencies and the Joint Parties, all testified that the relicensing option analysis significantly underestimates the true cost of relicensing. These parties indicate that the projected relicensing costs are subject to significant risk of escalation with no guarantee that a FERC license will ever be issued due, in particular, to great uncertainty about water quality certification. Yet, even though the full expected costs of the relicensing option is not captured in Pacific Power's analysis, the analysis still shows that the KHSA results in lower rates for Oregon customers, as well as all customers of Pacific Power. If the risks associated with the relicensing scenario could be quantified, we believe that the relative economic benefits of the KHSA would likely be great.

We observe that no party testified that the relicensing option would likely result in lower rates and better service for customers. ICNU criticizes the KHSA surcharge rates, but does so in comparison to hypothesized "normal" ratemaking for costs associated with removing a hydroelectric dam. Ten years into a process to resolve the future of the Klamath Project with no "normal" resolution in sight, we conclude that it's not reasonable to compare proposed solutions to so-called "normal" ratemaking scenarios.

Because the KHSA limits costs and manages risk better than relicensing, we find the KHSA to be in the best interest of customers, and we determine that the KHSA surcharges are, therefore, fair, just and reasonable.

### ***3. Are the Surcharges Calculated Reasonably and Consistently with Senate Bill 76?***

Section 7.3.2.A of the KHSA anticipates collecting \$172 million in customer contributions to pay for removal of the Klamath dams. Section 7.3.2.B expects to earn approximately \$28 million in interest on these contributions. The sum of the collected surcharge and interest earnings “results in a total of \$200 million in the accounts available for Facilities Removal costs.”<sup>86</sup> SB 76 sets forth certain requirements to calculate surcharges to collect Oregon’s share of the customer contributions.

In Advice No. 10-008, the Company filed Schedule 199, with an effective date of March 18, 2010. Pacific Power, Staff and other parties evaluated whether the Company’s tariff implementing the surcharges, Schedule 199, is consistent with SB 76. ICNU challenged an assumption that amounts collected under the surcharges would earn

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<sup>86</sup> *Id.*

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3.5 percent interest in the trust accounts. ICNU also argued that calculation of the KHSA surcharges should assume annual increases in sales growth for Pacific Power. In response, Pacific Power and Staff recommended that the surcharges should be annually reviewed. ICNU asserted that interested parties should participate in such reviews.

*a. Positions of the Parties*

As required by ORS 757.736(2), Pacific Power states, Schedule 199 includes two dam removal surcharges, one for J. C. Boyle Dam and the other for the Copco 1, Copco 2 and Iron Gate dams. The Company asserts that these surcharges are calculated consistently with the requirements of SB 76.

The surcharges are calculated to collect no more than Oregon's share of the total customer contribution of \$200 million, Pacific Power states, as required by ORS 757.736(3).<sup>87</sup> Oregon's 92 percent share of the \$172 million target is calculated to be \$158.24 million.<sup>88</sup> Pacific Power indicates that Schedule 199 calculates the surcharges based on a collection schedule funding this amount by December 31, 2019.<sup>89</sup> The Company represents that the analysis undertaken during settlement negotiations assumed collection of the surcharges over a ten-year period, as well as a 3.5 percent interest rate on the trust balance.<sup>90</sup> As Staff explains, this assumption of a 3.5 percent annual interest rate is an estimate only, and actual earnings may vary considerably over the trust period.<sup>91</sup> Staff does not object to assuming a 3.5 percent annual interest rate.<sup>92</sup>

ICNU challenges the assumption of a 3.5 percent interest rate, however. ICNU argues that the rate is too low, as it is below the current rate for conservative interest-bearing investments.<sup>93</sup> ICNU recommends that a 6 percent interest rate be assumed, to thereby reduce the initial amount to be collected by the surcharges by \$1.72 million.<sup>94</sup> In support of the 6 percent rate as reasonable and conservative, ICNU argues that cost of capital experts for both Pacific Power and ICNU recently testified that single A utility bonds will earn between 6.19 and 6.27 percent.<sup>95</sup> ICNU also argues that negotiation of the interest rate during the KHSA is insufficient reason to rely on it.<sup>96</sup>

Staff responds, however, that based on research<sup>97</sup>, there is a strong chance that 3.5 percent is actually too high, and that undercollection is more likely than overcollection.

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<sup>87</sup> PPL/200, Kelly/7-8.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> PPL/200, Kelly/8; PPL/104, Appendix H.

<sup>91</sup> Staff's Surcharge Reply Brief at 2.

<sup>92</sup> Tr. at 81, ll 23-82.

<sup>93</sup> ICNU/100, Falkenberg/6.

<sup>94</sup> ICNU's Opening Brief at . 13; ICNU/100, Falkenberg/7.

<sup>95</sup> ICNU's Opening Brief at 14; ICNU/100, Falkenberg/6.

<sup>96</sup> ICNU's Reply Brief at 9.

<sup>97</sup> Staff's Surcharge Reply Brief at 2, n. 3. Staff cites the Federal Reserve Statistical Release H.15 website at <http://federalreserve.gov/release/h15/data.htm>, and asks that we take official notice under OAR 860-014-0050(1)(a) and (b) of the United States Treasury Rates posted there. We do not find it necessary to take official notice and deny the request.

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Staff notes that the average annual “[m]arket yield[s] on U.S. Treasury securities at [the specified] constant maturity, quoted on [an] investment basis” for the week ending August 6, 2010 are as follows: 30-day bill 0.15 percent; 90-day bill 0.16 percent; 6-month bill 0.20 percent; 1-year bill 0.27 percent; 2-year note 0.54 percent; and 3-year note 0.82 percent.<sup>98</sup> On this basis, ICNU’s assertion in its Opening Brief that the 3.5 percent interest rate used to determine an annual revenue requirement is ‘too-low’ is believed by Staff to be exactly the opposite given the desideratum of principal preservation that current yields on investments considered by Staff to be suitable.”<sup>99</sup> Staff considers the “more reasonable, yet conservative 6% interest rate” assumption advocated by ICNU to be mistaken.

ICNU’s argument assumes that the surcharges will be deposited in investments putting principal at risk, Pacific Power responds, while KHSA parties expect the opposite.<sup>100</sup> Staff confirms that surcharge balances will be invested in a manner not putting principal under risk.<sup>101</sup> Under ORS 757.738(1), the Commission is required to establish trust accounts to hold the surcharge collections. Pacific Power’s role is to collect the surcharges on customers’ bills and then remit the proceeds to the Oregon trust accounts on a monthly basis. The Commission will manage the trusts, with specific trustee instructions that are to be developed in consultation with the federal government and the state of California. The Commission currently is depositing surcharge collections into a money market account.<sup>102</sup> Pacific Power asserts that ICNU did not provide evidence that an interest rate of 3.5 percent is unreasonable for accounts qualified to receive public funds under ORS 295.001 to 295.008.

Pacific Power responds that the surcharges are carefully calculated to implement the KHSA, pursuant to SB 76. Pacific Power states:

The KHSA specifies that the Parties acknowledge that the surcharges will earn approximately \$28 million in interest based on a 3.5 percent interest rate assumption. PPL/104 at 48; Appendix H. The Parties used this calculation to determine how to reach the Customer Contribution of \$200 million. PPL/104 at 48. PacifiCorp then used this agreed-upon calculation from the KHSA as the basis of its surcharge calculations in this proceeding. Under Sections 2.3 and 4.1.1 of the KHSA, the Parties agreed that the costs of dam removal shall be funded in part through Oregon surcharges that amount to approximately \$158 million. PPL/104 at 16, 24. If the Oregon Commission does not adopt the surcharges as specified in the KHSA, the Parties must Meet and Confer to attempt to find alternatives to cover the costs of dam removal. PPL/104 at 16. Because the Oregon surcharge amount is a material condition of the KHSA, the KHSA may be terminated if the parties cannot negotiate alternative funding during

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<sup>98</sup> Staff’s Surcharge Reply Brief at 2.

<sup>99</sup> *Id.*

<sup>100</sup> PPL/203, Kelly/6.

<sup>101</sup> Staff’s Surcharge Reply Brief at 3.

<sup>102</sup> Tr. at 76.

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the Meet and Confer process. As a result changing the interest rate would present a significant threat to the viability of the KHSA.<sup>103</sup>

Pacific Power alleges that ICNU's interest rate proposal is an attempt to undermine the KHSA, contrary to the intent of SB 76.

The Company calculated the surcharges to equally spread the \$158.24 million amount over the collection period beginning on March 18, 2010, and ending on December 31, 2019, resulting in an annual collection rate of approximately \$16.16 million per year, thereby increasing Oregon rates by approximately 1.6 percent a year.<sup>104</sup> Pacific Power asserts that this approach complies with ORS 757.736(7), directing the Commission to set the surcharges so that the total annual collections of the surcharges remain approximately the same during the collection period. As reflected in the tariff, however, Pacific Power points out that the Commission and the Company will need to monitor the collections under the surcharge tariff given variations in load forecasts and may need to adjust the cents per kWh rate in the future. Pacific Power also indicates that pursuant to ORS 757.736(3), the annual collection rate was compared against Pacific Power's revenue requirement in Oregon as of January 1, 2010, to ensure that the annual collection rate does not exceed 2 percent. Finally, Pacific Power asserts that the surcharges are calculated to remain approximately the same during the collection period and are of a specified amount per kilowatt hour, as required by ORS 757.736(7).<sup>105</sup>

ICNU expresses concern that the Company did not factor sales growth into calculation of the KHSA surcharges.<sup>106</sup> As collection under the surcharges will increase with sales growth, currently forecast to grow slightly in excess of 1 percent per annum, ICNU asserts that the surcharges are designed to over-collect.<sup>107</sup> ICNU recommends that the Commission mandate periodic reductions to reflect sales growth, and that the Commission monitor the surcharges on an annual basis, providing both Staff and intervenors with opportunities to review and challenge surcharge inputs.<sup>108</sup>

Pacific Power alternatively proposes that the Commission direct the Company to meet with Staff each year, within 30 days of the Company's filing of the TAM. Based on the updated load forecast filed in the TAM, Pacific Power indicates that Staff and the Company can review the status of collections in relation to the new forecast to determine if Schedule 199 rates should be revised. If revisions are needed, then Pacific Power proposes that the Company be required to file a revised tariff within 60 days of the TAM filing. The tariff would have an effective date of at least 30 days from the date of filing. The Company argues that its proposal ensures that amounts collected under Schedule 199 reflect changes in load, without speculating as to load growth.

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<sup>103</sup> Pacific Power's Surcharge Reply Brief at 5-6.

<sup>104</sup> PPL/100, Kelly/8.

<sup>105</sup> PPL/203, Kelly/6.

<sup>106</sup> ICNU/100, Falkenberg/7.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*; ICNU Reply Brief at 8.

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Staff proposes a similar process, as follows:

Staff recommends that the Commission require the Company to file annually updated surcharge rates, using its most recent forecast of future loads, the history of interest earned, and other transactions impacting actual and projected trust account balances.<sup>109</sup> Such a requirement should include that no less than thirty days following the annual Transition Adjustment Mechanism (TAM) filing, [Pacific Power], Staff and other interested parties will meet to review the actual interest earned, the surcharge balance, and the load forecast to determine whether it is necessary to file a revised surcharge tariff. If there is over- or under-collection of the surcharge relative to obtaining a cumulative total of surcharge collected plus interest earned of approximately \$184 million by December 31, 2019, Staff would recommend [Pacific Power] file a modified Schedule 199 tariff within 60 days following the TAM filing, with the revised tariff to be effective 30 days from the revised tariff filing.<sup>110</sup>

*b. Resolution*

ORS 757.736 sets forth a framework for the calculation of two dam removal surcharges, one for J. C. Boyle Dam and another for the Copco 1, Copco 2 and Iron Gate dams. Staff and parties reviewed the calculation of Schedule 199 to ensure that it was correctly calculated. The surcharges are calculated to collect an amount that when added to interest on the collected amount will total \$200 million, Oregon's share of the customer contribution, by December 31, 2010. Pacific Power calculated this amount to be \$158.24 million, with the rate collection period beginning on March 18, 2010.

This calculation assumes a 3.5 percent interest rate, as negotiated as part of the KHSA, to be earned on amounts collected and deposited in trust accounts established and managed by the Commission. The interest rate is an assumption and actual earnings may vary over the period of time that the amounts collected under the surcharge are held in a trust account. The Company calculated the surcharges to equally spread the \$158.24 million amount over the collection period, resulting in an annual collection rate of approximately \$16.16 million per year, thereby increasing Oregon rates by approximately 1.6 percent a year. Pacific Power asserts that this approach complies with ORS 757.736(7), directing the Commission to set the surcharges so that the total annual collections of the surcharges remain approximately the same during the collection period.

We find that Pacific Power correctly calculated the surcharges pursuant to the requirements of SB 76. As a primary intent of SB 76 is to implement the KHSA, we find it appropriate to honor the assumption of a 3.5 percent interest rate. Nevertheless, we are

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<sup>109</sup> In a footnote Staff indicates that, "Other" transactions should include estimates prepared by the Company as to the amount and timing of requested disbursements prior to December 31, 2019." (Staff's Surcharge Reply Brief at 3, n. 6),

<sup>110</sup> Staff's Surcharge Reply Brief at 3.

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mindful of ICNU's challenges to that assumption, as well as to Staff's concerns that the 3.5 percent interest rate assumption is actually too high. We are also mindful of ICNU's challenge to annual distribution of the rates on an equal basis, without adjustments for changes in Pacific Power's sales. Consequently, we adopt Staff's proposed annual review process, finding that this approach provides a sufficient opportunity for the Company, Staff and interested parties to review and adjust the surcharges, as appropriate.

**4. *How Should Schedule 199 Rates be Spread Among Customer Classes?***

*a. Positions of the Parties*

Pacific Power proposes to allocate the surcharges among customer classes based on each class' share of generation revenues, while ensuring that the impact on each customer class does not exceed 2 percent and is not less than 1.5 percent.<sup>111</sup> This proposal recognizes that the dam removal surcharges are a generation-related cost, while mitigating disparity among the classes.<sup>112</sup> Pacific Power calculates the surcharge will increase the average customer's monthly bill by approximately \$1.25 per month, for a total of \$14.88 per year.<sup>113</sup>

Rather than spreading the surcharges based on each class' share of generation revenues, subject to a two percent cap and 1.5 percent floor for each customer class, ICNU proposes that the surcharges should be spread equally across all customer classes, similar to the rate spread methodology proposed by the Company in direct testimony in its most recently filed general rate case, UE 217.<sup>114</sup> ICNU argues that "the rate spread proposed by [Pacific Power] is not based on cost of service principles, but on an arbitrary methodology that penalizes industrial customers."<sup>115</sup> ICNU additionally argues that dam removal costs would ordinarily be considered demand-related and not spread on the basis of energy use.<sup>116</sup>

ICNU further complains that Pacific Power's proposal does not even spread the surcharges on the basis of energy use due to the floor of 1.5 percent and ceiling of 2 percent on rate increases to each customer class.<sup>117</sup> The floor level selected by the Company is arbitrary, ICNU charges.<sup>118</sup>

In any case, ICNU concludes, the Klamath surcharges are outside of ordinary ratemaking as they represent costs "foisted upon ratepayers by the legislature to achieve political and environmental goals."<sup>119</sup> ICNU argues that "[s]ince SB 76 includes a revenue based cap and is similar to special purpose legislation, 'it would be most reasonable to treat

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<sup>111</sup> PPL/200, Kelly/9.

<sup>112</sup> PPL/203, Kelly/7.

<sup>113</sup> *Id.*

<sup>114</sup> ICNU/100, Falkenberg/8.

<sup>115</sup> ICNU's Opening Brief at 9.

<sup>116</sup> ICNU/100, Falkenberg/9.

<sup>117</sup> *Id.* at 9-10.

<sup>118</sup> *Id.* at 10.

<sup>119</sup> ICNU's Opening Brief at 10.



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[the Klamath surcharge] as a revenue tax and apply the same percentage increase to all customer classes.”<sup>120</sup>

Pacific Power responds that the Company’s proposed rate spread methodology is consistent with Commission policy and precedent.<sup>121</sup> The KHSA surcharges fund dam removal costs, which are traditionally spread on the basis of generation. Pacific Power explains that costs to remove generation are fundamentally generation-based.<sup>122</sup> Pacific Power notes as well, that the Company’s methodology to spread KHSA surcharges is consistent with how net power costs are spread in the TAM,<sup>123</sup> and with how relicensing costs would be spread.<sup>124</sup>

Pacific Power observes that ICNU’s proposal to use the rate spread from the Company’s direct case in UE 217 ignores the fact that the costs at issue in a general rate case relate to distribution and transmission as well as generation.<sup>125</sup> It also ignores the rate spread contained in the stipulation in UE 217 to which ICNU is a party.

Staff concurs with the Company’s methodology because it is consistent with a functional approach to ratemaking that was endorsed by the Commission in Order No. 98-374, entered in docket UM 827 on September 11, 1998.<sup>126</sup> In that order, the Commission adopted a stipulation providing that marginal costs and revenue requirements be reconciled on a functional basis—i.e., separated according to the functions of generation, transmission, distribution and customer service prior to being allocated to customer classes.<sup>127</sup>

Staff explains that, “[t]he Company’s proposed rate spread follows the functional approach endorsed by the Commission in UM 827 by basing the surcharges on generation revenues since the associated costs are generation-related; *i.e.*, reflecting the cost of removal of a generation resource, the dams.” ICNU’s proposal, however, would contrarily “incorporate distribution- and transmission-related costs and therefore does not appropriately apportion the generation-identified cost of dam removal.”<sup>128</sup> ICNU’s proposal is problematic, Staff observes, because it allocates a larger share of dam removal surcharges to residential class customers due to this class’ greater distribution costs.<sup>129</sup>

<sup>120</sup> *Id.* at 10-11, citing ICNU/100, Falkenberg/10.

<sup>121</sup> Pacific Power Surcharge Power’s Reply Brief at 4.

<sup>122</sup> PPL/203, Kelly/8.

<sup>123</sup> PPL/203, Kelly/7.

<sup>124</sup> Tr. at 98.

<sup>125</sup> PPL/203, Kelly/8.

<sup>126</sup> Staff’s Surcharge Opening Brief at 7. *See In Re Methods for Estimating Marginal Cost of Service for Electric Utilities*, Docket UM 827, Order No. 98-374 (Sept 11, 1998).

<sup>127</sup> Order No. 98-374 at 3. (The Commission praised the value of the functional approach, “[t]his new approach will improve our historical efforts to **allocate cost** responsibility to customer **classes** in ways that lead to more efficient price signals for **customers** and efficient use of electrical service. It will also improve fairness in our rates by ensuring that the **costs** of another function (e.g., distribution) do not affect the **allocation** of the **costs** of another function (e.g., generation)” (emphasis in original).)

<sup>128</sup> Staff’s Opening Brief at 8.

<sup>129</sup> *Id.*

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Staff also supports the Company's floor and ceiling as a reasonable means to mitigate the impact on any customer class. Staff explains that each class' share of the dam removal costs is limited to a range between 1.5 and 2 percent of that class's overall revenue requirement (as opposed to only the generation portion of the overall revenue requirement).<sup>130</sup>

Pacific Power calls ICNU's allegation that industrial customers are penalized by the Company's proposed rate spread false. As CUB observed at the Commission workshop, residential customers actually pay a larger amount of the total surcharges.<sup>131</sup> Moreover, the Company observes, the rates per kilowatt-hour for residential customers, \$0.0010 and \$0.00033, are higher than for Schedule 48 Large General Service customers, \$0.00079 and \$0.00026.<sup>132</sup>

*b. Resolution*

We agree with Staff's analysis finding the Company's proposed methodology to spread KHSA surcharge rates to be consistent with the functional ratemaking approach we endorsed in Order No. 08-374. The KHSA provides for continued generation by the Klamath dams until at least December 31, 2019, with decommissioning thereafter. KHSA costs are generation-related, therefore, and should be allocated accordingly. We also agree with Staff's assessment that the Company's floor and ceiling reasonably mitigate the impact on any customer class. Although ICNU criticized the floor as arbitrary, ICNU failed to support an alternative.

**5. *Should the Surcharges be Suspended if a KHSA Condition Precedent May not be Met?***

*a. Positions of the Parties*

At the July 23, 2010 Commission workshop, ICNU suggested, for the first time, that the Commission may decline to approve the surcharges on the basis that a condition precedent to the KHSA may not be met.<sup>133</sup> ICNU argues that the Commission should suspend the Klamath surcharges until the state of California decides whether it will provide its share of funding to remove the Klamath dams in 2020.<sup>134</sup> At the workshop, ICNU indicated that California Governor Arnold Schwarzenegger issued a press release on June 29, 2010, stating that he wants to delay placement on California's ballot of a bond measure expected to raise \$250 million towards dam removal until 2012,<sup>135</sup> despite the fact that the Secretary of the Interior is required to make a determination that California has authorized

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<sup>130</sup> *Id.* at 6.

<sup>131</sup> Pacific Power's Surcharge Opening Brief at 20, citing CUB witness Jenks' discussion in Tr. at 97, ll 2-8.

<sup>132</sup> *Id.*

<sup>133</sup> Tr. at 83, ll 14-16.

<sup>134</sup> ICNU's Opening brief at 5-7.

<sup>135</sup> ICNU included the press release as Attachment A to its opening brief and requests the Commission take judicial notice of it pursuant to ORS 40.065 and 40.090. We take official notice of the press release under OAR 860-014-0055. Any party may object to the facts noticed within 15 days of this order.

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funding or does not need to do so by March 31, 2012.<sup>136</sup> Although ICNU acknowledges that California could “theoretically raise the funds through other measures,”<sup>137</sup> ICNU argues that the state’s ability to do so is highly uncertain given severe budget shortfall issues. ICNU represents that “the KHSA will be terminable because of the inability of the Secretary to conclude that there are sufficient funds to remove the dams.”<sup>138</sup>

ICNU asserts that the Commission “has the discretion under SB 76 to change or eliminate the surcharges ‘at any time’ if it is likely that dam removal will occur after 2020.”<sup>139</sup> ICNU cites to ORS 757.736(7) providing, “[t]he commission may change the collection schedule if a Klamath River dam will be removed during a year other than 2020.” ICNU also cites to ORS 757.736(10) providing in pertinent part that, “[i]f one or more Klamath River dams will not be removed, the commission shall direct Pacific Power to terminate collection of all or part of the surcharges.”

Pacific Power questions whether the Commission has a sufficient record to resolve this issue.<sup>140</sup> In any case, Pacific Power asserts that SB 76 does not provide the Commission with the discretion to suspend the surcharges, before they are even approved. The Company observes that ORS 757.736(7) only allows the Commission to change the collection schedule after a finding that the Project dams will not be removed, or will be removed in a year other than 2020.<sup>141</sup> Pacific Power argues that such a finding cannot be made if there is only a possibility that the dams will not be removed, or will be removed in a year other than 2020.<sup>142</sup> Pacific Power also argues that ORS 757.736(10) is inapplicable because there has been no decision that one or more of the Klamath dams will not be removed.

The Intervenor State Agencies agree that the Commission likely does not have discretion to suspend collection of the surcharges. The State Agencies state:

Pursuant to ORS 757.736(2), the Surcharges are already being collected. Under ORS 757.736(4), the Commission “shall enter an order” whether the Surcharges will result in rates that are fair, just and reasonable, within six months of Pacific Power’s filing. ICNU did not describe how the Commission might “put on hold” collection of the Surcharges. The Commission is not given express authority to suspend or postpone the Surcharges. The Commission does have authority to decide that the Surcharges will *not* result in rates that are fair, just, and reasonable, but even in this event the Surcharges remain in effect pending a final decision on Supreme Court review.<sup>143</sup>

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<sup>136</sup> PPL/104 (KHSA § 3.3.4.C); ICNU/102, Falkenberg/5.

<sup>137</sup> See PPL/104 (KHSA § 4.12).

<sup>138</sup> ICNU’s Opening Brief at 6. See PPL/104 (KHSA §8.11.1); ICNU/102, Falkenberg/5.

<sup>139</sup> ICNU’s Opening Brief at 5.

<sup>140</sup> Pacific Power’s Surcharge Opening Brief at 15.

<sup>141</sup> *Id.* at 15-16.

<sup>142</sup> *Id.* at 16.

<sup>143</sup> ORS 757.736(5).

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The Intervenor State Agencies strongly rebut ICNU's allegation that the Secretary will be unable to make the necessary determination:

First, a California bond of up to \$250 million is in fact a potential source of dam removal funding contemplated under the KHSA, *KHSA* § 4.1.2.A, and could affect the prerequisite for the secretarial determination that the states have provided funding for dam removal. *See KHSA* § 3.3.4.C. However, voter approval of the California bond by March 2012 is not an absolute prerequisite to the secretarial determination and dam removal is going forward. If the bond funding has not been approved by that time, the Secretary of Interior may still make a dam removal determination if the customer contribution funding (i.e., \$200 million) will be sufficient to accomplish dam removal, or if California provides assurances that bond funding is necessary to effect dam removal will be timely provided after March 2010.<sup>144</sup> California may pursue financing mechanisms other than a bond. *See KHSA* § 4.1.2.A.<sup>145</sup>

Staff agrees with the Intervenor State Agencies' position that ICNU misreads the KHSA.

ICNU responds to all of the criticism by asserting, "California's decision to delay the water bond is significant, will likely result in termination or amendment of the Klamath Hydro Settlement Agreement ('KHSA'), and provides the Commission with ample support to place the Klamath surcharges on hold or otherwise adopt reasonable ratepayer protections." Pacific Power's arguments are for naught, ICNU reports, as the California Legislature recently voted to move the water bond to the 2012 election. ICNU alleges that the KHSA should be considered "terminable" because it is now unlikely that California will be able to raise its share of the dam removal funds.<sup>146</sup>

*b. Resolution*

The KHSA contains several conditions precedent to the transfer of the Klamath Dams to the DRE, including conditions precedent relating to funding by the states of Oregon and California. Under SB 76, we do not have the discretion to undermine conditions precedent relating to funding by Oregon due to a possibility that conditions precedent relating to funding by California may not occur. ORS 757.736(10) provides in pertinent part, "[i]f one or more Klamath River dams will not be removed," then the Commission must direct Pacific Power to terminate collection of the surcharges, and excess funds already collected will be applied to relicensing costs, refunded or otherwise used for the benefit of customers. Similarly, in the event of delay, not termination, of the removal of the Klamath Dams, ORS 757.736(7) provides in pertinent part, "[t]he commission may change the collection schedule if a Klamath River dam will be removed during a year other than 2020."

<sup>144</sup> *See KHSA* § 3.3.4(1) and (2).

<sup>145</sup> Intervenor State Agencies' Brief on Dam Removal Surcharges at 3.

<sup>146</sup> ICNU's Reply Brief at 2.

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ICNU asks us to suspend KHSA surcharge collections pursuant to one or both of these statutory provisions—and to thereby undermine conditions precedent relating to Oregon’s funding of costs to remove the Klamath Dams—, pursuant to one or both of these statutory provisions based on a *possibility* that California will undermine conditions precedent relating to that state’s funding of dam removal costs by delaying placement of a pertinent bond measure on California’s ballot. ORS 757.736(10) and ORS 757.736(7) respectively apply, however, only if there is *certainty*—not the *possibility*—that the Klamath Dams will either not be removed or that removal will be delayed. We acknowledge ICNU’s identification of risks associated with how California will fund that state’s share of the costs to remove the Klamath Dams, but risks mean possibility, not certainty, and we cannot take action under ORS 757.736(10) on the basis of possibility.

Regardless of our legal ability to suspend the KHSA surcharges on the basis of California’s delayed bond measure, we do not agree with ICNU that voter approval of a bond measure that funds California’s share of KHSA is a condition precedent to KHSA implementation. We agree with the Intervenor State Agencies that the Secretary of the Interior may otherwise determine that removal of the Klamath dams should continue.

**6. *Should the Refund Language Schedule 199 be Modified?***

*a. Positions of the Parties*

In Advice No. 10-008, the Company filed Schedule 199 with a refund provision stating that the tariff shall remain in effect “pending review by the Commission as to whether the imposition of surcharges under the KHSA results in rates that are fair, just and reasonable or during any period of judicial review of such a finding.” As filed, Schedule 199 further provided that, “[i]f the rates resulting from these surcharges are finally determined not to be fair, just and reasonable the surcharges shall be refunded pursuant to ORS 757.736, subsection (5).”<sup>147</sup> Pacific Power proposes modifications to this language, but Staff and other parties object, or propose differing modifications.

Pacific Power recommends revising Schedule 199 to remove the refund condition once the Commission makes a final determination pursuant to ORS 757.736(5) that the dam removal surcharges are fair, just, and reasonable.<sup>148</sup> Pacific Power observes that such a determination would be final 60 days after entry of the pertinent order should no petition for review be filed, or at the conclusion of a proceeding before the Oregon Supreme Court should a petition for review be filed. At either of these points, Pacific Power contends that there is no basis for refund under ORS 757.736(5). Instead, refunds would be available

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<sup>147</sup> ORS 757.736(5) states that judicial review of an appeal of the Commission’s decision on the reasonableness of the rates resulting from the surcharges is conferred on the Supreme Court, and that the surcharges shall be refunded if the rates are determined not to be fair, just, and reasonable.

<sup>148</sup> Pacific Power’s Surcharge Opening Brief at 27-28; PPL/200, Kelly/7; Tr. at 107, ll 16-18.

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only under ORS 757.736(10).<sup>149</sup> Pacific Power observes that it would be appropriate, although not necessary, to replace the sentence the Company proposes to remove with the following sentence: “The surcharges may be refundable only as provided in ORS 757.736(9) and 757.736(10).”<sup>150</sup> Pacific Power asserts that such language would mirror the statutory language.

Staff recommends that the Commission retain refund language in Schedule 199. Staff proposes, however, modifications to the refund language indicating that refunds are available if there is the possibility of appeal.<sup>151</sup> Staff recommends modifying the refund language in Schedule 199, as follows:

~~\* \* \* pending review by the Commission as to whether the imposition of surcharges under the terms of the final agreement results in rates that are fair, just and reasonable or during any period of judicial review of such a finding.~~ If the rates resulting from these surcharges are finally determined not to be fair, just and reasonable the surcharges shall be refunded pursuant to ORS 757.736, Subsection (5).<sup>152</sup>

Pacific Power expresses concern that this language suggests that Schedule 199 rates could be determined to be not fair, just, and reasonable at any time.<sup>153</sup>

CUB asserts that tariff language should mirror statutory language. Consequently, CUB does not support any modification to the refund language in UE 199.<sup>154</sup>

ICNU also argues that the refund language in UE 199 should not be changed. Moreover, ICNU expresses concern that Pacific Power’s proposal to add language regarding refunds pursuant to ORS 757.736(10) would limit refunds to future customers only and is unnecessarily narrow. ICNU urges the Commission to explicitly maintain the subject to refund provisions in Schedule 199.

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<sup>149</sup> ORS 757.736(10) provides:

If one or more of the Klamath River dams will not be removed, the commission shall direct [Pacific Power] to terminate collection of all or part of the surcharges under this section. In addition, the commission shall direct the trustee of the appropriate trust account under ORS 757.738 to apply any excess balances in the accounts to Oregon’s allocated share of prudently incurred costs to implement Federal Energy Regulatory Commission relicensing requirements. If any excess amounts remain in the trust accounts after that application, the Public Utility Commission shall order that the excess amounts be refunded to customers or otherwise be used for the benefit of customers in accordance with Public Utility Commission rules and policies.

<sup>150</sup> Pacific Power’s Surcharge Reply Brief at 12.

<sup>151</sup> Staff’s Surcharge Reply Brief at 5.

<sup>152</sup> Staff/100, Brown/13.

<sup>153</sup> Pacific Power’s Surcharge Opening Brief at 29.

<sup>154</sup> CUB’s Opening Brief at 17.

*b. Resolution*

Our role in this proceeding is to implement SB 76 by ensuring that surcharges for funding the costs to remove Klamath dams comply with statutory requirements. As such, we agree with CUB that tariff language in Schedule 199 should precisely execute the provisions of that statute.

Under SB 76, refunds may be appropriate under several scenarios. Under ORS 757.736(5), surcharges imposed and collected under Schedule 199 are subject to refund until our determination is *final* that such surcharges are fair, just, and reasonable pursuant to ORS 757.736(4). ORS 757.736(5) modifies the review process by providing that the Supreme Court of Oregon has *judicial review* jurisdiction to review any order entered under ORS 757.736(4). SB 76 does not address, nor modify, the applicability of a request for rehearing of any order entered under ORS 757.736(4) pursuant to ORS 756.561. Consequently, we find it premature to remove or modify the language included in Schedule 199 relating to refunds under ORS 757.736(5).

In order to ensure that tariff language fully reflects the provisions of SB 76, we find it appropriate to modify Schedule 199, to reflect that this order is subject to a request for rehearing, judicial review, and to indicate that surcharges may be refunded as provided in ORS 757.736(9) and 757.736(10), as follows (**additions in bold**):

\* \* \* pending review by the Commission as to whether the imposition of surcharges under the terms of the final agreement results in rates that are fair, just and reasonable **becoming final** or during any period of judicial review of such finding. If the rates resulting from these surcharges are finally determined not to be fair, just and reasonable the surcharges shall be refunded pursuant to ORS 757.736, Subsection (5). **Surcharges are also refundable as provided in ORS 757.736(9) and 757.736(10).**

**7. *Should Surcharge Collections be Tracked by Customer or Class?***

*a. Positions of the Parties*

ICNU recommends tracking surcharge collections under Schedule 199 on a customer-by-customer basis, at least for all large customers taking service at one MW and above.<sup>155</sup> ICNU argues that this level of accounting will prevent future disputes regarding amounts owed under refunds, and will allow all customers that paid a Klamath surcharge rate to receive the appropriate refund regardless of service status at the time of the refund.<sup>156</sup>

<sup>155</sup> ICNU/100, Falkenberg/5-6; ICNU's Opening Brief at 8.

<sup>156</sup> *Id.*

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Pacific Power calls ICNU's proposal unnecessarily burdensome, particularly in relation to the likelihood of refunds.<sup>157</sup> Pacific Power represents that tracking collections for hundreds of existing, departing and new customers on Schedules 47 and 48 over a ten-year period would be onerous.<sup>158</sup> Pointing to Commission precedent for the distribution of refunds by rate surcredit to existing customers on a going forward basis,<sup>159</sup> the Company proposes to track collections under the surcharges on a customer class basis.<sup>160</sup>

*b. Resolution*

SB 76 is silent regarding the accounting for possible refunds, leaving us with the discretion to determine how to plan for them. We want to balance fairness to customers with practicality and efficiency. We are mindful that surcharges are already being collected under Schedule 199, and that accounting must be timely. For that reason, we are hesitant to direct Pacific Power to undertake the development of new accounting systems to track collections under Schedule 199 on a customer-by-customer basis when the Company has testified that doing so would be unduly burdensome. We agree, however, that collections under Schedule 199 should be tracked, at a minimum, by customer class.

**8. *Do Customers Need Additional Notification Regarding the Klamath Surcharges?***

*a. Positions of the Parties*

In direct testimony, ICNU recommended that the Commission require Pacific Power to provide a "bill stuffer" on an annual basis that explained the reasons for the charge and identified the status of the trust fund. ICNU requests that Pacific Power identify the Klamath surcharge on each customer's monthly bill.

Pacific Power responds that ICNU's recommendations are unnecessary because customers have already been made aware of the level and purposes of the surcharge.<sup>161</sup> Pacific Power explains that explanatory messages were already provided on the first bills that included the surcharges.<sup>162</sup> The Company further explains that the surcharge is separately identified as a line item on every bill.<sup>163</sup> Pacific Power indicates that any future changes to the surcharges will be announced to customers according to the Company's normal business practices.<sup>164</sup>

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<sup>157</sup> PPL/203, Kelly/5. Pacific Power explains that a refund could occur after the Commission determines that rates resulting from the surcharges are fair, just and reasonable only if two conditions are met: (1) dam removal doesn't happen; and (2) amounts collected under the surcharges are in excess of the Company's Oregon-allocated relicensing costs.

<sup>158</sup> Pacific Power's Surcharge Reply Brief at 7.

<sup>159</sup> Pacific Power's Surcharge Opening Brief at 22-23. *See* Advice No. 04-005(Apr 16, 2004).

<sup>160</sup> PPL/203, Kelly/5.

<sup>161</sup> ICNU/100, Falkenberg/4.

<sup>162</sup> PPL/203, Kelly/5-6.

<sup>163</sup> *Id.* at 5.

<sup>164</sup> *Id.* at 6.



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*b. Resolution*

We find Pacific Power's customer notification actions to date to be sufficient. As we have mandated annual review of the Klamath surcharges, we anticipate that changes and updates can be noticed as appropriate.

**9. Disclaimer of jurisdiction under ORS 757.480:***a. Parties' Positions*

Pacific Power asks the Commission to recognize that SB 76 preempts the operation of the Commission property transfer statute, ORS 757.480.<sup>165</sup> Pacific Power argues that ORS 757.480 is repealed by implication by SB 76 because the two statutes are in irreconcilable conflict, citing *Oregon v. Ferguson*, 228 Or App 1 (2009).<sup>166</sup> In the alternative, the Company requests the Commission presently approve the transfer under the statute, contingent upon satisfaction of certain conditions precedent for the transfer in the KHSA, and the filing by Pacific Power of the information required by OAR 860-027-0025.<sup>167</sup>

Staff opposes Pacific Power's request for disclaimer of jurisdiction under ORS 757.480, finding no provision in SB 76 that preempts the Commission's property transfer law, nor any language in the statute indicating that the legislature intended this result.<sup>168</sup> In direct testimony, Staff asserts that the Commission should not address Pacific Power's request "until such time as Pacific Power decides on dam removal."<sup>169</sup>

Pacific Power takes the position, however, that the Company already decided to remove the dams by executing the KHSA.<sup>170</sup> Pacific Power observes that the Company is obligated to transfer the dam if KHSA conditions are met.<sup>171</sup> Pacific Power further argues that waiting to evaluate the transfer is inconsistent with the legislature's intent that SB 76 be implemented immediately, and violates the principle of administrative efficiency. Pacific Power asserts that requiring subsequent approval proceedings to review transfer of the project would effectively create a new precondition on KHSA implementation, thereby creating uncertainty about the Commission's support for implementation of the KHSA.

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<sup>165</sup> Pacific Power indicates that ORS 757.480(1) requires a utility to obtain Commission approval before disposing of any utility property in excess of \$100,000 that is necessary or useful in the performance of utility duties. The Company further provides that OAR 860-027-0025(1)(l) requires the utility to show that disposition of such property is consistent with the public interest, which is a "no harm" standard.

<sup>166</sup> Pacific Power's Surcharge Opening Brief at 24, n. 7.

<sup>167</sup> *Id.* at 23-25.

<sup>168</sup> Staff's Surcharge Opening Brief at 5.

<sup>169</sup> Staff/100, Brown/3.

<sup>170</sup> PPL/203, Kelly/2.

<sup>171</sup> *Id.*

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CUB argues that SB 76 does not legally preempt ORS 757.480. Among other points made, CUB asserts that SB 76 is intended to facilitate the funding of costs associated with removing the Klamath dams, but does not address removal itself.<sup>172</sup> Although SB 76 may be intended to facilitate implementation of the KHSA, CUB observes that even KHSA Section 7.6.5.B anticipates state inspection and due diligence before any transfer of Klamath Project land.<sup>173</sup> CUB argues that “SB 76 has nothing to do with land transfers.”<sup>174</sup> While KHSA Section 7.6.5.A anticipates a transfer of the Klamath dams to the DRE after a set of conditions precedent are met, an agreement may not repeal a statute.<sup>175</sup>

Both Staff and ICNU argue that Pacific Power’s argument that SB 76 preempts the property transfer statute is inconsistent with rules of statutory construction.<sup>176</sup> Noting that the Oregon courts follow the rule of statutory construction that amendment by implication is not favored and only recognized when the inconsistency of two statutes is clear, ICNU observes that SB 76 neither specifically mentions nor indirectly refers to Oregon’s property transfer statute.<sup>177</sup> In contrast, ICNU asserts, SB 76 specifically amends ORS 757.736(5), the judicial review statute, which demonstrates the legislature was aware of the laws governing the Commission and elected to amend certain statutes, but not others.<sup>178</sup> Staff further observes that a newer statute will be held to repeal by implication an older one only when the two statutes are either irreconcilably inconsistent or when there is a “persuasive indication” that the newer statute was intended to prevail over the earlier one.<sup>179</sup> Staff asserts that Pacific Power fails to demonstrate either.

ICNU also argues that the Commission cannot conditionally approve the transfer as Pacific Power requests because the Company fails to provide the required information.<sup>180</sup> Staff asserts that it is not administratively inefficient to wait to review a property transfer under ORS 747.480 until the transfer is about to occur.<sup>181</sup>

*b. Resolution*

This proceeding was opened to review certain filings that SB 76 directs Pacific Power to make for the purpose of facilitating the rate recovery of costs associated with removing the Klamath Dams. SB 76 does not direct Pacific Power to make a filing regarding the transfer of the Klamath Dams to the DRE. The issue is simply outside the scope of this proceeding.

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<sup>172</sup> CUB’s Opening Brief at 13-14.

<sup>173</sup> *Id.* at 14.

<sup>174</sup> CUB’s Reply Brief at 9.

<sup>175</sup> Staff’s Surcharge Reply Brief at 4.

<sup>176</sup> ICNU’s Opening Brief at 15; Staff’s Surcharge Reply Brief at 3.

<sup>177</sup> *Id.* See *Balzer Machinery Co. v. Kline Sand & Gravel Co.*, 271 Or 596, 601 (1975).

<sup>178</sup> *Id.*

<sup>179</sup> Staff’s Surcharge Reply Brief at 4. See *Pioneer Trust Bank v. Mental Health Division*, 8 Or App 132, 136 (1987); *Harris v. Craig*, 299 Or 12, 15 n 1 (1985).

<sup>180</sup> Staff’s Surcharge Reply Brief at 15-16.

<sup>181</sup> *Id.* at 5.

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As discussed above, there is some uncertainty regarding whether and when all conditions precedent to the transfer of the Klamath Dams will occur. Pacific Power is correct that there is a presumption that the dams will be transferred to the DRE, and that Pacific Power has agreed to transfer the dams should all conditions precedent occur. However, SB 76 anticipates that one or more of the Klamath Dams may not be transferred, providing for refunds in such a situation, as also discussed above. Moreover, as CUB observes, the KHSA itself, at Section 7.6.5.B, anticipates state inspection and due diligence prior to the transfer of Klamath Project land. As such, we do not agree that SB 76 repeals ORS 757.480 by implication.

While we are responsible for implementing the explicit requirements of SB 76, we do not have the discretion to undertake additional actions to implement the KHSA that are not specifically authorized by the statute. Although the Klamath Dams must be transferred to the DRE to fully execute the KHSA, SB 76 does not address our approval of the transfer. In absence of doing so, the property transfer statute, ORS 757.480 applies. Pacific Power did not make a filing that satisfies the requirements of ORS 757.480. Consequently, we cannot approve a property transfer, even on a conditional basis.

**IV. ORDER**


IT IS ORDERED that:

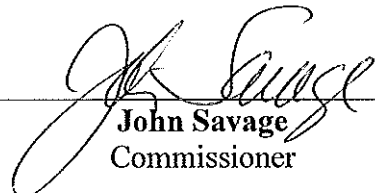
1. Rates instituted by Schedule 199, as filed by PacifiCorp, dba Pacific Power, on March 18, 2010, are affirmed.
2. PacifiCorp, dba Pacific Power, must file annually updated surcharge rates according to the review process provided for in this order.
3. PacifiCorp, dba Pacific Power, must modify Schedule 199 language regarding refunds as provided for in this order.
4. PacifiCorp, dba Pacific Power, must track collections under Schedule 199 by customer class.


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5. PacifiCorp, dba Pacific Power, must file a request to transfer the Klamath Dams pursuant to ORS 757.480 at a later time.

Made, entered, and effective SEP 16 2010.

  
\_\_\_\_\_  
**Ray Baum**  
Chairman

  
\_\_\_\_\_  
**John Savage**  
Commissioner

  
\_\_\_\_\_  
**Susan K. Ackerman**  
Commissioner



A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.

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# **KLAMATH HYDROELECTRIC SETTLEMENT AGREEMENT**

**February 18, 2010**

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This KLAMATH HYDROELECTRIC SETTLEMENT AGREEMENT ("Settlement") is made and entered into by and among the following entities who sign this Settlement:

Ady District Improvement Company;  
 American Rivers;  
 Bradley S. Luscombe;  
 California Department of Fish and Game ("CDFG");  
 California Natural Resources Agency ("CNRA");  
 California Trout;  
 Collins Products, LLC;  
 Del Norte County, California;  
 Don Johnston & Son;  
 Enterprise Irrigation District;  
 Humboldt County, California;  
 Institute for Fisheries Resources;  
 Inter-County Properties Co., which acquired title as Inter-County Title Co.;  
 Karuk Tribe;  
 Klamath Basin Improvement District;  
 Klamath County, Oregon;  
 Klamath Drainage District;  
 Klamath Irrigation District;  
 Klamath Tribes;  
 Klamath Water and Power Agency ("KWAPA");  
 Klamath Water Users Association ("KWUA");  
 Malin Irrigation District;  
 Midland District Improvement Company;  
 Northern California Council, Federation of Fly Fishers;  
 Oregon Department of Environmental Quality ("ODEQ");  
 Oregon Department of Fish and Wildlife ("ODFW");  
 Oregon Water Resources Department ("OWRD");  
 Pacific Coast Federation of Fishermen's Associations;  
 PacifiCorp;  
 Pine Grove Irrigation District;  
 Pioneer District Improvement Company;  
 Plevna District Improvement Company;  
 Poe Valley Improvement District;  
 Randolph Walthall and Jane Walthall as trustees under declaration of trust dated  
     November 28, 1995 (the "Randolph and Jane Walthall 1995 trust");  
 Reames Golf and Country Club;  
 Salmon River Restoration Council;  
 Shasta View Irrigation District;  
 Siskiyou County, California;  
 Sunnyside Irrigation District;  
 Trout Unlimited;  
 Tulelake Irrigation District;  
 United States Department of Commerce's National Marine Fisheries Service ("NMFS");

United States Department of the Interior ("Interior");  
Upper Klamath Water Users Association ("UKWUA");  
Van Brimmer Ditch Company;  
Westside Improvement District #4;  
Winema Hunting Lodge, Inc.; and  
Yurok Tribe;

each referred to individually as a "Party" and collectively as "Parties."

## 1. Introduction

### 1.1 Recitals

**WHEREAS**, the States, the United States and PacifiCorp entered into an Agreement in Principle ("AIP") to address issues pertaining to the resolution of certain litigation and other controversies in the Klamath Basin, including a path forward for possible Facilities Removal;

**WHEREAS**, the AIP provided that the parties to the AIP would continue good-faith negotiations to reach a final settlement agreement in order to minimize adverse impacts of dam removal on affected communities, local property values and businesses and to specify substantive rights, obligations, procedures, timetables, agency and legislative actions, and other steps for Facilities Removal; and

**WHEREAS**, the other Parties to this Settlement desired to participate in the negotiations of a final settlement agreement in order to ensure that the interests of Indian tribes, environmental organizations, fishermen, water users, and local communities were addressed; and

**WHEREAS**, the Parties view this Settlement as an important part of the resolution of long-standing, complex, and intractable conflicts over resources in the Klamath Basin; and

**WHEREAS**, the AIP established a "commitment to negotiate" a Settlement "based on existing information and the preliminary view of the governmental Parties (the United States, Oregon, and California) that the potential benefits for fisheries, water and other resources of removing the Facilities outweigh the potential costs, risks, liabilities or other adverse consequences of such removal"; and

**WHEREAS**, certain Parties believe that decommissioning and removal of the Facilities will help restore Basin natural resources, including anadromous fish, fisheries and water quality; and

**WHEREAS**, the Parties understand that the Project dams are currently the property of PacifiCorp, and that they are currently operated subject to applicable State and Federal law and regulations. The other Parties understand that the decision before PacifiCorp is whether the decommissioning and removal of certain Facilities is appropriate and in the best interests of PacifiCorp and its customers. PacifiCorp asserts that prudent and reasonable long term utility rates and protection from any liability for damages caused by Facilities Removal are central to its

willingness to voluntarily surrender the dams and the low-carbon renewable energy they produce and to concur in the removal of the dams; and

**WHEREAS**, the United States has devoted considerable funds and resources to resource enhancements, management actions, and compensation in the Klamath Basin, and various Parties believe that a broader and integrated approach is appropriate to realize basin-wide objectives; and

**WHEREAS**, this Settlement contemplates a substantial non-federal contribution in support of said approach; and

**WHEREAS**, PacifiCorp is a regulated utility and did not participate in the KBRA negotiations and will not have obligations for implementation of the KBRA; and

**WHEREAS**, the Tribal Parties and the Federal Parties agree that this Settlement advances the trust obligation of the United States to protect Basin Tribes' federally-reserved fishing and water rights in the Klamath and Trinity River Basins; and

**WHEREAS**, all of the Parties agree that this Settlement is in the public interest.

**NOW, THEREFORE**, the Parties agree as follows:

1.2 Purpose of Settlement

The Parties have entered into this Settlement for the purpose of resolving among them the pending FERC relicensing proceeding by establishing a process for potential Facilities Removal and operation of the Project until that time.

1.3 Parties Bound by Settlement

The Parties shall be bound by this Settlement for the term stated in Section 8.1 herein, unless terminated pursuant to Section 8.11.

1.4 Definitions

**"Affirmative Determination"** means a determination by the Secretary under Section 3 of this Settlement that Facilities Removal should proceed.

**"Agreement in Principle"** or **"AIP"** refers to the Agreement in Principle executed on November 13, 2008, by the States of Oregon and California, Interior, and PacifiCorp setting forth a framework for potential Facilities Removal.

**"Applicable Law"** means general law which (i) exists outside of this Settlement, including, but not limited to a Constitution, statute, regulation, court decision, or common law, and (ii) applies to obligations or activities of Parties contemplated by this

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Settlement. The use of this term is not intended to create a contractual obligation to comply with any law that would not otherwise apply.

**“Authorizing Legislation”** refers to the statutes enacted by Congress and the Oregon and California Legislatures, respectively, to authorize and implement this Settlement. Appendices E and G state the proposals for federal and California legislation, which the Parties will support pursuant to Section 2.1.1. The term “federal legislation” as used in this Settlement includes but is not limited to federal Authorizing Legislation.

**“CEQA”** refers to the California Environmental Quality Act, Cal. Pub. Res. Code § 21000 *et seq.*

**“CWA”** refers to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*

**“Concurrence”** means the decisions by each State whether to concur with an Affirmative Determination and, if applicable, a designation of a non-federal DRE.

**“Coordination Process”** for the Studies Supporting the Secretarial Determination means the process contained in Appendix A by which the United States will obtain input and assistance from the Parties to this Settlement, as governed by Applicable Law, regarding the studies and environmental compliance actions needed to inform and support the Secretarial Determination.

**“Counties”** refers to Siskiyou County, California; Humboldt County, California; and Klamath County, Oregon.

**“Dam Removal Entity”** or **“DRE”** means an entity designated by the Secretary that has the legal, technical, and financial capacities set forth in Section 7.1. The Secretary may designate Interior to be the DRE.

**“Decommissioning”** means PacifiCorp’s physical removal from a facility of any equipment and personal property that PacifiCorp determines has salvage value, and physical disconnection of the facility from PacifiCorp’s transmission grid.

**“Definite Plan”** means a plan and timetable for Facilities Removal prepared by the DRE under Section 7.2.1 after an Affirmative Determination by the Secretary.

**“Detailed Plan”** means the plan prepared to inform the Secretarial Determination under Section 3.3.1 and including the elements described in Section 3.3.2.

**“Dispute Resolution Procedures”** means the procedures established by Section 8.6.

**“Due Diligence”** means a Party’s taking all reasonable steps to implement its obligations under this Settlement.

“**Effective Date**” is defined in Section 8.2.

“**EPAct**” refers to the Energy Policy Act of 2005, Section 241, codified at 16 U.S.C. § 823d and amendments to 16 U.S.C. §§ 797(e) and 811.

“**ESA**” refers to the federal Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.*

“**Facilities**” or “**Facility**” means the following specific hydropower facilities, within the jurisdictional boundary of FERC Project No. 2082: Iron Gate Dam, Copco No. 1 Dam, Copco No. 2 Dam, and J.C. Boyle Dam and appurtenant works currently licensed to PacifiCorp.

“**Facilities Removal**” means physical removal of all or part of each of the Facilities to achieve at a minimum a free-flowing condition and volitional fish passage, site remediation and restoration, including previously inundated lands, measures to avoid or minimize adverse downstream impacts, and all associated permitting for such actions.

“**Federal Parties**” refers to Interior, including the component agencies and bureaus of Interior, and the NMFS.

“**FERC**” refers to the Federal Energy Regulatory Commission.

“**Interim Conservation Plan**” or “**ICP**” refers to the plan developed by PacifiCorp through technical discussions with NMFS and the U.S. Fish and Wildlife Service (USFWS) regarding voluntary interim measures for the enhancement of coho salmon and suckers listed under the ESA, filed with FERC on November 25, 2008, or such plan as subsequently modified.

“**Interim Measures**” refers to those measures described in Appendices C and D to this Settlement.

“**Interim Period**” refers to the period between the Effective Date and Decommissioning.

“**Keno facility**” means Keno Dam, lands underlying Keno Dam, appurtenant facilities and PacifiCorp-owned property described as Klamath County Map Tax Lot R-3907-03600-00200-000 located in Klamath County, Oregon.

“**Klamath Basin Restoration Agreement**” or “**KBRA**” refers to the Klamath Basin Restoration Agreement for the Sustainability of Public and Trust Resources and Affected Communities entered on February 18, 2010.

“**Meet and Confer**” procedures mean the procedures established by Section 8.7 of this Settlement.

“**Negative Determination**” means a determination by the Secretary under Section 3 of this Settlement that Facilities Removal should not proceed.

“NEPA” refers to the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*

“Nominal dollars” means dollars that are not adjusted for inflation at the time they are collected.

“Non-bypassable surcharge” means a monetary surcharge authorized by the appropriate state utility commission through a tariff schedule that applies to all retail customers who rely on PacifiCorp's transmission and distribution system for the delivery of electricity.

“Notice” means written notice pursuant to the requirements and procedures of Section 8.5.

“Oregon Surcharge Act” is defined in Section 2.3.

“PacifiCorp's Economic Analysis” means the primary economic analysis prepared by PacifiCorp and relied upon by PacifiCorp to compare the present value revenue requirement impact of this Settlement against the present value revenue requirement of relicensing of the Facilities under defined prescriptions generally based on the FERC Final Environmental Impact Statement dated November 2007, which analysis PacifiCorp will file with the Oregon PUC pursuant to Section 4(1) of the Oregon Surcharge Act and with the California PUC in accordance with Section 4 of this Settlement. This analysis is used to compare the relative cost of relicensing with the relative cost of this Settlement.

“Parties” or “Party” means the signatories to this Klamath Hydroelectric Settlement Agreement.

“Project” refers to the Klamath Hydroelectric Project as licensed by FERC under Project No. 2082.

“Public Agency Party” means each Tribe, the Federal Parties, the agencies of each State, Counties, and each other Party, which is a public agency established under Applicable Law.

“Regulatory Approval” means each permit or other approval under a statute or regulation necessary or appropriate to implement any of the obligations or activities of Parties contemplated under this Settlement.

“Regulatory Obligation” means each of those obligations or activities of Parties contemplated by this Settlement, which are subject to Regulatory Approval and, upon such approval, are enforceable under regulatory authority.

“Secretarial Determination” means the determination by the Secretary as set forth in Section 3 of this Settlement.



“Secretary” refers to the Secretary of the Interior.

“Services” means the National Marine Fisheries Service and the U.S. Fish and Wildlife Service.

“Settlement” means the entirety of this Klamath Hydroelectric Settlement Agreement and Appendices A through K. “Settlement” does not include Exhibits 1 through 3, which are related documents attached for informational purposes.

“States” refers to the State of Oregon by and through the Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, and Oregon Water Resources Department, and the State of California by and through the California Department of Fish and Game and the California Resources Agency.

“State Cost Cap” means the collective maximum monetary contribution from the States of California and Oregon as described in Section 4.1.3 of this Settlement.

“Timely” or “Timeliness” means performance of an obligation by the deadline established in the applicable provision of this Settlement, and otherwise in a manner reasonably calculated to achieve the bargained-for benefits of this Settlement.

“Tribes” means the Yurok Tribe, the Karuk Tribe, and the Klamath Tribes.

“Value to Customers” means potential cost reductions described in Section 7.3.8. These cost reductions would (1) decrease the customer contribution for Facilities Removal, (2) decrease the costs of ongoing operations, (3) decrease the costs of replacement power, or (4) increase the amount of generation at the Facilities, as compared against the assumptions contained in PacifiCorp's Economic Analysis.

## 1.5 Compliance with Legal Responsibilities

In the implementation of this Settlement, Public Agency Parties shall comply with Applicable Law, including but not limited to the Authorizing Legislation, NEPA, ESA, CWA, the Wild and Scenic Rivers Act, and CEQA.

## 1.6 Reservations

### 1.6.1 Generally

Nothing in this Settlement is intended or shall be construed to affect or limit the authority or obligation of any Party to fulfill its constitutional, statutory, and regulatory responsibilities or comply with any judicial decision. Nothing in this Settlement shall be interpreted to require the Federal Parties, the States, or any other Party to implement any action which is not authorized by Applicable Law or where sufficient funds have not been appropriated for that purpose by Congress or

the States. The Parties expressly reserve all rights not granted, recognized, or relinquished in this Settlement.

#### 1.6.2 Reservations Regarding Federal Appropriations

All actions required of the Federal Parties in implementing this Settlement are subject to appropriations for that purpose by Congress. Nothing in this Settlement shall be interpreted as or constitute a commitment or requirement that any Federal agency obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other Applicable Law. Nothing in this Settlement is intended or shall be construed to commit a federal official to expend federal funds not appropriated for that purpose by Congress. Nothing in this Settlement is intended to or shall be construed to require any official of the executive branch to seek or request appropriations from Congress to implement any provision of this Settlement.

#### 1.6.3 Availability of Public Funds

Funding by any Public Agency Party under this Settlement is subject to the requirements of Applicable Law. Nothing in this Settlement is intended or shall be construed to require the obligation, appropriation, or expenditure of any funds by the States or a Public Agency Party except as otherwise permitted by Applicable Law.

#### 1.6.4 Reservations Regarding Legislative Proposals

Nothing in this Settlement shall be deemed to limit the authority of the executive branch of the United States government to make recommendations to Congress on any particular proposed legislation.

#### 1.6.5 Reservations Regarding Regulations

Nothing in this Settlement is intended or shall be construed to deprive any public official of the authority to revise, amend, or promulgate regulations.

#### 1.6.6 No Pre-decisional Commitment

Nothing in this Settlement is intended or shall be construed to be a pre-decisional commitment of funds or resources by a Public Agency Party. Nothing in this Settlement is intended or shall be construed to predetermine the outcome of any Regulatory Approval or other action by a Public Agency Party necessary under Applicable Law in order to implement this Settlement.

#### 1.6.7 No Waiver of Sovereign Immunity

Nothing in this Settlement is intended or shall be construed as a waiver of sovereign immunity by the United States, the State of Oregon, the State of

California, or any other Public Agency Party. This Settlement does not obligate the United States or any Federal Party to affirmatively support this Settlement regarding any state or local legislative, administrative, or judicial action before a state administrative agency or court.

#### 1.6.8 No Argument, Admission, or Precedent

This Settlement shall not be offered for or against a Party as argument, admission, or precedent regarding any issue of fact or law in any mediation, arbitration, litigation, or other administrative or legal proceeding, except that this Settlement may be used in any future proceeding to interpret or enforce the terms of this Settlement, consistent with Applicable Law. This Settlement may also be used by any Party in litigation by or against non-Parties to implement or defend this Settlement. This section shall survive any termination of this Settlement.

#### 1.6.9 Protection of Interests

Each Party may, in a manner consistent with this Settlement, protect, defend, and discharge its interests and duties in any administrative, regulatory, legislative or judicial proceeding, including but not limited to the Secretarial Determination, FERC relicensing process, CWA 401 proceedings, or other proceedings related to potential Project relicensing, Decommissioning, or Facilities Removal.

### 1.7 Trinity River

The Parties intend that this Settlement shall not adversely affect the Trinity River Restoration Program, and the Trinity River Restoration Program shall not adversely affect this Settlement.

To reach that conclusion, the Karuk, Yurok and Klamath Tribes reaffirm and rely upon their view of the existing fishery restoration goals and principles for the Trinity River Fishery Restoration Program, as follows:

1. Restoration of the Trinity River fish populations to pre-Trinity Dam construction levels;
2. Fishery restoration shall be measured not only by returning anadromous fish spawners but also by the ability of dependent tribal and non-tribal fishers to participate fully in the benefits of restoration through meaningful subsistence and commercial harvest opportunities;
3. An appropriate balance between stocks of natural and hatchery origins shall be maintained to minimize negative interactions upon naturally produced fish by hatchery mitigation releases;

4. A collaborative- working relationship between federal agencies and the above mentioned Tribes;
5. Portions of federal activities that are associated with fishery restoration programs are Indian Programs for the purposes of the Indian Self-Determination Act; and
6. The Tribes support full funding implementation of the Trinity River Record of Decision from funding sources outside of this Settlement.

Nothing in this Section binds any Party to any particular interpretation of the law or requires any Party to take particular actions, including performance of Interim Measures, or excuses any action otherwise required by Applicable Law or this Settlement.

## 2. Implementation of Settlement

### 2.1 General Duty to Support Implementation

The Parties shall fully support this Settlement and its implementation. The form, manner, and timing of each Party's support are reserved to the discretion of each Party. Each Party agrees to refrain from any action that does not support or further cooperative efforts in support of the goals of this Settlement and its effective implementation.

#### 2.1.1 Legislation

- A. The Parties acknowledge that legislation is necessary to provide certain authorizations and appropriations to carry out this Settlement as well as the KBRA. Obligations under this Settlement that require such additional authorizations or appropriations shall become effective as provided in that legislation. Each non-Federal Party shall support the proposal and enactment of legislation materially consistent with Appendix E; provided that nothing in this Settlement shall be deemed to limit the authority or discretion of the federal or state Executive Branch consistent with Applicable Law. The Parties agree that the goal is introduction of legislation within 90 days of the Effective Date.
- B. The United States may also request and support the enactment of federal legislation materially consistent with Appendix E, subject to the requirements of Executive Order 12,322, 46 Fed. Reg. 46,561 (1981), and Circular No. A-19 of the Office of Management and Budget, and the President's authority to make such legislative recommendations to Congress as he shall judge necessary and expedient. The Parties intend and anticipate that such federal legislation will provide certain federal authorizations

necessary for the Federal Parties to carry out the federal obligations under this Settlement and the KBRA.

- C. The State of California shall Timely recommend legislation materially consistent with Appendix G-1 and G-2. Further, within sixty days of Concurrence by the State of California with an Affirmative Determination, CDFG will provide draft legislation to the Parties regarding a limited authorization for incidental take of Lost River Suckers, Shortnose Sucker, Golden Eagles, southern Bald Eagles, Greater Sandhill Cranes, or American Peregrine Falcon contingent upon the fulfillment of certain conditions, if such authorization is necessary for implementation of this Settlement. After reasonable opportunity for Parties to provide comments on the draft legislation, the State of California shall Timely recommend the legislation.
- D. Upon the Effective Date and prior to the enactment of Authorizing Legislation, the Parties shall perform obligations under this Settlement that can be performed under their existing authorities.
- E. In consideration for PacifiCorp executing the Settlement, the legislation that Parties will support, in accordance with Section 2.1.1.A and 2.1.1.B, shall:
- i. Provide PacifiCorp with full protection from any liability arising from, relating to, or triggered by actions associated with Facilities Removal with provisions that are materially consistent with the following:
    - a. Notwithstanding any other federal, state, local law or common law, PacifiCorp shall not be liable for any harm to persons, property, or the environment, or damages resulting from either Facilities Removal or Facility operation arising from, relating to, or triggered by actions associated with Facilities Removal, including but not limited to any damage caused by the release of any material or substance, including but not limited to hazardous substances.
    - b. Notwithstanding Section 10(c) of the Federal Power Act, this protection from liability preempts the laws of any state to the extent such laws are inconsistent with the Authorizing Legislation, except that the Authorizing Legislation shall not be construed to limit any otherwise available immunity, privilege, or defense under any other provision of law.

- c. This liability protection shall become operative as it relates to any particular Facility upon transfer of title to that Facility from PacifiCorp to the DRE.
- ii. Authorize and direct the Secretary to issue a Secretarial Determination consistent with the provisions of Section 3.

#### 2.1.2 Regulatory Approvals

Subject to Section 1.6.1, each Party shall support the application for and granting of Regulatory Approvals consistent with this Settlement. The preceding sentence shall not apply to the Public Agency Party exercising the regulatory approval or to a Public Agency Party not participating in the proceeding.

#### 2.1.3 Defense of Settlement

If an administrative or judicial action is brought against any Party to challenge the validity of this Settlement or its implementation consistent with the Settlement, each other Party shall endeavor to intervene or otherwise participate in such action, subject to its discretion, necessary funding, and Section 1.6. Any such participating Party will defend the Settlement. The form of such defense, including what litigation positions to support or recommend in such action, shall be left to the discretion of each participating Party in the action.

Each Party may comment on the consistency of any plan, other document, or data arising during the implementation of this Settlement and not otherwise set forth in an Appendix or Exhibit to this Settlement. The Parties acknowledge that their comments may conflict due to differing good-faith interpretations of the applicable obligations under this Settlement.

#### 2.1.4 Obligation to Implement

##### A. General

Each Party shall implement each of its obligations under this Settlement in good faith and with Due Diligence. Any obligation identified as an obligation of all of the Parties does not obligate any individual Party to take any action itself or itself make any specific commitment other than to participate in the applicable procedures.

B. Cooperation Among the Parties

Each Party shall cooperate in the implementation of this Settlement. A Party shall not act in a manner that results in an action or requirement that is inconsistent with the Settlement unless necessary to comply with statutory, regulatory, or other legal responsibility.

C. Covenant Not to Sue with Respect to Permitting and Performance of Definite Plan

After the DRE provides Notice to the Parties of the completion of the Definite Plan pursuant to Section 7.2.1, the Parties shall have 60 days to review the Definite Plan and initiate Meet and Confer provisions pursuant to Section 8.7, if they dispute the material consistency of the Definite Plan with this Settlement. The Parties shall complete such Meet and Confer process within 60 days. If within that 60 day period a Party files a Notice under Section 8.11.3.A, the Parties shall complete any process under Section 8.11 within 180 days of its initiation. If there is no dispute with the Definite Plan, or the dispute is Timely resolved within either the process under Section 8.7 (60 days) or Section 8.11 (180 day period), or the 240 day period to resolve any such dispute(s) regarding the material consistency between the Definite Plan and this Settlement has elapsed and the Settlement has not been terminated pursuant to Section 8.11.3, each Party:

- i. Shall not directly or indirectly through other entities oppose the DRE's securing all permits and entering all contracts necessary for Facilities Removal consistent with the Definite Plan, provided this clause does not apply to a Public Agency Party exercising a Regulatory Approval;
- ii. Hereby covenants not to bring any claim or claims for monetary or non-monetary relief against the United States, in any judicial or administrative forum, arising from any federal DRE's actions performing Facilities Removal consistent with the Definite Plan and any applicable Regulatory Approval; provided, that this covenant not to sue does not apply to a Regulatory Agency's enforcement action, or to claims for monetary relief sounding in tort, subject to the limitations of the Federal Tort Claims Act, 28 U.S.C. § 1346(b), 2671 *et seq.*, arising from harm caused by acts of a federal DRE that are not in substantial compliance with the Definite Plan.

- iii. Except as provided in subsection (ii) of this Section, after transfer of each Facility to the DRE, each Party covenants not to sue any other Party for monetary relief for harm arising from removal of that Facility, provided this covenant does not apply to claims against a non-federal DRE arising from the negligence of the non-federal DRE or from the non-federal DRE's actions inconsistent with the Definite Plan or in violation of a Regulatory Approval.

D. Monetary Obligations

None of the Parties shall be responsible for Facilities Removal costs in excess of the State Cost Cap.

2.1.5 Timeliness

Exhibit 2 describes the sequence of performance of specific obligations necessary to achieve the bargained-for benefits of this Settlement. Exhibit 2 is subject to change and modification as needed and is provided for guidance only. The Parties shall undertake to implement this Settlement in a manner consistent with this sequence. If any Party requires more time than permitted by this Settlement to perform an obligation, that Party shall provide Notice to other Parties 30 days before the applicable deadline, unless the applicable provision in this Settlement establishes a different period. The Notice shall explain: (i) the obligation that the Party is attempting to perform; (ii) the reason that performance is or may be delayed; and (iii) the steps the Party has taken or proposes to take to Timely complete performance.

2.1.6 Force Majeure

A. Definition of Force Majeure

The term "Force Majeure" means any event reasonably beyond a Party's control, that prevents or materially interferes with the performance of an obligation of that Party, that could not be avoided with the exercise of due care, and that occurs without the fault or negligence of that Party. Force Majeure events may be unforeseen, foreseen, foreseeable, or unforeseeable, including without limitation: natural events; labor or civil disruption; breakdown or failure of Project works not caused by failure to properly design, construct, operate, or maintain; new regulations or laws that are applicable to the Project (other than the Authorizing Legislation); orders of any court or agency having jurisdiction over the Party's actions; delay in a FERC order becoming final; or delay in issuance of any required permit. Force Majeure is presumed not to include normal inclement weather, which presumption can be



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overcome by a preponderance of the evidence provided by the non-performing Party.

B. Suspension of Obligation

During a Force Majeure event, and except as otherwise provided in this Settlement, a Party shall be relieved of any specific obligation directly precluded by the event, as well as those other obligations performance of which is materially impaired, but only for the duration of such event. The non-performing Party bears the burden of proving by a preponderance of the evidence the existence of Force Majeure, including the absence of negligence and fault.

C. Remedies

If a Force Majeure event occurs, and except as otherwise provided in this Settlement:

- i. A Party that believes it is excused from performance pursuant to Section 2.1.6.B shall provide Notice within 10 days of the onset of the event. Such Notice shall describe the occurrence, nature, and expected duration of such event and describe the steps the Party has taken or proposes to be taken to prevent or minimize the interference with the performance of any affected obligation under this Settlement;
- ii. A Party shall thereafter provide periodic Notice to the other Parties of the efforts to address and resolve a Force Majeure event; and
- iii. If any other Party disputes the Party's claim of a Force Majeure event, or the adequacy of the efforts to address and resolve such event, such Party shall initiate the Dispute Resolution Procedures stated in Section 8.6.

2.2 KBRA Execution

Each Party, other than PacifiCorp and the Federal Parties, shall execute this Settlement and the KBRA concurrently.

2.3 Ratemaking Legislation and Proceedings

Each Party shall support implementation of the Oregon legislation enacted in 2009 authorizing the collection of a customer surcharge for the costs of Facilities

Removal, which legislation was enacted as Senate Bill 76, 2009 Or. Session Laws Chapter 690, is attached to this Settlement as Appendix F, and for purposes of this Settlement is referred to as the "Oregon Surcharge Act."

The Parties understand and agree that the costs of Facilities Removal shall be funded as specified in Section 4 of this Settlement. The Parties further understand and agree that funds allocated for Facilities Removal shall be managed and disbursed as specified in Section 4 of this Settlement. In the event that (1) the California Legislature does not adopt legislation by the time of the Secretarial Determination to place a ballot measure before California voters that contains a provision to fund up to \$250,000,000 (in nominal dollars) of the costs of Facilities Removal, or (2) the California voters do not adopt such ballot measure by the time of the Secretarial Determination, or (3) the California PUC does not adopt a California Klamath Surcharge, as defined herein and specified in Section 4, or (4) the Oregon PUC does not adopt an Oregon Klamath Surcharge, as defined in the Oregon Surcharge Act and specified herein, the Parties shall Meet and Confer to attempt, in good faith, to identify substitute funding and/or other alternatives to cover the costs of Facilities Removal.

#### 2.4 Project Water Rights; Klamath Basin Adjudication

##### 2.4.1 Project Water Rights

PacifiCorp's Oregon water rights will be processed and adjusted in accordance with the principles of Oregon law and the *Water Right Agreement between PacifiCorp and the State of Oregon* attached to this Settlement as Exhibit 1.

##### 2.4.2 Klamath Basin Adjudication

The Parties support the efforts by PacifiCorp, the Klamath Tribes, Bureau of Indian Affairs, and OWRD to develop a Klamath Basin Adjudication ("KBA") Settlement Agreement of cases 282 and 286 in the KBA. Siskiyou County agrees to remain neutral on this issue.

#### 2.5 Lease of State-Owned Beds and Banks

Within 60 days of the Effective Date, PacifiCorp shall apply to the Oregon Department of State Lands in accordance with state law for leases authorizing occupancy of submerged and submersible lands by the J.C. Boyle Dam, J.C. Boyle Powerhouse, and Keno Dam. No Party shall be deemed to have admitted, adjudicated, or otherwise agreed to the State of Oregon's claim to ownership of submerged and submersible lands by virtue of this Settlement.

### 3. Studies, Environmental Review and Secretarial Determination

#### 3.1 Introduction

This Settlement addresses the proposed Secretarial Determination regarding the removal of all four Facilities, defined in Section 1.4 as Facilities Removal. This Section describes the process for studies, environmental review, and participation by the Parties and public to inform the Secretarial Determination.

#### 3.2 Studies and Environmental Review

##### 3.2.1 Support for Secretarial Determination

The Secretary, in cooperation with the Secretary of Commerce and other Federal agencies as appropriate, will: (i) use existing studies and other appropriate data, including those in the FERC record for this project, including but not limited to environmental impact studies, EPA proceedings, and other pertinent material; (ii) conduct further appropriate studies, including but not limited to an analysis of sediment content and quantity; (iii) undertake related environmental compliance actions, including environmental review under NEPA; and (iv) take other appropriate actions as necessary to determine whether to proceed with Facilities Removal pursuant to Section 3.3. No Party may be reimbursed for any costs associated with completing the Secretarial Determination from the funds collected for Facilities Removal under Section 4 of this Settlement, except as provided in Section 4.11.

##### 3.2.2 Coordination with Parties and Public

In conducting such studies and related environmental compliance actions, the Secretary shall coordinate and seek input from the Parties and the public, in accordance with Applicable Law and policy, and as further described in Appendix A.

##### 3.2.3 Recommendations Regarding Inter-Agency Coordination and Environmental Documents

In the conduct of the environmental compliance actions described in Sections 3.2.1 and 3.2.5, the Parties, other than the Federal Parties, California, and Oregon, support and will urge that:

- A. The United States, California, and Oregon will cooperate as appropriate in the preparation of environmental documents, and
- B. The environmental documents will be prepared, not only as the basis for the Secretarial Determination and State Concurrence with an Affirmative Determination, but also, to the extent practicable

and permitted by Applicable Law and consistent with the schedule stated in Section 3.3.4, to support permits that may be necessary for Facilities Removal, if the Secretary determines to proceed.

#### 3.2.4 Study and Science Process

The study process to support the Secretarial Determination shall be focused, prioritized, and shall include review and assistance, as described in Appendices A, I, and J. Nothing in this Section or in the attached Appendices shall impair or constrain the discretion of the Secretary to determine the scope, sufficiency, or content of any study undertaken pursuant to this Settlement. The Secretary will, however, coordinate with the Parties as described in Appendices A, I and J.

#### 3.2.5 Schedule for Environmental Reviews

##### A. Secretary

The Secretary shall use best efforts to complete the environmental review described in Section 3.2.1 by March 31, 2012.

##### B. California

Consistent with Section 1.5, the State of California shall conduct CEQA review of Facilities Removal and associated actions prior to its decision whether to concur with an Affirmative Determination as provided in Section 3.3.5.A. To the extent practicable and as described in Section 3.2.2, the State and the Secretary shall consult and cooperate with the studies, environmental compliance and other actions, for the purpose of informing the State's CEQA review. The California Department of Fish and Game shall be the lead agency for the CEQA review. The State shall use best efforts to complete its environmental review by March 31, 2012.

##### C. Oregon

The State of Oregon shall prepare environmental documents as appropriate under applicable State laws to inform a decision whether to concur with any Affirmative Determination. Oregon shall use best efforts to complete its environmental review by March 31, 2012.

##### D. Notice

The Secretary or either State shall provide Notice to the other Parties as soon as practicable, if it anticipates that its environmental compliance actions review will not be concluded by

the specified date. Upon receipt of such Notice, the Parties shall follow the Meet and Confer procedures in Section 8.7 to consider potential amendments to this Settlement. Nothing in this Settlement shall require the Secretarial Determination or each State's Concurrence, as provided in Section 3.3.5, to occur before completion of the environmental compliance actions.

### 3.3 Secretarial Determination

#### 3.3.1 Standards

Based upon the record, environmental compliance and other actions described in Section 3.2, and in cooperation with the Secretary of Commerce and other Federal agencies as appropriate, the Secretary shall determine whether, in his judgment, the conditions of Section 3.3.4 have been satisfied, and whether, in his judgment, Facilities Removal (i) will advance restoration of the salmonid fisheries of the Klamath Basin, and (ii) is in the public interest, which includes but is not limited to consideration of potential impacts on affected local communities and Tribes.

#### 3.3.2 Detailed Plan for Facilities Removal

As a part of developing the basis for the Secretarial Determination, the Secretary shall develop a Detailed Plan to implement Facilities Removal. This Detailed Plan will also serve as the basis for the Definite Plan described in Section 7.2.1.A. The Detailed Plan may include:

- A. The physical methods to be undertaken to effect Facilities Removal, including but not limited to a timetable for Decommissioning and Facilities Removal, which is removal of all or part of each Facility as necessary to effect a free-flowing condition and volitional fish passage as defined in Section 1.4;
- B. As necessary and appropriate, plans for management, removal, and/or disposal of sediment, debris, and other materials;
- C. A plan for site remediation and restoration;
- D. A plan for measures to avoid or minimize adverse downstream impacts;
- E. A plan for compliance with all Applicable Laws, including anticipated permits and permit conditions;
- F. A detailed statement of the estimated costs of Facilities Removal;

- G. A statement of measures to reduce risks of cost overruns, delays, or other impediments to Facilities Removal; and
- H. The identification, qualifications, management, and oversight of a non-federal DRE, if any, that the Secretary may designate.

### 3.3.3 Egress Agreement Related to the Detailed Plan and Definite Plan to be Negotiated Between the Secretary, the DRE and PacifiCorp

The Parties agree that within three months of the Effective Date, the Company and the Secretary shall enter into a contract to manage, control, and permit entry onto Company lands for the express purpose of developing the Detailed Plan for Facilities Removal including without limitation: to control entry and egress activities at the Facilities in a manner that will not damage or disturb existing structures and terrain at the points of access to the Facilities except as specifically necessary for the development of the Detailed Plan for Facilities Removal; require the DRE to mitigate damage to an affected area to an equivalent condition as that existing prior to the actions that caused the damage; to be aware of, initiate, maintain, and supervise compliance with all safety laws, regulations, precautions, and programs in connection with the performance of the contract; and, to make themselves aware of and adhere to the Company Work Site regulations including, without limitation, environmental protection, loss control, dust and sediment control, safety, and security.

The Parties further agree that within three months of the designation of a DRE by the Secretary pursuant to Section 3.3.5.A.i, the Company, the Secretary and the DRE shall make any necessary amendments to the contract to permit access to the Facilities to allow for the development of the Definite Plan and for implementation of the Definite Plan. Provided that, title transfer shall specify the legal description of lands conveyed from PacifiCorp to the DRE for the purpose of implementing the Definite Plan to effect Facilities Removal.

### 3.3.4 Schedule for Secretarial Determination

By March 31, 2012, the Secretary shall use best efforts to (i) determine whether the costs of Facilities Removal as estimated in the Detailed Plan, including the cost of insurance, performance bond, or similar measures, will not exceed the State Cost Cap, and (ii) otherwise complete his determination whether to proceed with Facilities Removal as described in Section 3.3.1, provided that any such determination shall not be made until the following conditions have been satisfied:

- A. Federal legislation, which in the judgment of the Secretary is materially consistent with Appendix E, has been enacted;

- B. The Secretary and PacifiCorp have agreed upon acceptable terms of transfer of the Keno facility pursuant to Section 7.5.2;
- C. The States of Oregon and California have authorized funding for Facilities Removal as set forth in Section 4 of this Settlement;
- D. The Parties have developed a plan to address the excess costs, consistent with Section 4.10 of the Settlement, if the estimate of costs prepared as part of the Detailed Plan (including the cost of insurance, performance bond, or similar measures) shows that there is a reasonable likelihood such costs are likely to exceed the State Cost Cap; and
- E. The Secretary has identified a DRE-designate, and, if the DRE-designate is a non-federal entity: (i) the Secretary has found that the DRE-designate is qualified; (ii) the States have concurred in such finding; and (iii) the DRE-designate has committed, if so designated, to perform Facilities Removal within the State Cost Cap.

If the above conditions are not satisfied, the Secretary shall not make a determination. Instead, the Secretary shall provide Notice to the Parties, who shall follow the Meet and Confer procedures in Section 8.7 to consider potential modifications to this Settlement.

However, if the conditions set forth in Sections 3.3.4.A, B, D, and E are satisfied and, with respect to the condition set forth in Section 3.3.4.C, the Customer Contribution required by Sections 4.1.1 has been established but California Bond Funding required by Section 4.1.2 has not been approved, in whole or part, the Secretary may still make an Affirmative Determination so long as one of the following additional conditions is met:

- (1) Based on the Detailed Plan, the Secretary finds that the Customer Contribution and any approved California Bond Funding will be sufficient to accomplish Facilities Removal; or,
- (2) If the Secretary finds that the Customer Contribution and any approved California Bond Funding may not be sufficient to accomplish Facilities Removal, the Secretary has received satisfactory assurances from the State of California that the California Bond Funding pursuant to Section 4.1.2.A necessary to effect Facilities Removal will be Timely available.

3.3.5 Use and Consequences of Secretarial DeterminationA. Affirmative Determination

In the event of an Affirmative Determination, California and Oregon each shall provide Notice to the Secretary and other Parties whether the State concurs with the Affirmative Determination. In its Concurrence, each State shall consider, in its discretion and independent judgment, whether: (i) significant impacts identified in its environmental review can be avoided or mitigated as provided under state law; and (ii) Facilities Removal will be completed within the State Cost Cap.

i. Designation of DRE Concurrent with Any Affirmative Determination

Any Affirmative Determination shall include designation of a DRE. The Secretary may designate Interior as the DRE, unless the Secretary, in his sole judgment and discretion, designates a non-Federal entity as the DRE consistent with Section 3.3.4.E. The Secretary shall consult with the Parties prior to designating a non-federal DRE.

ii. Concurrences By States in Event of Designation of a Federal DRE

In the event of the designation of a federal DRE, no Concurrence in such designation is required, and each State's Concurrence decision shall be limited to the Affirmative Determination under Section 3.3.5.A. Each State shall undertake to concur in the Affirmative Determination within 60 days of such determination.

iii. Concurrence by States in Event of Designation of a Non-Federal DRE

If the Secretary designates a non-federal DRE, and each State has concurred in the designation of the DRE as provided in Section 3.3.4.E, each State shall then undertake to concur in the Affirmative Determination within 60 days of Notice of the Determination.

If either State proposes to withhold Concurrence with the Affirmative Determination, the Parties shall undertake Dispute Resolution pursuant to Section 8.6 to consider potential modifications to this Settlement.



B. Negative Determination

If the Secretary determines not to proceed with Facilities Removal, which is removal of all or part of each Facility as necessary to effect a free-flowing condition and volitional fish passage as defined in Section 1.4, this Settlement shall terminate unless the Parties agree to a cure for this potential termination event. Prior to adopting or public release of such a determination, the Secretary shall provide Notice to the Parties of his tentative determination and its basis. The Parties shall consider whether to amend the Settlement, pursuant solely to the provisions of Section 8.11.3.A.i, in a manner that will permit the Secretary to make an Affirmative Determination.

4. Costs

4.1 Funds for the Purpose of Facilities Removal

The Parties agree to pursue arrangements for the creation of the following funding sources described below for the purpose of Facilities Removal.

4.1.1 The Customer Contribution

- A. Within 30 days of the Effective Date, PacifiCorp shall request that the Public Utility Commission of Oregon ("Oregon PUC"), pursuant to the Oregon Surcharge Act, establish two non-bypassable customer surcharges, the Oregon J.C. Boyle Dam Surcharge and the Oregon Copco I and II/Iron Gate Dams Surcharge (together, the "Oregon Klamath Surcharges"), for PacifiCorp's Oregon customers to generate funds for the purpose of Facilities Removal. PacifiCorp shall request that the Oregon PUC set the Oregon Klamath Surcharges so that to the extent practicable the total annual collections of the surcharges remain approximately the same during the collection period.
- B. Within 30 days of the Effective Date, PacifiCorp shall request that the California Public Utilities Commission ("California PUC") establish a non-bypassable customer surcharge (the "California Klamath Surcharge") for PacifiCorp's California customers to generate funds for the purpose of Facilities Removal. PacifiCorp shall request that the California PUC establish the California Klamath Surcharge so that it will collect an approximately equal amount each year that it is to be collected. PacifiCorp shall request that such surcharge assigns responsibility among the customer classes in an equitable manner. PacifiCorp shall also request that

the California PUC set the California Klamath Surcharge so that it at no time exceeds two percent of the revenue requirements set by the California PUC for PacifiCorp as of January 1, 2010.

- C. The Parties agree that the total amount of funds to be collected pursuant to the Oregon Klamath Surcharges and the California Klamath Surcharge shall not exceed \$200,000,000 (in nominal dollars); these funds shall be referred to as the "Customer Contribution."
- D. PacifiCorp shall request that the Oregon PUC establish a surcharge so that the amount collected under the Oregon Klamath Surcharges is 92% (a maximum of approximately \$184,000,000) of the total Customer Contribution, and with 75% of the total Oregon Klamath Surcharges amount collected through the Oregon Copco I and II/Iron Gate Dams Surcharge and 25% collected through the Oregon J.C. Boyle Dam Surcharge.
- E. PacifiCorp shall request that the California PUC establish a surcharge so that the amount collected under the California Klamath Surcharge is 8% (a maximum of approximately \$16,000,000) of the Total Customer Contribution. The trustee of the California Klamath Surcharge shall apply 75% of the total California Klamath Surcharge amount collected to the California Copco I and II/Iron Gate Dams Trust Account and 25% of the total California Klamath Surcharge amount collected to the California J.C. Boyle Dam Trust Account.
- F. PacifiCorp shall collect and remit the surcharges collected pursuant to this section to the trustee(s) described in Section 4.2, below, to be deposited into the appropriate California Klamath Trust Accounts and Oregon Klamath Trust Accounts.
- G. Consistent with Section 2.1 of this Settlement, each non-Federal Party shall support the California Klamath Surcharge and the Oregon Klamath Surcharges in the proceedings conducted by the California PUC and the Oregon PUC, respectively, to the extent the proposed Surcharges are consistent with this Settlement.

#### 4.1.2 The California Bond Funding

- A. The California Legislature has approved a general obligation bond ("Bond Measure") containing a provision authorizing the issuance of bonds for the amount necessary to fund the difference between the Customer Contribution and the actual cost to complete Facilities Removal, which bond funding in any event shall not

exceed \$250,000,000 (in nominal dollars). The bond language is set forth in Appendix G-1. At its sole discretion, the State of California may also consider other appropriate financing mechanisms to assist in funding the difference between the Customer Contribution and the actual cost of complete Facilities Removal, not to exceed \$250,000,000 (in nominal dollars).

- B. Consistent with Applicable Law and Section 2.1, each non-federal Party shall support the Klamath bond language in Appendix G-1; provided that nothing in this Settlement is intended or shall be construed to require a Party to support a Bond Measure that includes authorizations unrelated to the implementation of this Settlement.

#### 4.1.3 State Cost Cap

The Customer Contribution and the California Bond Funding shall be the total state contribution and shall be referred to together as the "State Cost Cap."

### 4.2 Establishment and Management of Trust Accounts and California Bond Funding

#### 4.2.1 The Oregon Klamath Trust Accounts

- A. In accordance with the Oregon Surcharge Act, the Oregon PUC will establish two interest-bearing accounts where funds collected by PacifiCorp pursuant to the Oregon Klamath Surcharges shall be deposited until needed for Facilities Removal purposes. The Oregon J.C. Boyle Dam Account shall be established to hold funds collected pursuant to the Oregon J.C. Boyle Dam Surcharge. The Oregon Copco I and II/Iron Gate Dams Account shall be established to hold funds collected pursuant to the Oregon Copco I and II/Iron Gate Dams Surcharge. The Oregon J.C. Boyle Dam Account and the Oregon Copco I and II/Iron Gate Dams Account may be referred to together as the "Oregon Klamath Trust Accounts."
- B. In accordance with the Oregon Surcharge Act, the Oregon PUC will select a trustee to manage the Oregon Klamath Trust Accounts. The Parties may recommend a trustee for consideration by the Oregon PUC.

#### 4.2.2 The California Klamath Trust Accounts

- A. Upon execution of this Settlement, California shall request, and each non-Federal Party shall support the request, that the California PUC establish two interest-bearing trust accounts where funds collected by PacifiCorp pursuant to the California Klamath

Surcharge for the purpose of Facilities Removal shall be deposited until needed for Facilities Removal purposes. The non-Federal Parties shall also request that California and the California PUC establish the trust accounts in a manner that ensures that the surcharge funds will not be taxable revenues to PacifiCorp. The California J.C. Boyle Dam Trust Account shall be established to hold 25% of the funds collected pursuant to the California Klamath Surcharge. The California Copco I and II/Iron Gate Dams Trust Account shall be established to hold 75% of the funds collected pursuant to the California Klamath Surcharge. The California J.C. Boyle Dam Trust Account and the California Copco I and II/Iron Gate Dams Trust Account may be referred to together as the "California Klamath Trust Accounts."

- B. California shall request, and each non-Federal Party shall support the request, that the California PUC select a trustee to accept surcharge funds from PacifiCorp and manage the California Klamath Trust Accounts. The Parties may recommend a trustee for consideration by the California PUC.

#### 4.2.3 The California Bond Funding

In the event that the Bond Measure is placed on the ballot and approved by voters, bond funds available from the Bond Measure shall be managed pursuant to California bond law; however, the State of California agrees that, to the extent permitted by law, the California Bond Funding shall be managed and disbursed in a manner consistent with and complementary to the management and disbursement of the Customer Contribution.

#### 4.2.4 Management of the Trust Accounts

- A. Within six months of the Effective Date, the States in consultation with the Federal Parties shall prepare draft trustee instructions for submission to the respective PUCs. The States shall then request that the California PUC or another designated agency of the State of California, and the Oregon PUC work cooperatively to prepare joint instructions to the trustee(s) of the Oregon Klamath Trust Accounts and California Klamath Trust Accounts, consistent with the draft instructions, as to the following:
- i. Whether and when to disburse funds from the Oregon Klamath Trust Accounts and California Klamath Trust Accounts to the DRE;

- ii. The methodology to be used by the trustee(s) to determine which account or accounts to draw funds from for the purpose of disbursing funds to the DRE;
  - iii. A protocol for the trustee(s) to use to ensure that the management of the Customer Contribution is consistent with and complementary to the management of the California Bond Funding;
  - iv. Disbursement of funds under the circumstances described in Section 4.4 below;
  - v. A protocol for reallocating between Trust Accounts monies that have already been deposited into the Trust Accounts, to be used by the trustees, at the request of the States, for removal of specific facilities; and
  - vi. If the trustee is a federal agency, provisions ensuring that Trust Account monies are not used for any other purpose than Facilities Removal consistent with the trustee instructions and do not become part of any federal agency's or bureau's budget.
- B. Within three months of the States' Concurrence with an Affirmative Determination, the States in consultation with the Federal Parties and the DRE shall prepare draft trustee instructions revised as appropriate to reflect the Affirmative Determination, Detailed Plan, and DRE designation, and request that the California PUC or another designated agency of the State of California, and the Oregon PUC, work cooperatively to prepare revised joint instructions to the trustee(s) of the Oregon Klamath Trust Accounts and California Klamath Trust Accounts consistent with the draft revised instructions.

#### 4.3 Adjustment Following Secretarial Determination

Upon review of the Secretarial Determination described in Section 3 of this Settlement, or as appropriate thereafter (such as, for example, in the event of a significant change in the relative revenues between California and Oregon), the States shall consult with each other, PacifiCorp, and the Federal Parties regarding adjustments to the California Klamath Surcharge or Oregon Klamath Surcharges necessitated by or appropriate considering the Secretarial Determination or other circumstances. Following such consultation, PacifiCorp will request that the California PUC and Oregon PUC adjust the Klamath Surcharges to be consistent with the recommendations developed through the consultation. Any adjustment shall not alter the maximum level of the Customer Contribution or State Cost Cap.

#### 4.4 Disposition of Unnecessary or Unused Funds from the Oregon and/or California Klamath Trust Accounts

- 4.4.1 If, as described in Section 4(5) of the Oregon Surcharge Act, the Oregon Klamath Surcharges are finally determined to result in rates that are not fair, just, and reasonable, the surcharges shall be refunded to customers in accordance with the Oregon Surcharge Act and the trustee instructions.
- 4.4.2 In the event that the Oregon PUC finds that the Oregon Klamath Trust Accounts contain funds in excess of actual costs necessary for Facilities Removal, those excess amounts shall be refunded to customers or otherwise used for the benefit of customers as set forth in Section 4(9) of the Oregon Surcharge Act and the trustee instructions.
- 4.4.3 In the event that, following Facilities Removal, the trustee of the California Klamath Trust Account determines that the California Klamath Trust Account contains funds in excess of actual costs necessary for Facilities Removal, the non-Federal Parties shall request that the California PUC order those excess amounts to be refunded to customers or otherwise used for the benefit of customers.
- 4.4.4 If, as a result of the Secretarial Determination, termination of this Settlement, or other cause, one or more Project dams will not be removed:
- A. All or part of the Oregon Klamath Surcharges shall be terminated and the Oregon Klamath Trust Accounts disposed as set forth in Section 4(10) of the Oregon Surcharge Act and the trustee instructions; and
  - B. PacifiCorp shall request that the California PUC direct PacifiCorp to terminate all or part of the surcharge, that the California PUC direct the trustee to apply any excess balances in the California Klamath Trust Account to California's allocated share of prudently incurred costs to implement FERC relicensing requirements, and that, if any excess amount remains in the trust accounts after that application, that the California PUC order that the excess amounts be refunded to customers or otherwise be used for the benefit of customers.

#### 4.5 Recovery of Net Investment in Facilities

- 4.5.1 Consistent with Section 3 of the Oregon Surcharge Act, PacifiCorp shall request, and each non-Federal Party shall support the request, that the Oregon PUC allow recovery of PacifiCorp's net investment in the Facilities.

- 4.5.2 PacifiCorp shall request, and each non-Federal Party shall support the request, that the California PUC conduct one or more proceedings to implement the following:
- A. That the California PUC determine a depreciation schedule for each Facility based on the assumption that the Facility will be removed in 2020, and change that depreciation schedule at any time if removal of the Facility will occur in a year other than 2020; and
  - B. That the California PUC use the depreciation schedules adopted consistent with Section 4.5.2.A above to establish rates and tariffs for the recovery of California's allocated share of undepreciated amounts prudently invested by PacifiCorp in the Facilities, with amounts recoverable including but not limited to:
    - i. Return on investment and return of investment;
    - ii. Capital improvements required by the Federal Parties or any agency of the United States or any agency of the States for the continued operation of the Facility until Facility removal;
    - iii. Amounts spent by PacifiCorp in seeking relicensing of the Project before the Effective Date of this Settlement;
    - iv. Amounts spent by PacifiCorp for settlement of issues relating to relicensing or removal of the Facilities; and
    - v. Amounts spent by PacifiCorp for the Decommissioning of the Facilities in anticipation of Facilities Removal.
  - C. If any amount has not been recovered by PacifiCorp before a Facility is removed, PacifiCorp shall request, and each non-Federal Party shall support the request, that the California PUC allow recovery of that amount by PacifiCorp in PacifiCorp's rates and tariffs.
- 4.5.3 Rates and tariffs proposed pursuant to this Section 4.5 shall be separate from, and shall not diminish the funds collected by, the Oregon and California Klamath Surcharges.

#### 4.6 Recovery of Costs of Ongoing Operations and Replacement Power

- 4.6.1 Consistent with Section 6 of the Oregon Surcharge Act, PacifiCorp shall request, and each non-Federal Party shall support the request, that the Oregon PUC allow recovery of other costs incurred by PacifiCorp.
- 4.6.2 Subject to Section 2.1.2, each non-Federal Party shall support PacifiCorp's request to the California PUC for PacifiCorp to include in rates and tariffs California's allocated share of any costs that are prudently incurred by PacifiCorp from changes in operation of Facilities, including reductions to generation from the Facilities before removal of the Facilities and for replacement power after the dams are removed.
- 4.6.3 Rates and tariffs proposed pursuant to this Section 4.6 shall be separate from, and shall not diminish the funds collected by, the Oregon and California Klamath Surcharges.

#### 4.7 Treatment of Costs Related to Future Portfolio Standards and Climate Change Legislation

The Parties agree to Meet and Confer at PacifiCorp's request subsequent to the Secretarial Determination regarding provisions to address potential customer impacts from renewable portfolio standards and climate change emissions requirements.

#### 4.8 Acknowledgment of Independence of Oregon PUC and California PUC

The Parties acknowledge that the Oregon PUC and California PUC each is a separate state agency that is not bound by this Settlement. Nothing in this Settlement expands, limits, or otherwise affects any authority of the respective commissions regarding the customer surcharges and trust accounts, recovery of net investment, or recovery of costs of ongoing operations or replacement power. Because the Parties cannot provide assurance that either commission will decide to or be allowed to implement any of the provisions for funding Facilities Removal, failure of a commission to do so is not a breach of this Settlement by any Party.

#### 4.9 Consultation

Before filing the requests to the California PUC and Oregon PUC described in Sections 4.5 and 4.6, above, PacifiCorp shall undertake to consult with the Parties, pursuant to a confidentiality agreement among the Parties or a protective order issued by the relevant PUC, so that the requested rates can be explained and the basis for such rates can be provided. Further, before any request to the California PUC or the Oregon PUC to reduce or increase a surcharge in the event the amount needed for Customer Contribution is determined to be less or more than the level of Customer Contribution specified in Section 7.3.2.A, the States and PacifiCorp shall undertake to consult with all Parties.



#### 4.10 United States Not Responsible for Costs of Facilities Removal

The United States shall not be liable or responsible for costs of Facilities Removal, whether such costs are identified prior to the Secretarial Determination or arise at any time thereafter, including during physical activities to accomplish Facilities Removal. If the Secretary determines pursuant to Section 3.3.5.A.i that Interior or one of its agencies or bureaus shall serve as the DRE, neither that decision nor performance of that role shall provide any basis for holding the United States or any of its agencies liable or responsible for any of the DRE's costs of Facilities Removal.

#### 4.11 Parties' Costs Related to Facilities Removal

Subject to Section 4.4, the funds accumulated pursuant to Section 4 are solely for use in accomplishing Facilities Removal, development of the Definite Plan, all necessary permitting and environmental compliance actions, and construction/project management for Facilities Removal. If an agency of the United States serves as the DRE, that agency will abide by its ordinary guidance documents and general accounting and contracting principles in determining which expenses may be claimed for reimbursement as costs of Facilities Removal consistent with this Settlement. Nothing in this section shall be interpreted as a limitation on the State of California's use of California Bond Funding, or funds collected pursuant to the California Klamath Surcharge and deposited into the California Copco 1 and 2 and Iron Gate Dams Trust Account, for environmental review as described in Section 3.2.5; provided the use of any funds from California Copco 1 and 2 and Iron Gate Dams Trust Account may be offset by California Bond Funds to achieve the target dates set forth in Section 7.3.

### 5. Local Community Power

#### 5.1 Power Development

5.1.1 PacifiCorp and the irrigation-related Parties will in good faith cooperate in the investigation or consideration of joint development and ownership of renewable generation resources, and purchase by PacifiCorp of power from renewable energy projects developed by KWAPA or other parties related to the Klamath Reclamation Project or off-project irrigators. PacifiCorp and interested Public Agency Parties will in good faith cooperate in the investigation or consideration of joint development and ownership of potential renewable generation resources, and purchase by PacifiCorp of power from renewable energy projects developed by interested Public Agency Parties. Nothing in this Settlement requires any Party to enter into a specific transaction related to such development, ownership or purchase, but PacifiCorp, interested Public Agency Parties and the irrigation-related Parties desire to take actions in their mutual beneficial interest where opportunities arise.

5.1.2 Pursuant to that certain Memorandum of Understanding dated October 15, 2001 among the Western Governors Association and various federal agencies, the Secretary and the State of California shall seek to designate Siskiyou County as a Western Renewable Energy Zone and the Secretary and the State of Oregon shall seek to designate Klamath County as a Western Renewable Energy Zone. The Federal Parties will work with the Counties and other Parties to explore and identify potential ways to expand transmission capacity for renewable resources within the Counties.

## 5.2 PacifiCorp Billing Crediting System

PacifiCorp, KWAPA, and Upper Klamath Water Users Association (UKWUA) shall Timely enter into one or more mutually-acceptable Billing Services Offset Agreements ("BSO Agreements") outlining each party's obligations related to the implementation of billing credits on PacifiCorp's bills to eligible customers who are billed by PacifiCorp.

### 5.2.1 Parties to Agreement

The parties to the BSO Agreement(s) will be PacifiCorp, KWAPA and UKWUA.

### 5.2.2 Funding to be Provided by KWAPA and UKWUA

KWAPA and UKWUA will establish one or more Bill Credit Accounts using funds made available for that purpose through the KBRA. The BSO Agreement(s) will establish the process for and necessary information by which KWAPA and UKWUA will remit funds available in the Bill Credit Account(s) to PacifiCorp so that KWAPA and UKWUA ensure that there are sufficient funds available for payment of the billing credit.

### 5.2.3 Credits to be Implemented by PacifiCorp

PacifiCorp will, through its existing billing system, provide credits on PacifiCorp electric service bills to eligible customers identified by KWAPA and UKWUA. The credits will be determined by the formulas set forth in the BSO Agreement(s), and approved pursuant to Section 5.2.6, below.

### 5.2.4 KWAPA and UKWUA to Provide Notice and Data to PacifiCorp

KWAPA and UKWUA must provide to PacifiCorp 120 days written notice prior to the date they desire commencement of the bill credits. KWAPA and UKWUA must also provide the names of eligible customers and other pertinent information necessary for PacifiCorp to identify the eligible customers in its billing system at least 90 days before commencement of the crediting system. The necessary information, as well as the procedures for updating the information, will be described in the BSO Agreement(s). PacifiCorp shall provide the billing credit to all eligible customers with respect to whom KWAPA and UKWUA provide such

information. To the extent allowed by Applicable Law or by order of the public utility commissions having jurisdiction, PacifiCorp will reasonably assist KWAPA and UKWUA in its efforts to create efficient means to identify eligible customers and provide benefits.

#### 5.2.5 PacifiCorp Not Liable

PacifiCorp will not be liable for any errors or omissions related to KWAPA's and UKWUA's identification of eligible customers.

#### 5.2.6 Regulatory Approval

PacifiCorp's implementation of the bill credit will remain subject to the approval and jurisdiction of the respective state utility commissions of California and Oregon. PacifiCorp will file for any required regulatory approval of new tariffs implementing the bill credits within 30 days of PacifiCorp's receipt of the names of eligible customers and other pertinent information necessary for PacifiCorp to identify the eligible customers in its billing system, provided pursuant to Section 5.2.4, above. PacifiCorp, KWAPA and UKWUA will cooperate in developing regulatory filings to update the tariffs implementing the bill credits, as necessary.

#### 5.2.7 Estimate of Aggregate Monthly Credits

The BSO Agreement(s) shall contain provisions that provide for coordination between KWAPA, UKWUA and PacifiCorp to exchange relevant data to assist KWAPA and UKWUA in estimating the aggregate amount of the Bill Credit to be provided during each billing cycle based on the identified eligible customers' historic usage data and the credit amount stated in the approved tariffs.

#### 5.2.8 Payment to PacifiCorp for Administrative Costs

PacifiCorp will be reimbursed for the administrative costs it incurs for establishing and providing the billing credit service. This payment will be remitted from the Bill Crediting Account(s) on a priority basis so as to ensure that PacifiCorp's costs are paid before any bill credits are issued to eligible customers. Upon request, PacifiCorp shall make available to KWAPA and UKWUA an accounting of such administrative expenses. PacifiCorp's administrative costs shall be consistent with a budget for such costs established in the BSO Agreement(s).

#### 5.2.9 Execution and Term of BSO Agreement

The BSO Agreement(s) shall become effective upon approval by the respective public utility commissions, and shall continue in effect until terminated by KWAPA, UKWUA or PacifiCorp consistent with the termination rights specified in the BSO Agreement(s). The execution of the BSO Agreement(s) is subject to

the demonstration to PacifiCorp by KWAPA and UKWUA of their legal and financial ability to fulfill the requirements of this Section.

#### 5.2.10 Termination

KWAPA and UKWUA shall provide at least 90 days advance written notice of the expected date on which funds will no longer be available so that PacifiCorp may seek all necessary approvals from the state PUCs to terminate the bill credit prior to exhaustion of available funds. At termination of the credit, KWAPA and UKWUA shall be responsible for remitting to PacifiCorp any remaining balance related to bill credits that have been paid to customers within 90 days of such termination.

#### 5.2.11 Failure to Perform

The BSO Agreement(s) will establish each party's remedy if the other party fails to perform its obligations arising thereunder, as well as procedures to meet and confer for dispute resolution.

#### 5.2.12 KWAPA and UKWUA

KWAPA and UKWUA will resolve: (i) whether there is to be a single BSO Agreement among the three parties or separate BSO Agreements between PacifiCorp and KWAPA and PacifiCorp and UKWUA; and (ii) if there is a single BSO Agreement, the respective obligations of KWAPA and UKWUA under that Agreement.

### 5.3 Transmission and Distribution of Energy

Interior, KWAPA, KWUA and UKWUA agree that federal power can contribute to meeting power cost targets for irrigation in the Upper Klamath Basin. To that end, and consistent with applicable standards of service and the Pacific Northwest Power Planning and Conservation Act, 16 U.S.C. § 839 *et seq.*, Interior will acquire power from the Bonneville Power Administration ("Bonneville") to serve all "eligible loads" located within Bonneville's authorized geographic area. Interior and Bonneville will engage in an open and transparent process that will provide for public review and comment on any proposed agreement. For purposes of the acquisition of federal power, Interior defines Klamath eligible loads to include both on and off-project loads. Such acquisitions are subject to Bonneville's then effective marketing policies, contracts, and applicable priority firm power rate.

For an additional, standard transmission charge, Bonneville will deliver power to PacifiCorp at the Captain Jack or Malin substations or other points as may be mutually agreed to by Bonneville and PacifiCorp ("Points of Delivery") and PacifiCorp will deliver the energy to eligible loads under applicable tariffs.

Interior, KWAPA, KWUA, UKWUA and PacifiCorp agree to continue to work in good faith to identify and implement a mutually agreeable approach for delivering acquired federal power to eligible loads. PacifiCorp agrees to receive any federal power at the Points of Delivery and to deliver such power to the eligible loads pursuant and subject to the following terms and conditions:

- 5.3.1 The terms and conditions related to accessing PacifiCorp's transmission system, to the extent that it is necessary, will be consistent with PacifiCorp's Open Access Transmission Tariff ("OATT").
- 5.3.2 The terms and conditions related to accessing PacifiCorp's distribution system will remain subject to the jurisdiction of the California Public Utilities Commission for distribution facilities located in California and the Oregon Public Utility Commission for distribution facilities located in Oregon. In California and Oregon, the respective PUCs have approved unbundled delivery service tariffs for PacifiCorp to implement direct access legislation. The Parties agree that these unbundled delivery service tariffs can enable the delivery of federal power. For power acquired by Interior from Bonneville, PacifiCorp will charge an unbundled distribution rate that is based on the Oregon Commission-approved tariff applicable to the delivery of Bonneville power to eligible loads in Oregon.

To the extent that PacifiCorp's existing tariffs require revision in order to allow PacifiCorp to implement the mutually agreeable approach, PacifiCorp shall request such revision by the Commission having jurisdiction.

The Parties understand and agree that PacifiCorp shall recover its costs incurred in providing the delivery services required under the mutually agreeable approach and that such services will not be subsidized by PacifiCorp's other retail customers. PacifiCorp, Interior, KWUA, KWAPA, and UKWUA agree to work cooperatively to identify and analyze, as necessary, PacifiCorp's costs for delivery services as part of identification of any such mutually agreeable approach. The Parties further agree that the costs of providing delivery services will be recovered pursuant to a tariff or tariffs established by the respective PUC based on cost-of-service principles and a finding by the PUC that the rates charged under the tariff[s] are fair, just, reasonable and sufficient.

- 5.3.3 PacifiCorp agrees to work in good faith to develop mutually agreeable revisions to existing provisions of state or federal law, if necessary to implement the mutually agreeable approach.
- 5.3.4 PacifiCorp agrees to work in good faith with Bonneville, Interior, KWAPA, KWUA and UKWUA and other Parties as the case may be, to resolve, on a mutually agreeable basis, any technical and administrative

issues (such as billing and metering) that may arise with respect to PacifiCorp's delivery of power to the eligible loads.

- 5.3.5 It is the Parties' intent that this Agreement will not require PacifiCorp to modify its existing transmission or distribution facilities. PacifiCorp may elect to do so at the sole cost and expense of the Party or entity requesting such modification.
- 5.3.6 At such time as the eligible loads are prepared to and technically able to receive federal power, PacifiCorp, Interior, KWAPA, KWUA and UKWUA agree to work cooperatively with each other to transition the eligible loads from full retail service on a mutually agreeable basis. The Parties acknowledge that for any eligible load that has received federal power pursuant to this section, PacifiCorp will no longer have the obligation to plan for or meet the generation requirements for these loads in the future, provided, however, that PacifiCorp agrees to work cooperatively to provide generation services to eligible loads in a manner that is cost-neutral to other PacifiCorp customers in the event that a contract for federal power is no longer available. Interior, KWAPA, KWUA and UKWUA agree to provide notice to PacifiCorp as soon as practicable after becoming aware that federal power will no longer be available to serve any eligible loads.
- 5.3.7 Interior, in consultation with KWAPA, KWUA and UKWUA, shall Timely develop a preliminary identification of the eligible loads for purposes of Section 5.3. Interior, in consultation with KWAPA, KWUA and UKWUA, shall provide notification to PacifiCorp identifying the final eligible loads for purposes of Section 5.3, not later than 120 days before delivery of federal power to any such eligible loads is to begin. The mutually agreeable approach will address the manner by which Interior provides notification to PacifiCorp of any changes to eligible loads.
- 5.3.8 Interior agrees to work cooperatively to assign or delegate or transition functions of Interior to KWAPA or another appropriate entity subject to the terms of this Section.
- 5.3.9 If Interior or KWAPA or UKWUA are able to acquire power from any entity other than Bonneville for eligible loads in either Oregon or California, PacifiCorp, KWAPA, UKWUA, Interior, and KWUA, as applicable, will work cooperatively to agree on a method for transmission and delivery.
- 5.3.10 Upon termination of this Settlement, PacifiCorp agrees to provide service under the terms of its approved delivery tariff until or unless the respective PUC determines that the applicable tariff should no longer be in place. It is the intention of PacifiCorp, Interior, KWUA, KWAPA, and UKWUA

that the general principles of cooperation expressed in Section 5 continue beyond the term of this Settlement.

## 6. Interim Operations

### 6.1 General

Interim Measures under this Settlement consist of: (i) Interim Measures included as part of PacifiCorp's Interim Conservation Plan ("ICP Interim Measures") (Appendix C); and, (ii) Interim Measures not included in the Interim Conservation Plan ("Non-ICP Measures") (Appendix D). In addition, PacifiCorp's Interim Conservation Plan includes certain measures for protection of listed sucker species not included as part of this Settlement.

#### 6.1.1 PacifiCorp Performance

PacifiCorp shall perform the Interim Measures in accordance with the terms and schedule set forth in Appendices C and D as long as this Settlement is in effect during the Interim Period. However, if the Secretarial Determination under Section 3 is that Facilities Removal should not proceed, or this Settlement otherwise terminates, PacifiCorp shall continue performance of the Iron Gate Turbine Venting until the time FERC issues an order in the relicensing proceeding. PacifiCorp shall have no obligation under this Settlement to perform any other of the Interim Measures if this Settlement terminates, but may implement certain ICP and Non-ICP Interim Measures for ESA or CWA purposes or for any other reason. PacifiCorp reserves its right to initiate termination pursuant to Section 8.11.1.E, if the Services fail to provide incidental take authorization in a Timely way.

#### 6.1.2 Duty to Support

Subject to the reservations in Sections 1.6, 6.2, and 6.3.4, each Party shall support the Interim Measures set forth in Appendices C and D, and will not advocate additional or alternative measures for the protection of environmental resources affected by the Project during the Interim Period.

#### 6.1.3 Permitting

- A. PacifiCorp shall comply with all federal, state, and local laws and obtain all federal, state, and local permits related to Interim Measures, to the extent such laws and permits are applicable.

B. FERC Enforcement and Jurisdiction

- i. In accordance with the Authorizing Legislation, the Parties agree that enforcement of the terms of the current license, as extended through annual licenses, shall be exclusively through FERC. If the annual license is amended to incorporate any of the Interim Measures, a Party may seek compliance pursuant to any remedies it may have under Applicable Law.
- ii. PacifiCorp will implement Interim Measures and the Klamath River TMDLs, subject to any necessary FERC or other Regulatory Approvals.

6.1.4 Interim Power Operations

PacifiCorp shall continue to operate the Facilities for the benefit of customers and retain all rights to the power from the Facilities until each Facility is transferred and decommissioned, including all rights to any power generated during the time between transfer of the Facility to the DRE and Decommissioning of the Facility by PacifiCorp.

6.1.5 Adjustment for Inflation

For any funding obligation under a Non-ICP Interim Measure in Appendix D expressly made subject to adjustment for inflation, the following formula shall be applied at the time of payment:

$$AD = D \times (CPI-U_t) / (CPI-U_0)$$

## WHERE:

AD = Adjusted dollar amount payable.

D = Dollar amount prescribed in the Interim Measure.

CPI-U<sub>t</sub> = the value of the published version of the Consumer Price Index-Urban for the month of September in the year prior to the date a dollar amount is payable. (The CPI-U is published monthly by the Bureau of Labor Statistics of the federal Department of Labor. If that index ceases to be published, any reasonably equivalent index published by the Bureau of Economic Analysis may be substituted by written agreement of the Parties.)

CPI-U<sub>0</sub> = the value of the Consumer Price Index-Urban for the month and year corresponding to the Effective Date of this Settlement.



## 6.2 Interim Conservation Plan

### 6.2.1 Application by PacifiCorp

PacifiCorp shall apply to the Services pursuant to ESA Section 10 and applicable implementing regulations to incorporate the Interim Conservation Plan measures, including both Appendix C (ICP Interim Measures) and the Interim Conservation Plan measures for protection of listed sucker species not included in Appendix C, into an incidental take permit. PacifiCorp also may apply in the future to FERC to incorporate some or all of the Interim Conservation Plan measures as an amendment to the current annual license for the Project.

### 6.2.2 Applicable Actions by the Services under the ESA

The Services shall review PacifiCorp's application to incorporate the Interim Conservation Plan measures into an incidental take permit pursuant to ESA Section 10 and applicable implementing regulations. Subject to Section 2.1.2, each Party shall support PacifiCorp's request for a license amendment or incidental take permit to incorporate the Interim Conservation Plan measures. Provided, however, the Services reserve their right to reassess these interim measures, as applicable, in: (1) developing a biological opinion pursuant to ESA Section 7 or reviewing an application for an incidental take permit pursuant to ESA Section 10 and applicable implementing regulations; (2) reinitiating consultation on any final biological opinion pursuant to applicable implementing regulations; or (3) revoking any final incidental take permit pursuant to the ESA, applicable implementing regulations, or the terms of the permit. Provided further, other Parties reserve any applicable right to oppose any such actions by the Services.

### 6.2.3 Potential Modifications of Measures

The Services shall provide the Parties Notice upon issuance of any final biological opinion or incidental take permit issued by the Services pursuant to the ESA regarding the ICP Interim Measures (Appendix C). If the terms of any such final biological opinion or incidental take permit include revisions to the ICP Interim Measures, those measures in the Settlement shall be deemed modified to conform to the provisions of the biological opinion or incidental take permit if PacifiCorp agrees to such modifications. If PacifiCorp does not agree to such modifications, PacifiCorp reserves the right to withdraw its application for license amendment or refuse to accept an incidental take permit regarding the ICP Interim Measures.

### 6.3 TMDLs

#### 6.3.1 PacifiCorp Implementation

Subject to the provisions of this Section 6.3.1, PacifiCorp agrees to implement load allocations and targets assigned the Project under the States' respective Klamath River TMDLs, in accordance with OAR chapter 340, Division 42, and California Water Code Division 7, Chapter 4, Article 3. It is the expectation of the Parties that the implementation of the commitments in this Settlement, coupled with Facilities Removal by the DRE, will meet each State's applicable TMDL requirements. PacifiCorp's commitment to develop and carry out TMDL implementation plans in accordance with this Settlement is not an endorsement by any Party of the TMDLs or load allocations therein.

#### 6.3.2 TMDL Implementation Plans

- A. No later than 60 days after ODEQ's and the North Coast Regional Water Quality Control Board (NCRWQCB)'s approval, respectively, of a TMDL for the Klamath River, PacifiCorp shall submit to ODEQ and NCRWQCB, as applicable, proposed TMDL implementation plans for agency approval. The TMDL implementation plans shall be developed in consultation with ODEQ and NCRWQCB.
- B. To the extent consistent with this Settlement, PacifiCorp shall prepare the TMDL implementation plans in accordance with OAR 340-042-0080(3) and California Water Code section 13242, respectively. The plans shall include a timeline for implementing management strategies and shall incorporate water quality-related measures in the Non-ICP Interim Measures set forth in Appendix D. Facilities Removal by the DRE shall be the final measure in the timeline. At PacifiCorp's discretion, the proposed plans may further include other planned activities and management strategies developed individually or cooperatively with other sources or designated management agencies. ODEQ and NCRWQCB may authorize PacifiCorp's use of offsite pollutant reduction measures, subject to an iterative evaluation and approval process; provided, any ODEQ authorization of such offsite measures conducted in Oregon solely to facilitate attainment of load allocations in California waters shall not create an ODEQ obligation to administer or enforce the measures.

#### 6.3.3 Keno Load Allocation

Subject to Section 6.3.4, in addition to other Project facilities and affected waters, PacifiCorp's TMDL implementation plan under Section 6.3.2 shall include water

quality-related measures in the Non-ICP Interim Measures set forth in Appendix D that are relevant to the Keno facility and affected waters for which the Project is assigned a load allocation. PacifiCorp shall implement Keno load allocations in accordance with the approved TMDL implementation plan under Section 6.3 up until the time of transfer of title to the Keno facility to Interior. Upon transfer of title to the Keno facility as set forth in Section 7.5 of this Settlement, the load allocations shall no longer be PacifiCorp's responsibility. Funding, if necessary, for post-transfer Keno load allocation implementation requirements will be provided by other non-PacifiCorp sources.

#### 6.3.4 TMDL Reservations

- A. PacifiCorp's TMDL implementation obligations under this Settlement are limited to the water quality-related measures in the Interim Measures set forth in Appendices C and D and any additional or different measures agreed to by PacifiCorp and incorporated into an approved TMDL implementation plan. If a TMDL implementation plan for PacifiCorp as finally approved requires measures that have not been agreed to by PacifiCorp and that are materially inconsistent with the Interim Measures, PacifiCorp may initiate termination pursuant to Section 8.11.1.E.
- B. PacifiCorp reserves the right to seek modification of a TMDL implementation plan in the event this Settlement terminates. The States reserve their authorities under the CWA and state law to revise or require submission of new TMDL implementation plans in the event this Settlement terminates or an implementation plan measure or Facilities Removal does not occur in accordance with the timeline in the approved implementation plans. Other Parties reserve whatever rights they may have under existing law to challenge the TMDLs or TMDL implementation plans in the event this Settlement terminates.
- C. To the extent it possesses rights outside of this Settlement, no Party waives any right to contest: a Klamath River TMDL; specific TMDL load allocation; or decision on a PacifiCorp TMDL implementation plan if the decision is materially inconsistent with this Settlement.

#### 6.4 Other Project Works

##### 6.4.1 East Side/West Side Facilities

- A. Within six months of enactment of federal legislation consistent with Appendix E, PacifiCorp will apply to FERC for an order approving partial surrender of license for the purpose of

decommissioning the East Side/West Side generating facilities. PacifiCorp will file the application consistent with applicable FERC regulations, and after consultation with the Parties. Notwithstanding Section 2.1.2, the Parties reserve their rights to submit comments and otherwise participate in the FERC proceeding regarding the conditions under which decommissioning should occur. PacifiCorp reserves the right to withdraw its surrender application in the event any FERC order or other Regulatory Approval in connection with the surrender application would impose unreasonable conditions on the surrender.

- B. Upon FERC approval, and in coordination with Reclamation and pursuant to Section 7.5.2, PacifiCorp shall decommission the East Side/West Side facilities in accordance with the FERC order approving the decommissioning, with the costs of such decommissioning to be recovered by PacifiCorp through standard ratemaking proceedings.
- C. Upon completion of decommissioning and subject to FERC's and state requirements, PacifiCorp and Interior shall discuss possible transfer of the following lands to Interior: Klamath County Map Tax Lots R-3809-00000-05800-000, R-3809-00000-05900-000, and R-3809-00000-05700-000, or any other mutually-agreeable lands associated with the East Side and West Side Facilities on terms and conditions acceptable to PacifiCorp and Interior.

#### 6.4.2 Fall Creek Hydroelectric Facility

PacifiCorp will continue to operate the Fall Creek hydroelectric facility under FERC's jurisdiction unless and until such time as it transfers the facility to another entity or the facility is otherwise disposed of in compliance with Applicable Law.

#### 6.5 Abeyance of Relicensing Proceeding

Within 30 days of the Effective Date, the Parties, except ODEQ, will request to the California State Water Resources Control Board and the Oregon Department of Environmental Quality that permitting and environmental review for PacifiCorp's FERC Project No. 2082 licensing activities, including but not limited to water quality certifications under Section 401 of the CWA and review under CEQA, will be held in abeyance during the Interim Period under this Settlement. PacifiCorp shall withdraw and re-file its applications for Section 401 certifications as necessary to avoid the certifications being deemed waived under the CWA during the Interim Period.

## 7. DRE, Transfer, Decommissioning, and Removal

This Section describes the measures, schedule, and regulatory compliance during decommissioning, transfer, and removal of Facilities under this Settlement.

### 7.1 DRE

#### 7.1.1 Capabilities

Pursuant to the Authorizing Legislation, any rules necessary or appropriate for implementation, or any existing authority, any entity designated as DRE shall, in the judgment of the Secretary, have the legal, technical, and financial capacities to:

- A. Accept and expend non-federal funds as provided in Section 4.2.4;
- B. Seek and obtain necessary permits and other authorizations to implement Facilities Removal;
- C. Enter into appropriate contracts;
- D. Accept transfer of title to the Facilities for the express purpose of Facilities Removal;
- E. Perform, directly or by oversight, Facilities Removal;
- F. Prevent, mitigate, and respond to damages the DRE causes during the course of Facilities Removal, and, consistent with Applicable Law, respond to and defend associated liability claims against the DRE, including costs thereof and any judgments or awards resulting therefrom;
- G. Carry appropriate insurance or bonding or be appropriately self-insured to respond to liability and damages claims against the DRE associated with Facilities Removal; and
- H. Perform such other tasks as are reasonable and necessary for Facilities Removal, within the authority granted by the Authorizing Legislation or other Applicable Law.

#### 7.1.2 Responsibilities

##### A. Contracts

The DRE shall enter all contracts it determines to be appropriate for Facilities Removal.

B. Performance of Facilities Removal

The DRE shall perform Facilities Removal in accordance with the Definite Plan and applicable permits and other environmental compliance requirements. Any work conducted by a federal DRE for Facilities Removal shall be done in accordance with relevant federal construction, design, safety, and procurement standards. Final design and cost estimates will be completed prior to initiation of Facilities Removal.

7.1.3 DRE to Be Party

Within 30 days of Notice from both States of their respective Concurrence with an Affirmative Determination, a non-federal DRE, if any, shall execute and become a Party to this Settlement, and shall be fully bound by the terms of this Settlement without any further act, approval, or authorization by the Parties. If the DRE fails to execute and become a Party to this Settlement, the Secretary will designate another DRE.

7.2 Definite Plan

7.2.1 Development and Use of Definite Plan

Upon an Affirmative Determination and the States' Concurrence pursuant to Section 3.3.5, the DRE shall develop a Definite Plan for Facilities Removal to include it as a part of any applications for permits or other authorizations. The Definite Plan shall be consistent with this Settlement, the Authorizing Legislation, the Detailed Plan, and the Secretarial Determination.

A. Elements of Definite Plan

The Definite Plan shall be based on all elements of the Detailed Plan described in Section 3.3.2. Such elements shall be in the form required for physical performance, such as engineering specifications for a construction activity, and shall also include consideration of prudent cost overrun management tools such as performance bonds. The Definite Plan shall also include:

- i. A detailed estimate of the actual or foreseeable costs associated with: the physical performance of Facilities removal consistent with the Detailed Plan; each of the tasks associated with the performance of the DRE's obligations as stated in Section 7.1; seeking and securing permits and other authorizations; and insurance, performance bond, or similar measures;

- ii. The DRE's analysis demonstrating that the total cost of Facilities Removal is likely to be less than the State Cost Cap, which is the total of Customer Contribution and California Bond Funding as specified in Section 4. If the DRE determines that the total cost of Facilities Removal is likely to exceed the State Cost Cap, the DRE shall not make any public release of the Definite Plan and shall instead provide Notice to the Parties, who shall undertake to Meet and Confer pursuant to Section 8.7 to consider modifications to the Definite Plan consistent with the State Cost Cap;
- iii. Appropriate procedures consistent with state law to provide for cost-effective expenditures within the cost estimates stated in (i);
- iv. Accounting procedures that will result in the earliest practicable disclosure of any actual or foreseeable overrun of cost of any task relative to the detailed estimate stated in (i);
- v. Appropriate mechanisms to modify or suspend performance of any task subject to such overrun. Upon receipt of Notice from the DRE of any actual or foreseeable cost overrun pursuant to (ii), the Parties shall use the Meet and Confer procedures to modify the task (to the extent permitted by the applicable permit or other authorization) or to modify this Settlement as appropriate to permit Facilities Removal to proceed; and
- vi. A form of Notice to the Parties and FERC for each Facility that all necessary permits and approvals have been obtained for removal of the Facility, all contracts have been finalized, and Facilities Removal is ready to commence.

**B. Notice of Completion**

The DRE shall provide Notice to the Parties upon completion of the Definite Plan. After such Notice, the Parties shall undertake to address the consistency of the plan and this Settlement, through the procedures and pursuant to the schedule stated in Section 2.1.4.C.

**C. Use of Definite Plan as Basis for Permit Applications**

With respect to any elements of the Definite Plan that are undisputed, and otherwise at the conclusion of any Dispute Resolution described in Section

7.2.1.B, the DRE shall use the Definite Plan as appropriate in applications for any applicable federal, state, and local permits for Facilities Removal.

**7.2.2 Process for Further Review of Cost Estimates Before and During Facilities Removal in the Event of a Federal DRE**

If there is a federal DRE, the Secretary, in consultation with the federal DRE, will confirm, immediately prior to commencement of Facilities Removal, that, based on the final design described in Section 7.2.1.A, the cost of Facilities Removal will be lower than the State Cost Cap. If the Secretary estimates at that time that the cost of Facilities Removal is likely to exceed the State Cost Cap, the DRE will not commence Facilities Removal but shall instead provide Notice to the Parties of the anticipated cost overruns. The Parties shall then use the Meet and Confer procedures to consider modifications to the final design or securing alternate sources of funding or such other measures as appropriate to permit Facilities Removal to proceed. In no event will the DRE commence Facilities Removal if the issue of anticipated cost overruns has not been resolved to the Secretary's satisfaction. If during Facilities Removal the DRE determines that its costs are likely to exceed the State Cost Cap, the DRE shall suspend Facilities Removal. The DRE will resume Facilities Removal after the Meet and Confer procedures have produced modifications to the final design or alternate sources of funding or such other measures as appropriate to permit Facilities Removal to proceed.

**7.2.3 Assessment and Mitigation of Potential Impacts to the City of Yreka**

The Parties understand that actions related to this Settlement may affect the City of Yreka. In recognition of this potential, the Parties agree to the following provisions, which shall remain in effect so long as this Settlement remains in effect.

- A. The Parties collectively and each Party individually shall agree not to oppose the City of Yreka's continued use of California State Water Right Permit 15379, which provides for the diversion of up to 15 cfs for municipal uses by the City of Yreka.
- B. As part of implementation of this Settlement, an engineering assessment to study the potential risks to the City of Yreka's water supply facilities as a result of implementation of Facilities Removal shall be funded and conducted by the Secretary. Actions identified in the engineering assessment necessary to assure continued use of the existing, or equivalent replacement, water supply facilities by the City of Yreka shall be funded from the California Bond Measure and implemented. Actions that may be required as a result of the engineering assessment include, but are not limited to:



- i. Relocation, replacement, and/or burial of the existing 24-inch diameter water line and transmission facilities from the City of Yreka's Fall Creek diversion;
  - ii. Assessment, mitigation, and/or funding to address potential damage to the City of Yreka's facilities located along the Klamath River, including mitigation of potential impacts that may occur as a result of a dam breach. Such assessment, mitigation, and/or funding shall include consideration of the cathodic protection field located near the north bank of the Iron Gate crossing and the facilities that house the City's diversion and pump station; and
  - iii. Assessment, mitigation, and/or funding to address any impacts resulting from implementation of the Settlement, on the ability of the City to divert water consistent with its Water Right Permit 15379.
- C. As part of implementation of this Settlement, the Secretary shall conduct an assessment of the potential need for fish screens on the City of Yreka's Fall Creek diversion facilities. If the assessment finds that installation of fish screens is necessary, as a result of implementation of this Settlement, in order to meet regulatory requirements and screening criteria, construction of the required fish screens, including, but not limited to, necessary costs to preserve City facilities with additional species protection, shall be funded through the California Bond Measure pursuant to Section 4.2.3, or through other appropriate sources.

### 7.3 Schedule for Facilities Removal

- 7.3.1 Should the Secretary render an Affirmative Determination, the Parties agree that the target date to begin Decommissioning the Facilities is January 1, 2020. The Parties agree that preparatory work for Facilities Removal may be undertaken by the DRE before January 1, 2020, consistent with the Secretarial Determination, the Definite Plan, applicable permits, and Section 6 of this Settlement; provided such preparatory work shall not have any negative impact on PacifiCorp's generation operations at the Facilities. The Parties further agree to a target date of December 31, 2020 for completion of Facilities Removal at least to a degree sufficient to enable a free-flowing Klamath River allowing volitional fish passage.
- 7.3.2 The Parties acknowledge and agree that the schedule to implement the Secretarial Determination and the Detailed Plan, to the extent such Determination leaves discretion for that purpose, shall be determined by the Parties in accordance with Section 7.3.4. Pending the Secretarial

Determination and the development of the Detailed Plan, the Parties intend to implement this Settlement based on the following approach to achieve the target dates for Decommissioning and Facilities Removal set forth in Section 7.3.1:

- A. Collect \$172 million of the total Customer Contribution by December 31, 2019, consistent with Section 4;
  - B. Earn approximately \$28 million in interest on the Klamath Trust Accounts to provide Value to Customers, which results in a total of \$200 million in the accounts available for Facilities Removal costs as illustrated in Appendix H to this Settlement;
  - C. Implement Decommissioning and Facilities Removal in a manner that permits PacifiCorp to generate sufficient electricity at the Facilities to achieve the economic results included in PacifiCorp's Economic Analysis; and
  - D. Implement the ICP and Non-ICP Interim Measures set forth in Appendices C and D to this Settlement.
- 7.3.3 The Parties agree that PacifiCorp may continuously operate the Facilities subject to the ICP and Non-ICP Interim Measures identified in Appendices C and D to this Settlement and generate electricity at the Facilities through December 31, 2019. Based upon PacifiCorp's representation of its Economic Analysis, the Parties agree that the following additional Value to Customers, in addition to the \$28 million in interest described in Section 7.3.2.B, is necessary to achieve the corresponding date for commencement of Facility Decommissioning:

Date of Facilities Decommissioning	Required Additional Value to Customers
January 1, 2020	\$27 million
July 1, 2020	\$13 million
December 31, 2020	\$0

If Decommissioning begins on December 31, 2020, no additional funding is required. The Parties acknowledge that, in order to complete Facilities Removal to the degree described in the last sentence of Section 7.3.1 by December 31, 2020, Decommissioning will need to begin prior to that date. As described in the table above, Decommissioning may begin on July 1, 2020 if \$13 million in additional Value to Customers is identified, or on January 1, 2020, if \$27 million in additional Value to Customers is identified.

7.3.4 Within 90 days of the Secretarial Determination or at such additional time as may be necessary, the Parties shall Meet and Confer to: (i) review progress in implementing the Settlement based upon the approach described in Section 7.3.2; (ii) establish the schedule to implement the Secretarial Determination and the Detailed Plan, to the extent such Determination leaves discretion for that purpose; and (iii) identify the Value to Customers necessary to implement the schedule, the mechanisms as described in Section 7.3.8 that will be used, and the estimated cost reduction from each mechanism through December 2019. The Parties (including the DRE) will subsequently Meet and Confer if the estimated additional Value to Customers has not been timely secured, a Regulatory Approval is inconsistent with that schedule, or the Definite Plan or final designs are inconsistent with the schedule.

If, within 90 days of the Secretarial Determination or such additional time as may be necessary, the Parties determine that the identified Value to Customers is less than the amount required to achieve the schedule, then the Parties at that time will consider additional actions to address the funding deficiency, including but not limited to extending the schedule and securing additional funding to protect PacifiCorp customers. The Parties may thereafter Meet and Confer if additional Value to Customers is secured in excess of what was previously estimated.

7.3.5 PacifiCorp, in its sole and absolute discretion, may determine that commencement of Decommissioning may occur earlier than January 1, 2020.

7.3.6 If the Parties determine that the schedule for Facilities Removal must extend beyond December 31, 2020, then the Parties shall also consider whether (i) modification of Interim Measures is necessary to appropriately balance costs to customers and protection of natural resources, and (ii) continuation of the collection of the customer surcharges up to the maximum Customer Contribution is warranted.

7.3.7 The Parties agree that if Decommissioning and Facilities Removal occurs in a staged manner, J.C. Boyle is intended to be the last Facility decommissioned. If, however, the Secretarial Determination directs a different sequence for Decommissioning and Facilities Removal, then the Parties shall Meet and Confer to identify adjustments necessary to implement the Secretarial Determination in a manner that is consistent with PacifiCorp's Economic Analysis.

7.3.8 The Parties have identified the following potential mechanisms for creating Value to Customers:

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**ORDER NO 10-364**

- A. Interest on the Klamath Trust Accounts. The Parties acknowledge above that the surcharges from the Customer Contributions will be placed in interest-bearing accounts and that the interest that accrues in the accounts may be used to reduce the amount collected through the surcharges so that the total Customer Contribution, including accrued interest through December 31, 2019, totals \$200,000,000. The Parties further acknowledge that it is not possible to precisely estimate the amount of interest that will accrue in the Klamath Trust Accounts. To the extent the interest in the accounts exceeds \$28,000,000, the additional earnings may be used as a Value to Customers unless the funds are required for Facilities Removal. Nothing in this paragraph will limit the Customer Contribution to less than \$200,000,000.
- B. Third-party Funding. The Parties agree to work jointly to identify potential partnerships to supplement funds generated pursuant to this Settlement. Such third-party funds may be employed to acquire generation facilities that can be used to replace the output of the Facilities, to fund aspects of Facilities Removal, or for other purposes to achieve the benefits of this Settlement.
- C. Value of Additional Generation due to KBRA. The Parties acknowledge that the KBRA contains elements that are designed to increase flows in the Klamath River. These elements include a water use retirement program above Upper Klamath Lake, increased storage capacity of Upper Klamath Lake, an interim flow and lake-level program, limitations on diversions of water for the Klamath Reclamation Project, and implementation of a drought plan. Increased or altered flows in the Klamath River may provide increased generation at the Facilities prior to Decommissioning and Facilities Removal. As the KBRA is implemented, the Parties agree that the value of additional generation as a direct result of measurable increased flows consistent with the protocol described in Interim Measure 14 may be used as a Value to Customers.
- D. Other. The Parties acknowledge that other mechanisms for Value to Customers may be identified, provided that they create sufficiently quantifiable benefits for customers.

7.3.9 PacifiCorp's Economic Analysis that will be used to implement this section shall be filed by PacifiCorp with the Oregon PUC pursuant to Section 4(1) of the Oregon Surcharge Act and with the California PUC in accordance with Section 4 of this Settlement. The Parties may seek to intervene in these state proceedings before the Commissions, and may request to view PacifiCorp's Economic Analysis consistent with the limitations imposed by Section 4(6) of the Oregon Surcharge Act,

applicable PUC protective orders, and general PUC discovery practices and legal requirements. PacifiCorp shall not oppose either request. PacifiCorp reserves the right to request that the PUCs restrict Parties' access to commercially sensitive material, other than PacifiCorp's Economic Analysis, consistent with Section 4(6) of the Oregon Surcharge Act, applicable PUC protective orders, and general PUC discovery practices and legal requirements.

#### 7.4 Transfer, Decommissioning, and Facilities Removal

##### 7.4.1 DRE Notice

The DRE will provide Notice to the Parties and FERC when all necessary permits and approvals have been obtained for removal of a Facility, all contracts necessary for Facility Removal have been finalized, and Facility Removal is ready to commence.

##### 7.4.2 Decommissioning and Transfer

PacifiCorp shall transfer ownership of each Facility, including the underlying land for each Facility in accordance with Section 7.6.4 (except for the Keno Development, which shall be disposed in accordance with Section 7.5), once the DRE notifies PacifiCorp that all necessary permits and approvals have been obtained for removal of that Facility, all contracts necessary for Facility Removal have been finalized, and Facility Removal is ready to commence. If the Facilities are removed in a staged manner, annual FERC license conditions applying to the Facility being removed shall no longer be in effect as provided in the Authorizing Legislation, and PacifiCorp shall continue to comply with license conditions pertaining to any Facility still in place to the extent such compliance is not prevented by the removal of any other Facility. Upon transfer of ownership of all Facilities, the FERC annual license shall terminate as provided in the Authorizing Legislation. As further provided in the Authorizing Legislation pursuant to Appendix E, as a precondition of transfer the DRE and PacifiCorp will enter into a contract under which PacifiCorp will continue to operate and maintain the Facility pending commencement of Facility Removal, and PacifiCorp will take title to any electric power generated by the Facility. To the extent engineering and safety best practices require that water continue to be diverted through the Facility powerhouse during the Facility Removal process, PacifiCorp will take title to the incidental electric power generated. PacifiCorp will have responsibility for Decommissioning of each Facility. PacifiCorp and the DRE will coordinate on the timing of PacifiCorp's removal of any personal property or equipment which PacifiCorp deems in its sole discretion to have salvage value. PacifiCorp and the DRE will further coordinate on the timing of PacifiCorp's disconnection of the Facility from the electric grid and cessation of electric generation. Costs of Decommissioning if any shall be recovered by PacifiCorp through standard ratemaking proceedings.

## 7.5 Keno Facility

### 7.5.1 Study

Resolution of issues surrounding Keno facility are an important part of achieving the overall goals of this Settlement. Accordingly, the Secretary, in consultation with affected Parties, shall study issues specific to the Keno facility concurrently with, but independent of, the Secretarial Determination and related environmental compliance actions, with specific focus on addressing water quality, fish passage, transfer of title to the Keno facility from PacifiCorp to Interior, future operations and maintenance, and landowner agreements. The study of the Keno facility will be designed with the goals of addressing these issues and maintaining the benefits the dam currently provides.

### 7.5.2 Keno Facility Determination

The Secretary shall not make an Affirmative Determination pursuant to Section 3.3 until there is agreement between Interior and PacifiCorp on acceptable terms for transfer of title to the Keno facility from PacifiCorp to Interior. Within 60 days of the Effective Date, Interior and PacifiCorp shall commence negotiations on Keno transfer informed by the analyses described in Section 7.5.1. Every six months or as necessary after the Effective Date, and subject to Section 8.17, Interior and PacifiCorp shall report to the Parties on the status of Keno negotiations, including as appropriate, drafts of a proposed Keno transfer agreement, a summary of negotiations and issues in dispute, and supporting documents. Interior and PacifiCorp shall use their best efforts to complete a Keno transfer agreement in principle by June 1, 2011. If acceptable terms of a final transfer agreement are not reached by October 1, 2011, the Parties may Meet and Confer in accordance with Section 8.7. Interior and PacifiCorp shall use their best efforts to complete a final Keno transfer agreement by March 31, 2012. If the Secretary makes an Affirmative Determination, the Secretary shall then accept transfer of title to the Keno facility when the DRE provides Notice to the Parties and FERC pursuant to Section 7.4.1 that J.C. Boyle Facility Removal is ready to commence.

The transfer of title to the Keno facility shall be subject to completion of any necessary improvements to the Keno facility to meet Department of the Interior Directives and Standards criteria for dam safety identified by Interior through its Safety of Dams inspection of the Keno facility. To facilitate this inspection, PacifiCorp agrees to grant access to the federal government and its contractors for study and assessment of the Keno facility. The terms and conditions of the transfer of title to the Keno facility, including coordination of operations between Link River dam, Keno dam, and any remaining facilities operated by PacifiCorp, ingress and egress agreements and easements required for operation and maintenance of the Klamath Reclamation Project, including but not necessarily limited to Lake Ewauna, Link River Dam, and Keno Dam will be negotiated

between Interior and PacifiCorp prior to transfer. Costs associated with any improvements necessary to meet Department of Interior's Directives and Standards criteria for dam safety shall be funded by other non-PacifiCorp sources.

#### 7.5.3 PacifiCorp Operations Prior to Transfer

Prior to and until transfer of title to the Keno Facility, PacifiCorp shall operate Keno in compliance with Contract #14-06-200-3579A, subject to any Applicable Law including the CWA and the provisions of Section 6.3 of this Settlement.

#### 7.5.4 Operations After Transfer

Following transfer of title to the Keno facility from PacifiCorp to Interior, Interior shall operate Keno in compliance with Applicable Law and to provide water levels upstream of Keno Dam for diversion and canal maintenance consistent with Contract #14-06-200-3579A executed on January 4, 1968, between Reclamation and PacifiCorp (then COPCO) and historic practice.

#### 7.5.5 Landowner Agreements

Based on the analysis under Section 7.5.1, the Secretary, upon an Affirmative Determination, will execute new agreements with landowners who currently have agreements in the Lake Ewauna to Keno reach, as he determines are necessary to avoid adverse impacts to the landowners resulting from the transfer, consistent with Applicable Law, operational requirements, and hydrologic conditions.

### 7.6 Dispositions of PacifiCorp Interests in Lands and other Rights

#### 7.6.1 Lands

PacifiCorp is the fee owner of approximately 11,000 acres of real property located in Klamath County, Oregon and Siskiyou County, California that are not directly associated with the Klamath Hydroelectric Project, and generally not included within the existing FERC project boundary. This property is more particularly described on Page 3 of the PacifiCorp Land Maps, attached as Exhibit 3, and referenced as Parcel A. This Settlement shall have no effect as to disposition of Parcel A lands, which shall continue to be subject to applicable taxes unless and until disposed of by PacifiCorp subject to applicable PUC approval requirements.

PacifiCorp is the fee owner of approximately 8,000 acres of real property located in Klamath County, Oregon and Siskiyou County, California that is associated with the Klamath Hydroelectric Project and/or included within the FERC project boundary. This property is more particularly described on Page 3 of the PacifiCorp Land Maps, Exhibit 3, and referenced as Parcel B. It is the intent of the Parties that Parcel B property be disposed in accordance with Section 7.6.4, except for the Keno Development which shall be disposed in accordance with

Section 7.5. In addition to Exhibit 3, PacifiCorp owns significant electric transmission and distribution facilities which will remain under its ownership and subject to applicable taxes.

#### 7.6.2 Potential Non-Project Land Exchanges

Interior and PacifiCorp have identified in Parcel A the potential for the exchange of certain non-Project PacifiCorp-owned lands in the Klamath Basin. Should an exchange of these lands to a state or Federal entity take place, the terms of the exchange agreement shall be revenue-neutral to County governments.

#### 7.6.3 BLM Easements and Rights of Way

The Parties agree that prior to Secretarial Determination and Facilities Removal, the FERC license for Project No. 2082 shall control the ingress and egress to the Facilities within the FERC project boundary. Access by PacifiCorp outside of the project boundary to BLM-administered lands may require a separate Right Of Way agreement.

The Parties agree that in the event of an Affirmative Determination, the DRE's obligations for operation, maintenance, remediation and restoration costs of BLM-administered, transportation-related structures affected by Facilities Removal will be addressed as part of the Definite Plan.

A proposed disposition of PacifiCorp's easements and right-of-ways across BLM-administered lands within the FERC Project boundary will be included as a part of the DRE's Definite Plan for Facility Removal. To the extent necessary, reciprocal Right Of Way agreements may be executed across PacifiCorp-owned lands and BLM-administered lands to provide continued access for public and BLM administration needs. During the implementation of the Definite Plan, the DRE will be required to obtain authorization for any access across PacifiCorp and BLM-administered lands necessary for every phase of action.

#### 7.6.4 PacifiCorp Klamath Hydroelectric Project Lands

- A. It is the intent of the Parties that ownership of PacifiCorp lands associated with the Klamath Hydroelectric Project and/or included within the FERC Project boundary, identified as Parcel B in Exhibit 3, shall be transferred to the State of Oregon or the State of California, as applicable, or to a designated third party transferee, before Facilities Removal is commenced. It is also the intent of the Parties that transferred lands shall thereafter be managed for public interest purposes such as fish and wildlife habitat restoration and enhancement, public education, and public recreational access.



- B. Each State shall undertake inspection and preliminary due diligence regarding the nature and condition of Parcel B lands located within its state boundaries. PacifiCorp shall provide each State all cooperation and access to the lands and pertinent records necessary to the inspection and due diligence. On or before January 31, 2012, each State and PacifiCorp shall identify and provide to the Parties, for each specific property in Parcel B: (i) the proposed transferee for the property; and (ii) the proposed terms of transfer for the property. Each State and PacifiCorp shall consult with the Parties and other stakeholders before identifying the proposed transfer of a specific Parcel B property. The States and PacifiCorp may coordinate this evaluation and identification with the Secretary's development of a Detailed Plan under Section 3.3.2. Following such evaluation, the State of Oregon and the State of California may, each in its sole and absolute discretion, elect not to accept the transfer of all or any portion of Parcel B lands; provided, if a State, PacifiCorp, or Interior believes that the proposed transfer for a property (or lack thereof) will not achieve the intent set forth in Section 7.6.4.A, those Parties shall Meet and Confer in accordance with Section 8.7.
- C. Without predetermining the final terms of transfer for a specific property, proposed terms of transfer may include but are not limited to: (i) final property inspection; (ii) specification of structures and improvements to remain on the property after Decommissioning and Facilities Removal; (iii) liability protection for the State, or designated third party transferee, and the DRE, for any harm arising from post-transfer Decommissioning or power operations at the property; (iv) liability protection for the State, or designated third party transferee, for any harm arising from post-transfer Facilities Removal by the DRE at the property; (v) easements or other property interests necessary for access to and continued operation of PacifiCorp transmission and distribution system assets that will remain on the property; and (vi) notice or acknowledgement of the State's claim of ownership to beds and banks of the Klamath River. The DRE shall be a party to the transfer document as necessary and appropriate. The consideration required for transfer of a property to a State or third party transferee under this Section shall be limited to the liability protections and other benefits conferred upon PacifiCorp under this Settlement. Transfer of Parcel B lands shall be subject to applicable regulatory approvals and the reservations set forth in Section 1.6.
- D. PacifiCorp shall convey Parcel B lands to the State, or designated third party transferee, and the DRE, after the DRE provides Notice

to the Parties and FERC that all necessary permits and approvals have been obtained for Facility Removal, all contracts necessary for Facility Removal have been finalized, and Facility Removal is ready to commence. PacifiCorp shall convey all right, title, and interest in a subset of the Parcel B lands designated on Exhibit 3 as lands associated with each Facility to the State or third party transferee subject to the DRE's possessory interest, consistent with the terms of this Settlement, including the Facilities, underlying lands, and appurtenances as further described through surveys and land descriptions. The DRE shall hold the underlying land for each Facility in trust for the benefit of the State or third party transferee. This public trust possessory interest in the DRE shall be controlled by the terms of the Settlement, the Definite Plan, federal legislation, and the transfer document. At the conclusion of Facilities Removal, the DRE will release the underlying land to the State or third party transferee. Upon transfer of ownership of all Facilities, PacifiCorp shall convey to the State or third party transferee all right, title, and interest in all Parcel B lands not already transferred to the DRE in trust, as further described through surveys and land descriptions, without restriction of possessory interest for the DRE. If transfer of a specific property for any reason is not consummated in a manner achieving the intent set forth in Section 7.6.4.A, PacifiCorp, the applicable State, and the DRE shall Meet and Confer in accordance with Section 8.7.

- E. Notwithstanding any provision hereof, in the event either State accepts title to any portion of Parcel B lands, the State of Oregon and the State of California retain the right to transfer their ownership to any third party for any purpose.

#### 7.6.5 PacifiCorp Water Rights

- A. PacifiCorp shall assign its revised hydroelectric water rights to the OWRD for conversion to an instream water right pursuant to ORS 543A.305, and OWRD shall take actions to effect such conversion, in accordance with the process and conditions set forth in *Water Right Agreement between PacifiCorp and Oregon* (Exhibit 1). Nothing in this Section 7.6.5 or Exhibit 1 is intended in any way to affect, diminish, impair, or determine any federally-reserved or state law-based water right that the United States or any other person or entity may have in the Klamath River.
- B. Except as provided in this paragraph, within 90 days of completion of Facilities Removal at the Copco No. 1, Copco No. 2 and Iron Gate Facilities, respectively, PacifiCorp shall submit a Revocation

Request to the California State Water Resources Control Board for License No. 9457 (Application No. 17527), and shall notify the State Water Resources Control Board of its intent to abandon its hydroelectric appropriative water rights at the Copco No. 1 and Copco No. 2 Facilities, as applicable, as identified in Statement of Water Diversion and Use Nos. 15374, 15375, and 15376. Should ongoing operations of the Iron Gate Hatchery or other hatchery facilities necessitate continued use of water under License No. 9457 (Application No. 17527) beyond 90 days after completion of Facilities Removal, PacifiCorp shall consult with the Department of Fish and Game and the State Water Resources Control Board and shall take actions directed by such Department and Board as are necessary to ensure a sufficient water supply to the Iron Gate Hatchery or other hatchery facilities under License No. 9457.

#### 7.6.6 PacifiCorp Hatchery Facilities

The PacifiCorp Hatchery Facilities within the State of California shall be transferred to the State of California at the time of transfer to the DRE of the Iron Gate Hydro Development or such other time agreed by the Parties, and thereafter operated by the California Department of Fish and Game with funding from PacifiCorp as follows:

##### A. Hatchery Funding

PacifiCorp will fund 100 percent of hatchery operations and maintenance necessary to fulfill annual mitigation objectives developed by the California Department of Fish and Game in consultation with the National Marine Fisheries Service. This includes funding the Iron Gate Hatchery facility as well as funding of other hatcheries necessary to meet ongoing mitigation objectives following Facilities Removal. Hatchery operations include development and implementation of a Hatchery Genetics Management Plan as well as a 25% constant fractional marking program. Funding will be provided for hatchery operations to meet mitigation requirements and will continue for eight years following the Decommissioning of Iron Gate Dam. PacifiCorp's 8-year funding obligation assumes that dam removal will occur within one year of cessation of power generation at Iron Gate Dam. If Facilities Removal occurs after one year of cessation of power generation at Iron Gate Dam, then the Parties will Meet and Confer to determine appropriate hatchery funding beyond the eight years.

**B. Hatchery Production Continuity**

PacifiCorp will fund a study to evaluate hatchery production options that do not rely on the current Iron Gate Hatchery water supply. The study will assess groundwater and surface water supply options and water reuse technologies that could support hatchery production in the absence of Iron Gate Dam. The study may include examination of local well records and increasing production potential at existing or new facilities in the basin as well as development of a test well or groundwater supply well. Based on the study results and with the approval of the California Department of Fish and Game and the National Marine Fisheries Service, PacifiCorp will provide one-time funding to construct and implement the measures identified as necessary to continue to meet current mitigation production objectives for a period of eight years following the Decommissioning of Iron Gate Dam. PacifiCorp's 8-year funding obligation assumes that Facilities Removal will occur within one year of cessation of power generation at Iron Gate Dam. If dam removal occurs after one year of cessation of power generation at Iron Gate Dam, then the Parties will Meet and Confer to determine appropriate hatchery funding beyond the eight years. Production facilities capable of meeting current hatchery mitigation goals must be in place and operational upon removal of Iron Gate Dam. PacifiCorp shall not be responsible for funding hatchery programs, if any, necessary to reintroduce anadromous fish in the Klamath basin.

**7.7 Federal Power Act Jurisdiction**

The non-federal Parties intend that the Authorizing Legislation shall provide that (i) FERC's jurisdiction over each Facility shall end upon transfer of that Facility to the DRE for Removal pursuant to Section 7.4.2; and (ii) in the event this Settlement terminates before all Facilities have been transferred, the FERC relicensing proceeding shall resume as to all remaining Facilities.

**8. General Provisions****8.1 Term of Settlement**

The term of this Settlement shall commence on the Effective Date and shall continue until Facilities Removal has been fully achieved and all conditions of this Settlement have been satisfied, unless terminated earlier pursuant to Section 8.11.

## 8.2 Effectiveness

This Settlement shall take effect upon execution on February 18, 2010 ("Effective Date"). As provided in Section 2.2, this Settlement shall be executed concurrently with the KBRA.

## 8.3 Successors and Assigns

This Settlement shall apply to, be binding on, and inure to the benefit of the Parties and their successors and assigns, unless otherwise specified in this Settlement. No assignment may take effect without the express written approval of the other Parties, which approval will not be unreasonably withheld.

## 8.4 Amendment

Except as otherwise expressly provided in Section 8.11.3.A, this Settlement may only be amended in writing by all Parties still in existence, including any successors or assigns. The Public Agency Parties may also obtain public input on any such modifications as required by Applicable Law. A Party may provide Notice of a proposed amendment at any time. The Parties agree to meet in person or by teleconference within 20 days of receipt of Notice to discuss the proposed amendment.

## 8.5 Notices

Any Notice required by this Settlement shall be written. Notice shall be provided by electronic mail, unless the sending Party determines that first-class mail or an alternative form of delivery is more appropriate in a given circumstance. A Notice shall be effective upon receipt, but if provided by U.S. Mail, seven days after the date on which it is mailed. For the purpose of Notice, the list of authorized representatives of the Parties as of the Effective Date is attached as Appendix K. The Parties shall provide Notice of any change in the authorized representatives designated in Appendix K, and PacifiCorp shall maintain the current distribution list of such representatives. The Parties agree that failure to provide PacifiCorp with current contact information will result in a waiver of that Party's right to Notice under this Settlement. The Party who has waived Notice may prospectively reinstate its right to Notice by providing current contact information to PacifiCorp.

## 8.6 Dispute Resolution

All disputes between Parties arising under this Settlement shall be subject to the Dispute Resolution Procedures stated herein. The Parties agree that each such dispute shall be brought and resolved in a Timely manner.

### 8.6.1 Cooperation

Disputing Parties shall devote such resources as are needed and as can be reasonably provided to resolve the dispute expeditiously. Disputing Parties shall cooperate in good faith to promptly schedule, attend, and participate in the dispute resolution.

### 8.6.2 Costs

Unless otherwise agreed among the Disputing Parties, each Disputing Party shall bear its own costs for its participation in these Dispute Resolution Procedures.

### 8.6.3 Non-Exclusive Remedy

These Dispute Resolution Procedures do not preclude any Party from Timely filing and pursuing an action to enforce an obligation under this Settlement, or to appeal a Regulatory Approval inconsistent with the Settlement, or to enforce a Regulatory Approval or Applicable Law; provided that such Party shall provide a Dispute Initiation Notice and, to the extent practicable, undertake and conclude these procedures, before such action.

### 8.6.4 Dispute Resolution Procedures

#### A. Dispute Initiation Notice

A Party claiming a dispute shall give Notice of the dispute within seven days of becoming aware of the dispute. Such Notice shall describe: (i) the matter(s) in dispute; (ii) the identity of any other Party alleged to have not performed an obligation arising under this Settlement or Regulatory Obligation; and (iii) the specific relief sought. Collectively, the Party initiating the procedure, the Party complained against, and any other Party which provides Notice of its intent to participate in these procedures, are "Disputing Parties."

#### B. Informal Meetings

Disputing Parties shall hold at least two informal meetings to resolve the dispute, commencing within 20 days after the Dispute Initiation Notice, and concluding within 45 days of the Dispute Initiation Notice unless extended upon mutual agreement of the Disputing Parties. If the Disputing Parties are unable to resolve the dispute, at least one meeting will be held within the 45 days at the management level to seek resolution.

C. Mediation

If the dispute is not resolved in the informal meetings, the Disputing Parties shall decide whether to use a neutral mediator. The decision whether to pursue mediation, and if affirmative the identity and allocation of costs for the mediator, shall be made within 75 days after the Dispute Initiation Notice. Mediation shall not occur if the Disputing Parties do not unanimously agree on use of a mediator, choice of mediator, and allocation of costs. The mediation process shall be concluded not later than 135 days after the Dispute Initiation Notice. The above time periods may be shortened or lengthened upon mutual agreement of the Disputing Parties.

D. Dispute Resolution Notice

The Disputing Parties shall provide Notice of the results of the Dispute Resolution Procedures. The Notice shall: (i) restate the disputed matter, as initially described in the Dispute Initiation Notice; (ii) describe the alternatives which the Disputing Parties considered for resolution; and (iii) state whether resolution was achieved, in whole or part, and state the specific relief, including timeline, agreed to as part of the resolution. Each Disputing Party shall promptly implement any agreed resolution of the dispute.

8.7 Meet and Confer8.7.1 Applicability

The Meet and Confer procedures in this Section 8.7 shall apply upon the occurrence of certain events or failure to occur of certain events as specifically required in this Settlement.

8.7.2 Meet and Confer Procedures

- A. Any Party may initiate the Meet and Confer procedures by sending Notice: (i) describing the event that requires the Parties to confer, and (ii) scheduling a meeting or conference call.
- B. The Parties will meet to discuss the problem and identify alternative solutions. The Parties agree to dedicate a reasonable amount of time sufficient to resolve the problem.
- C. The Meet and Confer procedures will result in: (i) amendment pursuant to Section 8.4; (ii) termination or other resolution pursuant to the procedures of Section 8.11; or (iii) such other resolution as is appropriate under the applicable section.

### 8.8 Remedies

This Settlement does not create a cause of action in contract for monetary damages for any alleged breach by any Party of this Settlement. Neither does this Settlement create a cause of action in contract for monetary damages or other remedies for failure to perform a Regulatory Obligation. The Parties reserve all other existing remedies for material breach of the Settlement; provided that Section 8.11 shall constitute the exclusive procedures and means by which this Settlement can be terminated.

### 8.9 Entire Agreement

This Settlement contains the complete and exclusive agreement among all of the Parties with respect to the subject matter thereof, and supersedes all discussions, negotiations, representations, warranties, commitments, offers, agreements in principle, and other writings among the Parties, including the AIP, prior to the Effective Date of this Settlement, with respect to its subject matter.

### 8.10 Severability

This Settlement is made on the understanding that each provision is a necessary part of the entire Settlement. However, if any provision of this Settlement is held by a Regulatory Agency or a court of competent jurisdiction to be invalid, illegal, or unenforceable: (i) the validity, legality, and enforceability of the remaining provisions of this Settlement are not affected or impaired in any way; and (ii) the Parties shall negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be invalid, illegal, or unenforceable) that is valid, legal, and enforceable and carries out the Parties' intention to the greatest lawful extent under this Settlement.

### 8.11 Termination

#### 8.11.1 Potential Termination Events

This Settlement shall be terminable if one of the following events occurs and a cure for that event is not achieved pursuant to Section 8.11.3:

- A. Authorizing Legislation materially inconsistent with Appendix E is enacted, or Authorizing Legislation is not Timely enacted;
- B. The Secretarial Determination: (i) does not provide for the Timely removal of all four dams; (ii) is materially inconsistent with the provisions of Sections 3.3.1 and 3.3.2; or (iii) is not made consistent with Section 3.3.4;
- C. A State does not provide Concurrence;



- D. The Oregon PUC or California PUC do not implement the funding provisions set forth in Sections 4.1 through 4.6;
- E. Conditions of any Regulatory Approval of Interim Measures, denial of Regulatory Approval of Interim Measures including the failure Timely to approve ESA incidental take authorization, or results of any litigation related to this Settlement are materially inconsistent with the provisions of Section 6.1 through 6.3 and Appendices C and D;
- F. Conditions or denial of any Regulatory Approval of Facilities Removal or the results of any litigation about such removal, are materially inconsistent with the Settlement;
- G. The DRE notifies the Parties that it cannot proceed with Facilities Removal because it cannot obtain all permits and contracts necessary for Facilities Removal despite its good faith efforts; or
- H. California, Oregon, the Federal Parties, or PacifiCorp is materially adversely affected by another Party's breach of this Settlement.

#### 8.11.2 Definitions for Section 8.11

- A. For purposes of this Section, "materially inconsistent" means diverging from the Settlement or part thereof in a manner that: (i) fundamentally changes the economics or liability protection such that a Party no longer receives the benefit of the bargain provided by this Settlement; or (ii) frustrates the fundamental purpose of this Settlement such that Facilities Removal or the underlying purposes of Interim Measures cannot be accomplished. Events occurring independent of this Settlement, other than those identified in Section 8.11.1, shall not be construed to create a material inconsistency or materially adverse effect.
- B. For purposes of this section, "materially adversely affected" means that a Party no longer receives the benefit of the bargain due to: (i) fundamental changes in the economics or liability protection; or (ii) frustration of the fundamental purpose of this Settlement such that Facilities Removal or the underlying purposes of Interim Measures cannot be accomplished.
- C. For purposes of this Section, a "result of any litigation" is materially inconsistent with this Settlement or a part thereof if a Party is materially adversely affected by: (i) costs to defend the litigation; or (ii) a final order or judgment.

### 8.11.3 Cure for Potential Termination Event

- A. A Party that believes that a potential termination event specified in Section 8.11.1 has occurred shall provide Notice.
- i. The Parties shall use the Meet and Confer Procedures specified in Section 8.7 to consider whether to deem the event to conform to the Settlement, or adopt a mutually agreeable amendment to this Settlement. These procedures shall conclude within 90 days of Notice.
  - ii. If these procedures do not resolve the potential termination event, the Federal Parties, the States, and PacifiCorp may, within 90 days thereafter, agree to an amendment, or deem the event to conform to the Settlement; otherwise, this Settlement shall terminate. In no event shall any amendment under this subsection provide for Facilities Removal with respect to fewer than four Facilities.
- B. If the Federal Parties, the States, and PacifiCorp disagree whether a potential termination event specified in Section 8.11.1 has occurred, these Parties shall follow the Dispute Resolution Procedures in Section 8.6 to attempt to resolve that dispute. If such a Notice of Dispute is filed while the Meet and Confer Procedures referenced in 8.11.3.A are ongoing, those Meet and Confer Procedures are deemed concluded, subject to being recommenced in accordance with the remainder of this Subsection. Upon conclusion of the Dispute Resolution Procedures in Section 8.6, the Federal Parties, the States, and PacifiCorp shall issue a Notice of Dispute Resolution.
- i. If, in the Notice of Dispute Resolution, the Federal Parties, the States, and PacifiCorp agree that a potential termination event has occurred, or agree to consider whether a cure could be achieved, the further procedures stated in Section 8.11.3.A.i and ii above shall apply.
  - ii. If, in the Notice of Dispute Resolution, the Federal Parties, the States, and PacifiCorp disagree whether a potential termination event has occurred, this Settlement shall terminate unless a Party seeks and obtains a remedy preserving the Settlement under Applicable Law.
- C. A Party may reasonably suspend performance of its otherwise applicable obligations under this Settlement, upon receipt of

Notice and pending a resolution of the potential termination event as provided in Section 8.11.3.A or B.

- D. If the Federal Parties, the States, and PacifiCorp, pursuant to the procedures in Section 8.11.3.A, agree to an amendment or other cure to resolve a potential termination event absent agreement by all other Parties pursuant to Section 8.4, any other Party may accept the amendment by Notice. If it objects, such other Party: (i) may seek a remedy regarding the potential termination event that resulted in the disputed amendment, to the extent provided by Section 8.8; (ii) may continue to suspend performance of its obligations under this Settlement; and (iii) in either event shall not be liable in any manner as a result of its objection or the suspension of its performance of its obligations under this Settlement.
- E. The Parties shall undertake to complete the applicable procedures under this Section within six months of a potential termination event.

#### 8.11.4 Obligations Surviving Termination

- A. Upon termination, all documents and communications related to the development, execution, or submittal of this Settlement to any agency, court, or other entity, shall not be used as evidence, admission, or argument in any forum or proceeding for any purpose to the fullest extent allowed by Applicable Law, including 18 C.F.R. § 385.606. This provision does not apply to the results of studies or other technical information developed for use by a Public Agency Party. This provision does not apply to any information that was in the public domain prior to the development of this Settlement or that became part of the public domain at some later time through no unauthorized act or omission by any Party. Notwithstanding the termination of this Settlement, all Parties shall continue to maintain the confidentiality of all settlement communications.

This provision does not prohibit the disclosure of: (a) any information held by a federal agency that is not protected from disclosure pursuant to the Freedom of Information Act or other applicable law; (b) any information held by a state or local agency that is not protected from disclosure pursuant to the California Public Records Act, the Oregon Public Records Law, or other applicable state or federal law; or (c) disclosure pursuant to Section 1.6.8.

- B. The prohibitions in Section 1.6.8 survive termination of this Settlement.

8.12 No Third Party Beneficiaries

This Settlement is not intended to and shall not confer any right or interest in the public, or any member thereof, or on any persons or entities that are not Parties hereto, as intended or expected third party beneficiaries hereof, and shall not authorize any non-Party to maintain a suit at law or equity based on a cause of action deriving from this Settlement. The duties, obligations, and responsibilities of the Parties with respect to third parties shall remain as imposed under Applicable Law.

8.13 Elected Officials Not to Benefit

No Member of or Delegate to Congress, Resident Commissioner, or elected official shall personally benefit from this Settlement or from any benefit that may arise from it.

8.14 No Partnership

Except as otherwise expressly set forth herein, nothing contained in this Settlement is intended or shall be construed to create an association, trust, partnership, or joint venture, or impose any trust or partnership duty, obligation, or liability on any Party, or create an agency relationship between or among the Parties or between any Party and any employee of any other Party.

8.15 Governing Law

8.15.1 Contractual Obligation

A Party's performance of an obligation arising under this Settlement shall be governed by (i) applicable provisions of this Settlement, and (ii) Applicable Law for obligations of that type.

8.15.2 Regulatory Obligation

A Party's performance of a Regulatory Obligation, once approved as proposed by this Settlement, shall be governed by Applicable Law for obligations of that type.

8.15.3 Reference to Applicable Law

Any reference in this Settlement to an Applicable Law shall be deemed to be a reference to such law in existence as of the date of the action in question.

### 8.16 Federal Appropriations

To the extent that the expenditure or advance of any money or the performance of any obligation of the Federal Parties under this Settlement is to be funded by appropriations of funds by Congress, the expenditure, advance, or performance shall be contingent upon the appropriation of funds by Congress that are available for this purpose and the apportionment of such funds by the Office of Management and Budget. No breach of this Settlement shall result and no liability shall accrue to the United States in the event such funds are not appropriated or apportioned.

### 8.17 Confidentiality

The confidentiality provisions of the *Agreement for Confidentiality of Settlement Communications and Negotiations Protocol Related to the Klamath Hydroelectric Project*, as it may be amended, shall continue as long as this Settlement is in effect.

## 9. Execution of Settlement

### 9.1 Signatory Authority

Each signatory to this Settlement certifies that he or she is authorized to execute this Settlement and to legally bind the entity he or she represents, and that such entity shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

### 9.2 Signing in Counterparts

This Settlement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as if all signatory Parties had signed the same instrument. The signature pages of counterparts of this Settlement may be compiled without impairing the legal effect of any signatures thereon.

### 9.3 New Parties

Any entity listed on pages 1 through 2 of this Settlement that does not execute this Settlement on the Effective Date will become a Party, subject to Section 2.2, by signing the Settlement within 60 days of the Effective Date, without amendment of this Settlement or other action by existing Parties. After 60 days from the Effective Date, any such entity, or any other entity, may become a Party, subject to Section 2.2 through an amendment of this Settlement in accordance with Section 8.4.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**  
**ORDER NO 10-364**

IN WITNESS THEREOF,

the Parties, through their duly authorized representatives, have caused this Settlement to be executed as of the date set forth in this Settlement.

United States Department of the Interior

Ken Salazar

Date: 2/18/2010

by: Ken Salazar, Secretary of the Interior

United States Department of Commerce's National Marine Fisheries Service

Dr. Jane Lubchenco

Date: 2/18/2010

by: Dr. Jane Lubchenco, Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator

PacifiCorp

Gregory E. Abel

Date: 2/18/2010

by: Gregory E. Abel, Chairman and CEO

States

California Natural Resources Agency

Arnold Schwarzenegger

Date: 2.18.10

by: Arnold Schwarzenegger, Governor

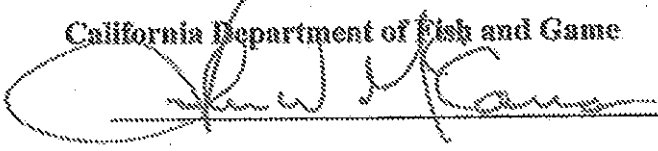
State of Oregon

Theodore R. Kulongoski

Date: 2/18/10

by: Theodore R. Kulongoski, Governor

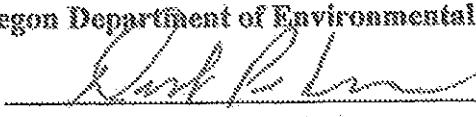
California Department of Fish and Game



Date: 2-18-10

by: John McCamman, Acting Director

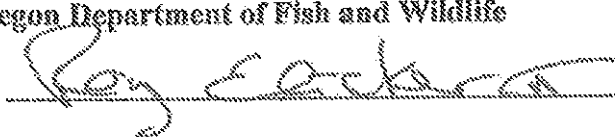
Oregon Department of Environmental Quality



Date: 2/18/10

by: Dick Pedersen, Director

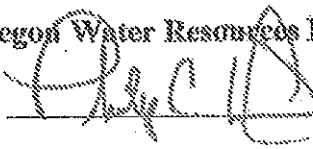
Oregon Department of Fish and Wildlife



Date: 2/18/10

by: Roy Elicker, Director

Oregon Water Resources Department



Date: 2/18/10

by: Phillip C. Ward, Director

Tribes

Karuk Tribe

Arch Super

Date: 02/18/10

by: Arch Super, Chairman

Klamath Tribes

Joseph Kirk

Date: 2-18-10

by: Joseph Kirk, Chairman

Yurok Tribe

Thomas O'Rourke

Date: 2-18-10

by: Thomas O'Rourke, Chairperson

Counties

Del Norte, California

\_\_\_\_\_

Date: \_\_\_\_\_

by: Gerry Hemmingsen, Chairman, Board of Supervisors

Humboldt County, California

Jill K. Duffy

Date: 2/18/10

by: Jill K. Duffy, Fifth District Supervisor

Klamath County, Oregon

John Elliott

Date: 2/18/2010

by: John Elliott, Commissioner

Klamath Hydroelectric Settlement Agreement  
Signature Page



**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**  
**ORDER NO 10-364**

Siskiyou County, California

\_\_\_\_\_ Date: \_\_\_\_\_

by: Chairman, Board of Supervisors

Irrigators

Ady District Improvement Company

Robert Flowers Date: 4-15-10

by: Robert Flowers, President

Collins Products, LLC

\_\_\_\_\_ Date: \_\_\_\_\_

by: Eric Schooler, President and Chief Executive Officer

Enterprise Irrigation District

Tracy L. Ronningen Date: 2/18/10

by: TRACY L. RONNINGEN,  
PRESIDENT

Don Johnston & Son

\_\_\_\_\_ Date: \_\_\_\_\_

by: Donald Scott Johnston, Owner

Inter-County Properties Co., which acquired title as Inter-County Title Co.

Darrel E. Pierce Date: FEB. 18, 2010

by: Darrel E. Pierce

Klamath Hydroelectric Settlement Agreement  
Signature Page

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**ORDER NO 10-364**

**Siskiyou County, California**

\_\_\_\_\_ Date: \_\_\_\_\_

by: Chairman, Board of Supervisors

**Irrigators**

**Ady District Improvement Company**

\_\_\_\_\_ Date: \_\_\_\_\_

by: Robert Flowers, President

**Collins Products, LLC**

 \_\_\_\_\_ Date: 2/19/2010

by: Eric Schooler, President and Chief Executive Officer

**Enterprise Irrigation District**

\_\_\_\_\_ Date: \_\_\_\_\_

by: Michael Beeson, President

**Don Johnston & Son**

\_\_\_\_\_ Date: \_\_\_\_\_

by: Donald Scott Johnston, Owner

**Inter-County Properties Co., which acquired title as Inter-County Title Co.**

\_\_\_\_\_ Date: \_\_\_\_\_

by: Darrel E. Pierce

**Siskiyou County, California**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Chairman, Board of Supervisors

**Irrigators**

**Ady District Improvement Company**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Robert Flowers, President

**Collins Products, LLC**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Eric Schooler, President and Chief Executive Officer

**Enterprise Irrigation District**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Michael Beeson, President

**Don Johnston & Son**



Date: 2-25-10

by: Donald Scott Johnston, Owner

**Inter-County Properties Co., which acquired title as Inter-County Title Co.**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Darrel E. Pierce

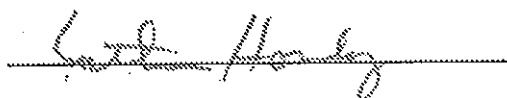
Klamath Irrigation District



Date: 2/18/2010

by: David Cacka, President

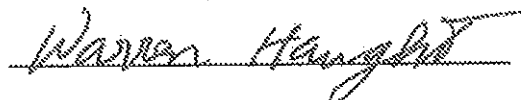
Klamath Drainage District



Date: 2/18/2010

by: Luther Horsley, President

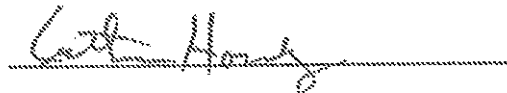
Klamath Basin Improvement District



Date: 2-18-2010

by: Warren Haught, Chairman

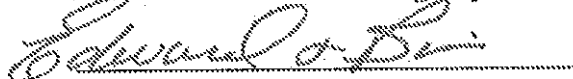
Klamath Water Users Association



Date: 2/18/2010

by: Luther Horsley, President

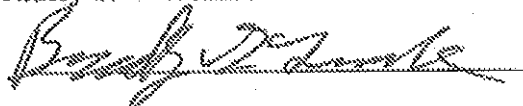
Klamath Water and Power Agency



Date: 2/18/2010

by: Edward T. Bair, Chairman of the Board

Bradley S. Luscombe



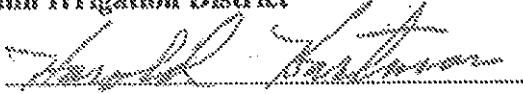
Date: 2-18-10

by: Bradley S. Luscombe

Klamath Hydroelectric Settlement Agreement  
Signature Page

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**  
ORDER NO 10-364

**Malin Irrigation District**



Date: 9/15/2010

by: Harold Hartman, President

**Midland District Improvement Company**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Frank Anderson, President

**Pine Grove Irrigation District**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Doug McCabe, President

**Pioneer District Improvement Company**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Lyle Logan, President

**Plevna District Improvement Company**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Steve Metz, President

**Poe Valley Improvement District**

\_\_\_\_\_

Date: \_\_\_\_\_

by: William Kennedy, President

**Malin Irrigation District**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Harold Hartman, President

**Midland District Improvement Company**

*Frank Anderson*  
\_\_\_\_\_

Date: *April 10, 2010*

by: Frank Anderson, President

**Pine Grove Irrigation District**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Doug McCabe, President

**Pioneer District Improvement Company**

*Lyle Logan*  
\_\_\_\_\_

Date: *Feb 18-10*

by: Lyle Logan, President

**Plevna District Improvement Company**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Steve Metz, President

**Poe Valley Improvement District**

\_\_\_\_\_

Date: \_\_\_\_\_

by: William Kennedy, President

**Malin Irrigation District**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Harold Hartman, President

**Midland District Improvement Company**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Frank Anderson, President

**Pine Grove Irrigation District**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Doug McCabe, President


**Pioneer District Improvement Company**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Lyle Logan, President

**Plevna District Improvement Company**

 \_\_\_\_\_

Date: 2/19/2010

by: Steve Metz, President

**Poe Valley Improvement District**

\_\_\_\_\_

Date: \_\_\_\_\_

by: William Kennedy, President

Reames Golf and Country Club

L.H. Woodward

Date: 2-18-10

by: L.H. Woodward, President

Shasta View Irrigation District

Claude Hagerty

Date: 4/15/10

by: Claude Hagerty, President

Sunnyside Irrigation District

Charles Kerr

Date: 2-18-10

~~by: Charles Kerr, President~~

Tulelake Irrigation District

John Crawford

Date: 2/18/10

by: John Crawford, President

Upper Klamath Water Users Association

\_\_\_\_\_

Date: \_\_\_\_\_

by: Karl Scronce, President

Van Brimmer Ditch Company

Gary Orem

Date: 2/23/10

by: Gary Orem, President



PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED  
ORDER NO 10-364

Reames Golf and Country Club

\_\_\_\_\_

Date: \_\_\_\_\_

by: L.H. Woodward, President

Shasta View Irrigation District

\_\_\_\_\_

Date: \_\_\_\_\_

by: Claude Hagerty, President

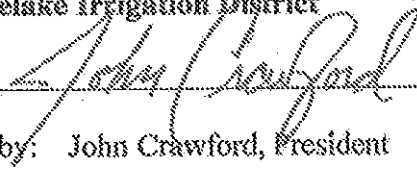
Sunnyside Irrigation District

\_\_\_\_\_

Date: \_\_\_\_\_

by: Charles Kerr, President

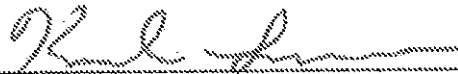
Tulelake Irrigation District

  
\_\_\_\_\_

Date: \_\_\_\_\_

by: John Crawford, President

Upper Klamath Water Users Association

  
\_\_\_\_\_

Date: 2-18-10

by: Karl Scronce, President

Van Brimmer Ditch Company

\_\_\_\_\_

Date: \_\_\_\_\_

by: Gary Orem, President

Randolph Walthall and Jane Walthall as trustees under declaration of trust dated November 28, 1995

Jane Walthall

Date: 2-24-10

by: Jane Walthall

Westside Improvement District #4

\_\_\_\_\_

Date: \_\_\_\_\_

by: Steven L. Kandra, President

Winema Hunting Lodge, Inc.

\_\_\_\_\_

Date: \_\_\_\_\_

by: R. David Bolls, III

Other Organizations

American Rivers

\_\_\_\_\_

Date: \_\_\_\_\_

by: Rebecca Wodder, President

California Trout

\_\_\_\_\_

Date: \_\_\_\_\_

by: George Shillinger, Executive Director

Institute for Fisheries Resources

\_\_\_\_\_

Date: \_\_\_\_\_

by: Glen Spain, Northwest Regional Director

Klamath Hydroelectric Settlement Agreement  
Signature Page

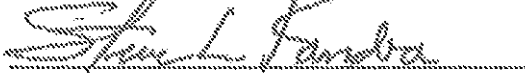
Randolph Walthall and Jane Walthall as trustees under declaration of trust dated November 28, 1995

\_\_\_\_\_

Date: \_\_\_\_\_

by: Jane Walthall

Westside Improvement District #4



Date: 2-18-2010

by: Steven L. Kandra, President

Winema Hunting Lodge, Inc.

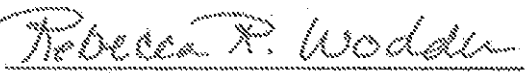
\_\_\_\_\_

Date: \_\_\_\_\_

by: R. David Bolls, III

Other Organizations

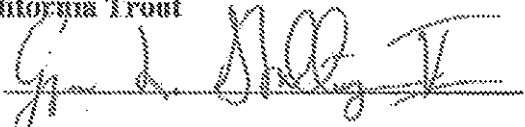
American Rivers



Date: 2-18-2010

by: Rebecca Wodder, President

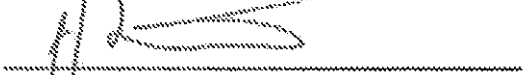
California Trout



Date: 2-18-2010

by: George Shillinger, Executive Director

Institute for Fisheries Resources



Date: 2/18/10

by: Glen Spain, Northwest Regional Director

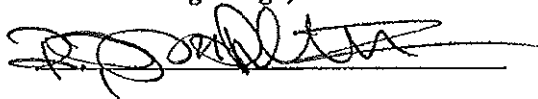
Randolph Walthall and Jane Walthall as trustees under declaration of trust dated November 28, 1995

\_\_\_\_\_ Date: \_\_\_\_\_  
by: Jane Walthall

Westside Improvement District #4

\_\_\_\_\_ Date: \_\_\_\_\_  
by: Steven L. Kandra, President

Winema Hunting Lodge, Inc.

 \_\_\_\_\_ Date: 04/06/2010  
by: R. David Bolts, III, Secretary

Other Organizations

American Rivers

\_\_\_\_\_ Date: \_\_\_\_\_  
by: Rebecca Wodder, President

California Trout

\_\_\_\_\_ Date: \_\_\_\_\_  
by: George Shillinger, Executive Director

Institute for Fisheries Resources

\_\_\_\_\_ Date: \_\_\_\_\_  
by: Glen Spait, Northwest Regional Director

Klamath Hydroelectric Settlement Agreement  
Signature Page

**Northern California Council, Federation of Fly Fishers**

C. Mark Rockwell Date: 2/18/10

by: Mark Rockwell, Vice-President, Conservation

**Pacific Coast Federation of Fishermen's Associations**

Glen Spain Date: 2/18/10

by: Glen Spain, Northwest Regional Director

**Salmon River Restoration Council**

Pete Brucker Date: 2/18/10

by: Petey Brucker, President

**Trout Unlimited**

Chris Wood Date: 2/18/10

by: Chris Wood, Chief Executive Officer

**Individual Non-Party Signatory**

**Arthur G. Baggett, Jr.<sup>1</sup>**

Arthur G. Baggett, Jr. Date: 2/18/2010  
by: Arthur G. Baggett, Jr.

<sup>1</sup> Mr. Baggett is signing this Agreement as a recommendation to the California State Water Resources Control Board, and not as a Party.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Joint Application for Approval of License Amendment and License Transfer**

## **Attachment K.2**

**Order No. 10-390, Docket No. UE 219 (Or. Pub.  
Util. Comm'n, Oct. 11, 2010)**

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**ORDER NO. 10-390**

**ENTERED 10/11/10**

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

UE 219

In the Matter of

PACIFICORP, dba PACIFIC POWER

Application to Implement the Provisions of  
Senate Bill 76.

ERRATA  
ORDER

**DISPOSITION: ORDER NO. 10-364 CORRECTED**

On September 16, 2010, the Public Utility Commission of Oregon issued Order No. 10-364. Subsequently, the Commission determined that the order contained several minor errors. The purpose of this order is to correct those errors as follows:

1. On page 5, third paragraph, second line, “may not exceed \$200 million (calculated as Oregon’s share of the costs)” should read: “May not exceed Oregon’s share of the \$200 million customer contribution (calculated as \$184 million).” *See* SB 76, Section 4(3).
2. On page 8, last paragraph, last line, “by putting a \$200 million cap on the Company’s Oregon customer contribution” should read: “by putting a \$200 million cap on the Company’s customer contribution.”
3. On page 15, first paragraph, line 7, “principal preservation that current yields” should read: “principal preservation and current yields.”
4. On page 17, second paragraph, line 5, “the collected amount will total \$200 million,” should read: “the collected amount will total \$184 million.”
5. On page 17, second paragraph, line 6, “by December 31, 2010” should read: “by December 31, 2020.”

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

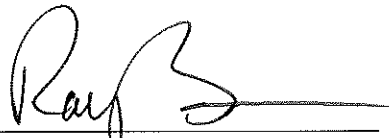
**ORDER NO. 10-390**

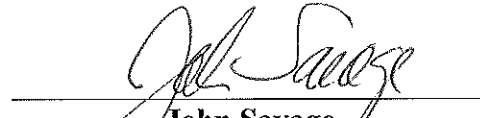
6. The appeal language on page 30 should be changed from: "A party may appeal this order \* \* \* with the Court of Appeals in compliance with ORS 183.480-183.484" to: "A party may appeal this order by filing a petition for review with the Supreme Court of Oregon in compliance with ORS 757.736(5) and the pertinent provisions of ORS 183.480-183.484."


The remainder of Order No. 10-364 is unchanged.

IT IS SO ORDERED.

Made, entered, and effective           **OCT 11 2010**          .

  
\_\_\_\_\_  
**Ray Baum**  
Chairman

  
\_\_\_\_\_  
**John Savage**  
Commissioner

  
\_\_\_\_\_  
**Susan K. Ackerman**  
Commissioner





**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Joint Application for Approval of License Amendment and License Transfer**

## **Attachment K.3**

**Order No. 16-218, Docket No. UE 219 (Or. Pub.  
Util. Comm'n, June 8, 2016)**

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UE 219

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Revision to Schedule 199 Klamath Dam  
Removal Surcharges.

ORDER

DISPOSITION: REVISED RECOMMENDATION ADOPTED

This order memorializes our decision, made and effective at our June 7, 2016 Regular Public Meeting, to adopt a revised recommendation in this matter. The Staff Report, which is attached as Appendix A, recommended that we direct PacifiCorp, dba Pacific Power, to revise its Klamath Dam Removal Surcharges. Because PacifiCorp had already made such a filing, we adopted the following revised recommendation:

Recommend the Commission approve PacifiCorp's Advice Filing 16-08, which revises Schedule 199 to increase the Klamath Dam Removal Surcharges to the maximum allowed by law, to be effective July 1, 2016.

Dated this 8 day of June, 2016, at Salem, Oregon.

**Lisa D. Hardie**  
Chair



**John Savage**  
Commissioner

**Stephen M. Bloom**  
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

ORDER NO. 16 218

ITEM NO. CA13

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: June 7, 2016

REGULAR \_\_\_\_\_ CONSENT X EFFECTIVE DATE N/A

DATE: May 31, 2016

TO: Public Utility Commission

FROM: Marc Hellman 

THROUGH: Jason Eisdorfer 

SUBJECT: PACIFIC POWER: (Docket No. UE 219) Revision to Schedule 199  
Klamath Dam Removal Surcharges.

**STAFF RECOMMENDATION:**

Staff recommends the Commission increase the Pacific Power ("PacifiCorp" or "Company") Klamath Dam Removal Surcharges to the maximum authorized level.

**APPLICABLE LAW:**

The Commission must require PacifiCorp to collect monies from customers to pay for Oregon's share of the removal of the Klamath River dams as set forth in ORS 757.736. The maximum level of surcharges is two percent of PacifiCorp's annual revenue requirement as determined in PacifiCorp's last rate case decided prior to January 1, 2010. (ORS 757.736(3)). In Docket UE 219, Order No. 10-364, at 17-18, the Commission ordered that no less than thirty days after the Company's annual Transition Adjustment Mechanism ("TAM") filing, Staff, the Company, and other interested parties review the status of surcharge collections to determine if Schedule 199 surcharges should be revised. If revisions were required, then the Company would be required to file a revised tariff within 60 days of the TAM filing, to be effective 30 days from the tariff filing.

Klamath Dam Surcharge Review  
May 31, 2016  
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**DISCUSSION:**

Background

The initial Klamath Agreement in Principle ("KAP") was signed November 13, 2008, by the states of Oregon and California, the United States, and by PacifiCorp. The KAP was followed by the Klamath Hydroelectric Settlement Agreement ("KHSa"), which was effective on February 18, 2010. The agreement sets in place a process for the ultimate removal of four dams<sup>1</sup> on the Klamath River (hereinafter "Klamath Dams").

In response to the KAP, the Oregon Legislature passed Senate Bill 76 ("SB 76"),<sup>2</sup> which prescribes various actions, with specific timeframes, that must be taken by PacifiCorp and the Commission to implement the final agreement. The Oregon Legislature subsequently passed House Bill 3461 that enabled the Commission to direct the Klamath Dam removal funds to the Oregon State Treasury (OST) for the potential of earning higher rates of interest.<sup>3</sup>

In February 2016, a second KAP was executed by the parties to the first KAP, indicating their intent to negotiate an amended KHSa. The KHSa was amended on April 6, 2016, and, in Section 2.2, it provides that each party shall support implementation of SB 76.

The Klamath dam removal surcharges have been set as follows. On March 18, 2010, PacifiCorp filed Schedule 199, Klamath Dam Removal Surcharges, as required by SB 76, along with the workpapers necessary for Staff to perform an analysis of whether the surcharge rates comply with the applicable statutes.<sup>4</sup> As also required, the tariff rates went into effect on the day they were filed, as the tariff was filed subsequent to January 1, 2010.

The surcharges resulted in an overall increase in rates of 1.7 percent, based on the annual revenue requirement and given the rates in effect as of January 1, 2010. The 1.7 percent is less than the two percent cap specified in section ORS 757.736(3). In any year, the surcharges collected cannot exceed \$19.06 million.<sup>5</sup> This value is two percent of PacifiCorp's revenue requirement as determined by the Commission in the most recent case concluded prior to January 1, 2010.<sup>6</sup>

<sup>1</sup> Specifically, the dams are known as J.C. Boyle, Copco 1 and 2, and Iron Gate.

<sup>2</sup> Codified as ORS 757.732 – 757.744.

<sup>3</sup> Codified as ORS 757.738(1)(c).

<sup>4</sup> ORS 757.736(7) requires that the amount of each surcharge shall be calculated based on a collection schedule that will fund, by December 31, 2019, Oregon's share of the customer contribution of the \$200 million identified in the KAP. Oregon's share is \$184 million including interest.

<sup>5</sup> \$19,061,680 is the maximum annual surcharge that may be collected under ORS 757.736(3).

<sup>6</sup> ORS 757.736(3).

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Klamath Dam Surcharge Review  
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At any time, if the Commission determines that surcharge collections exceed those needed or allowed, the Commission has the discretion to direct the trust account trustee to refund excess amounts to customers, to otherwise use the amounts to benefit customers, or to adjust future surcharge amounts.<sup>7</sup> If one or more of the Klamath Dams will not be removed, ORS 757.736(10) specifies the actions the Commission must take for distribution of the collection fund.

At the May 8, 2012, public meeting, the Commission adopted the Staff recommendation not to raise the surcharges in 2012, and directed \$30 million of the surcharge fund monies to be deposited in the OST's Oregon Intermediate Term Pool (OITP). After working extensively with Treasury, the transfer of funds to the OITP took place in September 2012. The interest earned through the OITP has been significantly greater than previously achieved through the short term fund alternative.

On May 21, 2013, the Commission adopted the Staff recommendation to raise the surcharges in 2013, consistent with Advice Filing No. 13-010. With an Oregon State Treasury short-term fund (OSTF) interest rate of 0.57 percent and an OITP of 2.5 percent, the proposed change increased the annual surcharge by \$1.7 million and ensured the attainment of \$184 million target. The average residential consumer using 900 kWh a month had a bill impact of \$0.11 per month as a result of this change.

On June 10, 2014, the Commission, in Order No. 14-211, adopted the Staff recommendation not to raise the surcharges in 2014. At the June 23, 2015, public meeting, the Commission again adopted the Staff recommendation not to raise the surcharges in 2015, as stated in Order No. 15-201.

#### Current Review of Surcharge Rate Levels

On May 24, 2016, representatives from interested parties held a conference call to review the surcharge. The parties included Staff, PacifiCorp, Industrial Customers of Northwest Utilities, Pacific Coast Federation of Fishermen's Association, American Rivers and California Trout, Oregon Fish and Wildlife, and the Oregon Department of Water Resources.

Based on the Treasury interest rate statements provided by Staff, the Company evaluated the Schedule 199 surcharge rates. The interest rates considered for the short term fund – OSTF – and the intermediate fund – OITP – are 0.5 and 2.0 percent respectively. (These rates are slightly lower than the previous year's estimates.) With no change to the current level of surcharge rates, the total annual surcharge collection for calendar 2016 is projected to be \$18,339,420. This value is less than two percent

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<sup>7</sup> ORS 757.736(9).

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specified in ORS 757.736(3), and hence complies with the two percent cap. The total surcharge collection (interest adjusted) projected at the current surcharge rates is \$178,732,848. This value is calculated as the sum of the actual collection with interest from March 2010 to February 2016, and the forecast collection with interest from March 2016 through December 2019. If the Commission does not change the present surcharge rates through 2019, the current projections show a significant deficit of \$5,267,152, given the \$184 million target. For reference, the worksheet provided by the Company is attached to this memo as Attachment 1. If the Commission increased the surcharge rates to the maximum amount of \$19,061,680 allowed by law, through 2019, the current projections show a smaller deficit of \$1,433,709, again given the \$184 million target. This is illustrated in Attachment 2.

At the May 24, 2016, conference call, Staff proposed that the surcharge be increased to the maximum level. No parties on the call disagreed. The Citizens' Utility Board of Oregon was not on the call, but sent separate correspondence to Staff conveying that CUB does not oppose raising the surcharge.

Raising the surcharge to the statutory cap will not cause a substantive rate increase as the surcharge is currently somewhat close to the cap. PacifiCorp prepared a table with the rate increases, which shows that schedules do not have a rate increase more than 0.1 percent with the increased surcharge. This table is provided as Attachment 3.

Consistent with Order No. 10-364, interested parties will meet again in 2017 to reassess the surcharge revenues, interest rates, updated load forecasts, and fund balances and to discuss other issues related to the annual surcharge review.

The Company has reviewed this memo and has no areas of concern.

**PROPOSED COMMISSION MOTION:**

Require PacifiCorp to file Klamath Dam Removal Surcharges that are the maximum allowed by law, to be effective 30 days from the tariff filing.

Klamath Dam Surcharge

PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED

PACIFIC POWER  
STATE OF OREGON  
KLAMATH DAM REMOVAL SURCHARGES  
ACTUAL AND FORECAST COLLECTIONS REFLECTING PRESENT RATES

Line No.	Description	Sch. No.	Actual Collections	Actual Collections	Actual Collections	Actual Collections	Actual Collections	Actual Collections	Actual Collections	Total Actual Collections	Partial 2016 Forecast	2017 Forecast	2018 Forecast	2019 Forecast	Total Forecast Collections	Total Collections Actual plus Forecast
			Mar-Dec 2010	2011	2012	2013	2014	2015	Jan-Feb 2016	March 2016	Mar-2016	Mar-Dec 2016	Forecast Collections	Forecast Collections	Forecast Collections	Forecast Collections
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	
<b>Residential</b>																
1	Residential	4	\$5,078,272	\$7,389,998	\$7,341,033	\$7,722,702	\$7,804,117	\$7,703,782	\$1,710,809	\$44,750,713	\$6,162,338	\$7,688,171	\$7,736,931	\$7,725,450	\$29,312,890	\$74,063,604
2	Total Residential		\$5,078,272	\$7,389,998	\$7,341,033	\$7,722,702	\$7,804,117	\$7,703,782	\$1,710,809	\$44,750,713	\$6,162,338	\$7,688,171	\$7,736,931	\$7,725,450	\$29,312,890	\$74,063,604
<b>Commercial &amp; Industrial</b>																
3	Com. Svc. < 31 kW	23	\$1,098,596	\$1,541,161	\$1,540,603	\$1,599,978	\$1,597,190	\$1,578,038	\$294,188	\$9,249,754	\$1,362,097	\$1,660,542	\$1,679,209	\$1,687,215	\$6,389,063	\$15,638,817
4	Com. Svc. 31 - 200 kW	28	\$1,921,775	\$2,615,111	\$2,653,332	\$2,775,078	\$2,933,236	\$2,923,379	\$516,238	\$16,338,149	\$2,392,509	\$2,900,325	\$2,930,091	\$2,945,326	\$11,168,251	\$27,506,400
5	Com. Svc. 201 - 999 kW	30	\$1,234,997	\$1,680,970	\$1,710,016	\$1,864,537	\$1,943,761	\$1,918,516	\$318,697	\$10,671,494	\$1,601,661	\$1,910,952	\$1,918,724	\$1,927,733	\$7,358,470	\$18,029,964
6	Large General Service >= 1,000 kW	48	\$1,999,914	\$2,778,591	\$2,907,734	\$3,228,705	\$3,491,098	\$3,494,724	\$529,555	\$18,430,320	\$2,809,180	\$3,169,078	\$3,117,080	\$3,125,836	\$12,221,174	\$30,651,494
7	Partial Reg. Svc. >= 1,000 kW	47	\$182,122	\$144,621	\$58,223	\$63,239	\$78,099	\$79,474	\$39,155	\$613,954	\$148,288	\$167,441	\$164,298	\$164,755	\$644,782	\$1,259,716
8	Agricultural Pumping Service	-1	\$223,060	\$238,935	\$254,505	\$326,552	\$333,101	\$328,718	\$1,859	\$1,702,758	\$336,731	\$338,250	\$338,250	\$338,250	\$1,351,482	\$3,054,240
9	Total Commercial & Industrial		\$6,630,466	\$9,989,388	\$9,124,412	\$9,857,090	\$10,382,484	\$10,332,848	\$1,699,721	\$57,006,409	\$8,649,866	\$10,146,589	\$10,147,652	\$10,189,116	\$39,133,223	\$96,139,652
<b>Lighting</b>																
10	Outdoor Area Lighting Service	15	\$17,548	\$22,783	\$22,190	\$22,647	\$22,782	\$22,474	\$3,722	\$134,146	\$17,943	\$21,916	\$22,125	\$22,204	\$84,188	\$218,334
11	Street Lighting Service	50	\$13,809	\$17,623	\$17,049	\$17,078	\$16,261	\$15,477	\$2,690	\$99,987	\$13,248	\$15,875	\$15,879	\$15,879	\$60,882	\$160,869
12	Street Lighting Service FIPS	51	\$42,740	\$57,717	\$58,610	\$61,157	\$63,447	\$63,489	\$10,943	\$358,104	\$53,330	\$63,905	\$63,921	\$63,921	\$245,077	\$603,181
13	Street Lighting Service	52	\$1,356	\$1,153	\$1,039	\$822	\$814	\$772	\$152	\$6,109	\$663	\$794	\$794	\$794	\$3,045	\$9,154
14	Street Lighting Service	53	\$7,999	\$11,123	\$11,023	\$10,921	\$11,675	\$11,540	\$1,941	\$66,222	\$9,841	\$11,793	\$11,796	\$11,796	\$45,226	\$111,448
15	Recreational Field Lighting	54	\$1,267	\$1,793	\$1,681	\$2,168	\$2,192	\$2,286	\$339	\$11,706	\$1,872	\$2,284	\$2,319	\$2,325	\$8,794	\$20,501
16	Total Public Street Lighting		\$84,719	\$112,193	\$111,592	\$114,793	\$117,171	\$116,017	\$19,788	\$676,273	\$96,897	\$116,567	\$116,829	\$116,920	\$447,213	\$1,123,486
17	TOTAL		\$11,793,457	\$16,491,579	\$16,577,037	\$17,694,584	\$18,303,773	\$18,147,667	\$3,430,518	\$102,493,995	\$14,900,101	\$17,951,326	\$18,001,412	\$18,031,486	\$68,893,326	\$171,326,721
18	Target Collection		\$12,795,572	\$16,160,492	\$16,160,492	\$17,251,552	\$18,334,272	\$18,408,988	\$3,095,656		\$15,478,278	\$18,658,920	\$18,751,616	\$18,845,547		
19	Over/(Under) Collection		(\$1,002,115)	\$331,087	\$416,545	\$443,032	(\$30,499)	(\$266,341)	\$334,663		(\$569,177)	(\$707,594)	(\$750,204)	(\$814,061)		
20	Interest		(708)	20,273	390,360	745,764	862,785	699,449	111,074		\$863,302	\$1,131,962	\$1,237,633	\$1,344,234		7,406,127
21	Collection plus Interest		\$11,792,749	\$16,511,852	\$16,967,398	\$18,440,349	\$19,166,557	\$18,842,096	\$3,541,392		\$15,772,404	\$19,083,268	\$19,239,045	\$19,375,720		\$178,732,848
22														Target Oregon Balance (w/interest)		\$184,000,000
23														Estimated Over/(Under) Amount		(\$5,267,152)

ORDER NO.

16 218

Attachment 1  
Klamath Dam Surcharge

16 218

ORDER NO.

Klamath Dam Removal Surcharge Revision - Schedule 199

PACIFIC POWER  
ESTIMATED EFFECT OF PROPOSED PRICE CHANGE  
ON REVENUES FROM ELECTRIC SALES TO ULTIMATE CONSUMERS  
DISTRIBUTED BY RATE SCHEDULES IN OREGON  
FORECAST 12 MONTHS ENDED DECEMBER 31, 2017

Line No.	Description	Sch No.	No. of Cust	MWh	Present Revenues (\$000)			Proposed Revenues (\$000)			Change				Line No.
					Base Rates	Adders <sup>1</sup>	Net Rates	Base Rates	Adders <sup>1</sup>	Net Rates	Base Rates		Net Rates		
											(\$000)	% <sup>2</sup>	(\$000)	% <sup>2</sup>	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(8) - (5)	(11)/(5)	(10) - (7)	(13)/(7)	
							(5) + (6)			(8) + (9)					
<b>Residential</b>															
1	Residential	4	490,463	5,230,048	\$597,765	\$15,481	\$613,246	\$597,765	\$15,952	\$613,717	\$0	0.0%	\$471	0.1%	1
2	Total Residential		490,463	5,230,048	\$597,765	\$15,481	\$613,246	\$597,765	\$15,952	\$613,717	\$0	0.0%	\$471	0.1%	2
<b>Commercial &amp; Industrial</b>															
3	Gen. Svc. < 31 kW	23	78,294	1,107,028	\$121,654	\$7,108	\$128,762	\$121,654	\$7,196	\$128,850	\$0	0.0%	\$89	0.1%	3
4	Gen. Svc. 31 - 200 kW	28	9,997	2,028,199	\$183,967	\$6,773	\$190,740	\$183,967	\$6,956	\$190,923	\$0	0.0%	\$183	0.1%	4
5	Gen. Svc. 201 - 999 kW	30	810	1,364,966	\$110,135	\$3,453	\$113,588	\$110,135	\$3,562	\$113,697	\$0	0.0%	\$109	0.1%	5
6	Large General Service >= 1,000 kW	48	187	2,708,614	\$193,506	(\$3,287)	\$190,219	\$193,506	(\$3,070)	\$190,436	\$0	0.0%	\$217	0.1%	6
7	Partial Req. Svc. >= 1,000 kW	47	7	143,112	\$12,104	(\$251)	\$11,853	\$12,104	(\$239)	\$11,865	\$0	0.0%	\$11	0.1%	7
8	Agricultural Pumping Service	41	7,950	233,276	\$26,924	(\$845)	\$26,079	\$26,924	(\$824)	\$26,100	\$0	0.0%	\$21	0.1%	8
9	Total Commercial & Industrial		97,245	7,585,195	\$648,290	\$12,952	\$661,242	\$648,290	\$13,581	\$661,871	\$0	0.0%	\$629	0.1%	9
<b>Lighting</b>															
10	Outdoor Area Lighting Service	15	6,424	9,366	\$1,203	\$249	\$1,452	\$1,203	\$250	\$1,453	\$0	0.0%	\$1	0.1%	10
11	Street Lighting Service	50	227	7,782	\$864	\$190	\$1,054	\$864	\$190	\$1,054	\$0	0.0%	\$0	0.0%	11
12	Street Lighting Service HPS	51	781	19,908	\$3,488	\$795	\$4,283	\$3,488	\$797	\$4,285	\$0	0.0%	\$2	0.0%	12
13	Street Lighting Service	52	35	401	\$52	\$10	\$62	\$52	\$10	\$62	\$0	0.0%	\$0	0.1%	13
14	Street Lighting Service	53	257	9,910	\$622	\$138	\$760	\$622	\$138	\$760	\$0	0.0%	\$0	0.0%	14
15	Recreational Field Lighting	54	107	1,464	\$121	\$25	\$146	\$121	\$25	\$146	\$0	0.0%	\$0	0.1%	15
16	Total Public Street Lighting		7,831	48,831	\$6,350	\$1,407	\$7,757	\$6,350	\$1,410	\$7,760	\$0	0.0%	\$3	0.0%	16
17	Total Sales before Emp. Disc. & AGA		595,539	12,864,074	\$1,252,405	\$29,839	\$1,282,244	\$1,252,405	\$30,943	\$1,283,348	\$0	0.0%	\$1,103	0.1%	17
18	Employee Discount				(\$464)	(\$3)	(\$467)	(\$464)	(\$3)	(\$467)	\$0		\$0		18
19	Total Sales with Emp. Disc		595,539	12,864,074	\$1,251,941	\$29,836	\$1,281,777	\$1,251,941	\$30,940	\$1,282,881	\$0	0.0%	\$1,103	0.1%	19
20	AGA Revenue				\$2,439		\$2,439	\$2,439		\$2,439	\$0		\$0		20
21	Total Sales		595,539	12,864,074	\$1,254,380	\$29,836	\$1,284,216	\$1,254,380	\$30,940	\$1,285,320	\$0	0.0%	\$1,103	0.1%	21

<sup>1</sup> Excludes effects of the Low Income Bill Payment Assistance Charge (Sch. 91), BPA Credit (Sch. 98), Public Purpose Charge (Sch. 290) and Energy Conservation Charge (Sch. 297).  
INCLUDES the effect of Klamath Dam Removal Surcharges (Sch. 199).

<sup>2</sup> Percentages shown for Schedules 48 and 47 reflect the combined rate change for both schedules



PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED

ORDER NO. 16 218

PACIFIC POWER  
STATE OF OREGON  
KLAMATH DAM REMOVAL SURCHARGES  
ACTUAL AND FORECAST COLLECTIONS REFLECTING INCREASE OF SURCHARGE TO MAXIMUM LEVEL

Line No.	Description	Set No.	Actual Collections	Actual Collections	Actual Collections	Actual Collections	Actual Collections	Actual Collections	Total Actual Collections	Partial 2016 Forecast Mar-Dec Collections	2017 Forecast Collections	2018 Forecast Collections	2019 Forecast Collections	Total Forecast Collections	Total Collections Actual plus Forecast	
			Mar-Dec 2010	2011	2012	2013	2014	2015	Jun-Feb 2016					March 2010 - Feb 2016		March 2016 - Dec 2019
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	
<b>Residential</b>																
1	Residential	4	\$5,078,272	\$7,389,998	\$7,341,033	\$7,722,702	\$7,804,117	\$7,703,782	\$1,710,809							
2	Total Residential		\$5,078,272	\$7,389,998	\$7,341,033	\$7,722,702	\$7,804,117	\$7,703,782	\$1,710,809							
<b>Commercial &amp; Industrial</b>																
3	Gen. Svc. < 31 kW	23	\$1,098,596	\$1,541,161	\$1,540,603	\$1,599,978	\$1,597,190	\$1,578,038	\$394,188							
4	Gen. Svc. 31 - 200 kW	28	\$1,821,775	\$2,615,111	\$2,633,332	\$2,775,078	\$2,933,236	\$2,923,379	\$516,238							
5	Gen. Svc. 201 - 999 kW	30	\$1,234,997	\$1,680,970	\$1,710,016	\$1,864,537	\$1,943,761	\$1,918,516	\$318,697							
6	Large General Service >= 1,000 kW	48	\$1,999,914	\$2,778,591	\$2,907,734	\$1,228,705	\$3,491,098	\$3,494,724	\$329,655							
7	Partial Req. Svc. >= 1,000 kW	47	\$152,122	\$144,621	\$38,233	\$62,239	\$78,099	\$79,474	\$39,155							
8	Agricultural Pumping Service	41	\$225,050	\$228,833	\$254,505	\$326,552	\$339,101	\$328,718	\$1,889							
9	Total Commercial & Industrial		\$6,630,466	\$8,969,388	\$9,124,412	\$9,857,090	\$10,382,484	\$10,322,848	\$1,699,721							
<b>Lighting</b>																
10	Outdoor Area Lighting Service	15	\$17,548	\$22,783	\$22,190	\$22,647	\$22,782	\$22,674	\$3,722							
11	Street Lighting Service	50	\$13,809	\$17,623	\$17,049	\$17,078	\$16,261	\$15,477	\$2,690							
12	Street Lighting Service HPS	51	\$42,740	\$57,717	\$58,610	\$61,157	\$63,447	\$63,489	\$10,943							
13	Street Lighting Service	52	\$1,356	\$1,153	\$1,039	\$822	\$814	\$772	\$152							
14	Street Lighting Service	53	\$7,999	\$11,123	\$11,023	\$10,921	\$11,675	\$11,540	\$1,941							
15	Recreational Field Lighting	54	\$1,267	\$1,793	\$1,681	\$2,168	\$2,192	\$2,266	\$339							
16	Total Public Street Lighting		\$84,719	\$112,193	\$111,592	\$114,793	\$117,171	\$116,017	\$19,788							
17	TOTAL		\$11,708,457	\$16,491,579	\$16,577,037	\$17,694,584	\$18,303,773	\$18,142,547	\$3,430,318	\$102,433,395	\$15,506,904	\$19,061,680	\$19,061,680	\$19,061,680	\$72,691,944	
18	Target Collection		\$12,795,572	\$16,160,492	\$16,160,492	\$17,251,652	\$18,334,272	\$18,408,988	\$0							
19	Over/(Under) Collection		(\$1,087,115)	\$331,087	\$416,545	\$443,032	(\$30,499)	(\$266,341)	\$3,430,318							
20	Interest		(708)	20,273	390,360	745,764	862,785	699,449	111,074							
21	Collection plus Interest		\$11,792,749	\$16,511,852	\$16,967,398	\$18,440,349	\$19,166,537	\$18,842,096	\$3,541,392	\$864,549	\$1,137,744	\$1,244,883	\$1,260,778		7,440,951	
22										\$16,371,454	\$20,199,424	\$20,310,563	\$20,422,458		\$182,566,291	
23																
															Target Oregon Balance (w/interest)	\$184,000,000
															Estimated Over/(Under) Amount	(\$1,433,709)

Attachment 3  
Klamath Dam Surcharge

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**Joint Application for Approval of License Amendment and License Transfer**

## **Attachment K.4**

**Decision 11-05-002, Docket No. A.10-03-015 (Cal.  
Pub. Utils. Comm'n, May 6, 2011)**

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**Date of Issuance 5/6/2011**

Decision 11-05-002 May 5, 2011

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of PACIFICORP (U901E), an Oregon Company, for an Order Authorizing a Rate Increase Effective January 1, 2011 and Granting Conditional Authorization to Transfer Assets, pursuant to the Klamath Hydroelectric Settlement Agreement.

Application 10-03-015  
(Filed March 18, 2010)

**DECISION APPROVING A RATE INCREASE FOR PACIFICORP PURSUANT TO THE KLAMATH HYDROELECTRIC SETTLEMENT AGREEMENT**

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Attachment A - List Of Testimony And Exhibits Entered Into Record In A.10-03-015

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**DECISION APPROVING A RATE INCREASE FOR PACIFICORP PURSUANT  
TO THE KLAMATH HYDROELECTRIC SETTLEMENT AGREEMENT**

**1. Summary**

This decision approves the request by PacifiCorp, an Oregon Company, for: 1) a surcharge of \$13.76 million collected over nine years; 2) institution of two trust accounts for the deposit of the surcharge; and 3) depreciation of the rate base of the Klamath River Project assets, and amortization of the relicensing and settlement costs associated with the Klamath River Project, on an accelerated basis. Approval of these requests will allow PacifiCorp to fulfill requirements of the Klamath Hydroelectric Settlement Agreement that affect its California customers. PacifiCorp must also file a separate Tier 3 advice letters at later dates requesting authority to transfer the Klamath River Project assets. On an annual basis, PacifiCorp must file a Status Report as an information only filing which identifies the status of key milestones in achieving the goals of the Klamath Hydroelectric Settlement Agreement. This proceeding remains open.

**2. Background**

The Federal Energy Regulatory Commission (FERC) licenses each non-federal hydropower project.<sup>1</sup> The Klamath Hydroelectric Project, which includes four PacifiCorp owned dams as well as related plant (Klamath assets), received its original license in 1954. The Klamath assets are located in the Klamath Basin, which consists of the lands tributary to the Klamath River, straddling southern Oregon and northern California. PacifiCorp serves

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<sup>1</sup> Pursuant to the Federal Power Act Part I, 16 U.S.C. §§ 791 et seq. Such a license has a term of not more than 50 years, subject to renewal. FERC must assure that the project will comply with laws applicable at the time the new license is authorized.

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approximately 555,000 customers in Oregon and 45,000 customers in California.<sup>2</sup> PacifiCorp's Klamath assets complied with laws applicable at the time of their original licensing at both the state and federal level. There are now many laws that did not exist in 1954, which the Klamath assets would have to comply with in order to be granted a new license.<sup>3</sup> Prior to the Klamath Hydroelectric Settlement Agreement (KHSA), the FERC Final Environmental Impact Statement found that the Klamath assets would require substantial modifications to be in compliance with current law and the requirements of a new FERC license.<sup>4</sup>

For many years, the Klamath assets have been at the center of controversy in the Klamath Basin, with numerous entities calling for the removal of the dams. Native American tribes, environmental groups, and organizations that promote the conservation and health of fish have protested and filed lawsuits, complaining that the Klamath assets threaten, among other things, water quality and the health and availability of local species of fish, such as Klamath River salmon. For example, these fish require cold clean water with sufficient oxygen in order to survive and spawn, and these groups have stated that the dams affect the natural flow of the river, which reduces the flushing of spawning gravel downstream, and causes the water temperature to rise and toxic algae to bloom, threatening the survival of the fish.

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<sup>2</sup> In addition to serving customers in California and Oregon, PacifiCorp provides service in the states of Utah, Washington, Idaho and Wyoming.

<sup>3</sup> These laws include but are not limited to the: Clean Water Act (1972); Endangered Species Act (1973); National Environmental Policy Act (1969); Coastal Zone Management Act (1972); and, Forest Land Planning and Management Act (1976).

<sup>4</sup> Exhibit CG-1R at 8-11.

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In December 2000, prior to the 2006 expiration of its FERC license to operate the Klamath assets, PacifiCorp filed its Notice of Intent to begin the relicensing process, which could take anywhere from eight to 30 years to resolve.<sup>5</sup> After starting the FERC relicensing process, PacifiCorp met with stakeholders in the Klamath Basin to discuss relicensing of, and possible alternatives to relicensing of, the Klamath assets, such as removal of the dams, as well as the costs of the various alternatives. Parties also discussed how to resolve numerous related controversies within the Klamath Basin, such as how to address water conservation, water quality, irrigation, hydropower, and restoration of fisheries and wildlife habitats, all of which have been the subject of litigation for many years.

After years of negotiation, in February 2010, PacifiCorp and over 40 federal, state, county, tribal, irrigation, conservation, and fishing organizations, including the states of California and Oregon, executed a final KHSA, which provides an economical framework for resolution of many long-standing and contentious issues faced in the Klamath Basin. By physically removing the Klamath assets pursuant to the KHSA, the cost to ratepayers of resolving issues in the Klamath Basin is capped, protecting ratepayers from the unknown cost of relicensing the dams; and the water of the Klamath River will be able to flow freely downstream, allowing spawning gravel downstream to be flushed clean and the water temperature to return to normal.

In part, as it relates to PacifiCorp's California ratepayers, the KHSA proposes that, instead of pursuing the unknown cost of and timeline of relicensing, the Klamath assets be transferred to a trustee who would be

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<sup>5</sup> Exhibit PPL-100 at 4.

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responsible for their removal, after selected milestones are met. Pursuant to the KHSA, the first source of funding for removal would be from PacifiCorp's California and Oregon customers,<sup>6</sup> the customer cost would be capped, and the funds collected from customers would be held in trust over the period between authorization of the funding and the target start of removal in 2020. The KHSA also proposes that, in order for the Klamath assets to be completely depreciated by the estimated removal date of 2020, depreciation of the Klamath assets be accelerated over the same period that the funding is proposed to be collected. In order to fulfill the requirements of the KHSA, PacifiCorp must request authority from this Commission.

On March 18, 2010, PacifiCorp did just that when it filed this application, in which it requests, pursuant to the KHSA: 1) authorization to institute a surcharge of \$13.76 million; 2) institution of the California Copco I and II/Iron Gate Dams Trust Account and the California J.C. Boyle Dam Trust Account<sup>7</sup> (California Klamath Trust Accounts) for the deposit of the surcharge; 3) authorization to depreciate the rate base of the Klamath assets and to amortize the relicensing and settlement costs associated with the Klamath River Project on an accelerated basis; and 4) authority to transfer the Klamath River Project assets

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<sup>6</sup> KHSA Section 4.1.2.A states that the difference between: i) the surcharges collected from both Oregon and California customers; and ii) the actual cost to complete removal of the Klamath assets, would be funded with a California bond or another appropriate California financing mechanism, not to exceed \$250 million.

<sup>7</sup> KHSA at Section 4.2.2(a) - These two trust accounts are named after PacifiCorp owned dams in the Klamath Basin. The California J.C. Boyle Dam Trust Account would hold 25% of the surcharge funds collected from PacifiCorp's California customers, and the California Copco I and II/Iron Gate Dams Trust Account would hold 75% of the surcharge funds collected from PacifiCorp's California customers.



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to an entity designated to remove the dams in question. These specific elements are designed to implement the ratemaking and regulatory requirements of the KHSA as they relate to PacifiCorp's California ratepayers, and to allow the Klamath assets to be removed and the KHSA to come to fruition.

On April 26, 2010, the Division of Ratepayer Advocates (DRA) filed a *Motion to Hold in Abeyance* (Motion), requesting that the assigned ALJ hold A.10-03-015 in abeyance until after the *Safe, Clean, and Reliable Drinking Water Supply Act of 2010* (Bond Measure)<sup>8</sup> had been voted on by the California voters in the November 2010 election; or the State of California finds another source of funding for the cost of removal allocated to the State in the KHSA. On that same day, a protest to the application was filed by DRA, requesting that A.10-03-015 be either denied without prejudice and PacifiCorp directed to file a new application after California financing had been secured, or that DRA's Motion be approved. PacifiCorp filed a response to the Motion and a reply to the protest on May 6, 2010.

On May 19, 2010, a prehearing conference (PHC) took place in San Francisco to establish the service list for the proceeding, discuss the scope of the proceeding, and develop a procedural timetable for the management of the proceeding. At the PHC, the assigned ALJ granted party status to The Utility Reform Network (TURN), Institute of Fisheries Resources,<sup>9</sup> Pacific Coast

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<sup>8</sup> The Bond Measure was originally scheduled to be part of the November 2010 ballot as Proposition 18. However, on August 9, 2010, the State Legislature voted to postpone the vote to the November 2012 ballot.

<sup>9</sup> Institute of Fisheries Resources is a California non-profit salmon and marine conservation organization, loosely affiliated with the Pacific Coast Federation of Fishermen's Associations, which has been working for a number of years to restore

*Footnote continued on next page*

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Federation of Fisherman's Association,<sup>10</sup> Trout Unlimited,<sup>11</sup> California Trout,<sup>12</sup> American Rivers,<sup>13</sup> the Karuk Tribe,<sup>14</sup> the Yurok Tribe,<sup>15</sup> and the Klamath Water Users Association.<sup>16</sup> The Institute of Fisheries Resources, Pacific Coast

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salmon runs to the Klamath River that it states have been damaged by the impacts of the Klamath assets on the Klamath River.

<sup>10</sup> The Pacific Coast Federation of Fishermen's Associations is a California non-profit organization that is the largest trade organization of commercial fishing families on the west coast, many of whose member groups and members are PacifiCorp customers.

<sup>11</sup> Trout Unlimited is a national coldwater fish conservation organization with over 140,000 members nationwide, including approximately 9,000 members in California. Trout Unlimited is a non-profit corporation whose mission is to conserve, protect, and restore North America's trout and salmon fisheries and their water sheds.

<sup>12</sup> California Trout is a statewide organization whose purpose is to protect and restore California's wild trout, native steelhead, and their habitats. California Trout has approximately 7,000 members, and fifty affiliate local angling clubs representing approximately 10,000 more persons.

<sup>13</sup> American Rivers is a non-profit conservation organization whose mission is to restore and protect the nation's rivers for the benefit of fish, wildlife, and people. American Rivers has approximately 30,000 members nationwide and approximately 5,000 members in California.

<sup>14</sup> The Karuk Tribe is a federally recognized Indian Tribe. The Karuk Tribe is a PacifiCorp ratepayer with a vested interest in both maintaining affordable power rates and a reliable power supply, as well as the restoration of Klamath River fisheries which the Karuk Indians have relied on for time beyond record.

<sup>15</sup> The Yurok Tribe is a federally recognized tribe having 5,579 members located along the Klamath River. Tribal headquarters, housing, schooling, police, court, watershed, fisheries, cultural, and Yurok offices are all within the PacifiCorp service area. The Yurok Tribal membership depends on the fish of the Klamath River for their livelihood, culture, and way of life.

<sup>16</sup> The Klamath Water Users Association is a non-profit corporation organized to preserve, protect, and defend the water and power rights of landowners of the Klamath Basin, and to promote wise management of resources. Members of the Klamath Water Users Association, who are also customers of PacifiCorp, include irrigation districts and similar public and quasi-public agencies in Oregon and California, who receive water through the Klamath Reclamation Project in the Upper Klamath Basin.

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Federation of Fisherman's Association, Trout Unlimited, California Trout, and American Rivers, are collectively referred to as Conservation Groups.<sup>17</sup>

The Assigned Commissioner's Ruling and Scoping Memo (Scoping Memo) issued on June 18, 2010, set forth the procedural schedule, assigned the presiding officer, and addressed the scope of this proceeding and other procedural matters following the PHC. The Scoping Memo also confirmed the preliminary determination of ratesetting and the necessity for hearings. In the Scoping Memo, the Assigned Commissioner denied DRA's motion to hold A.10-03-015 in abeyance and its request to dismiss A.10-03-015 and require PacifiCorp to file a new application after California state funding has been secured. We confirm his ruling herein.

On July 9, 2010, a workshop was held in San Francisco to discuss the background and details of the KHSA. Status Reports filed by PacifiCorp on July 1, July 30, August 31, October 1, November 1, December 2, and December 29, 2010, and February 1, March 1, and April 1, 2011, addressed progress made by PacifiCorp regarding the formation of the requested trust accounts, development of trustee instructions, and the receipt of permissions required for the proposed surcharge revenues to be deemed tax-free.

On July 30, 2010, PacifiCorp served its supplemental testimony. On September 10, 2010, DRA and the Conservation Groups each served testimony. On October 6, 2010, PacifiCorp served its rebuttal testimony. Evidentiary hearings were held on October 18, 2010. Opening Briefs were filed on

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<sup>17</sup> The Conservation Groups have intervened in past Commission proceedings regarding PacifiCorp, and have more recently intervened in PacifiCorp's application to the FERC for relicensing of the Klamath assets.

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November 17, 2010 and Reply Briefs were filed on November 24, 2010 by PacifiCorp, DRA, and Conservation Groups.

**3. Should the Commission Require PacifiCorp to File a New Application at a Later Date, after Selected Conditions are Met?**

As discussed in the Scoping Memo, DRA's motion to hold A.10-03-015 in abeyance and its request to dismiss the current application were denied. DRA again recommended in its testimony that the Commission require PacifiCorp to file a new application after several conditions, are met, including: 1) approval of a bond measure or alternative source of funding for the State of California's share of the KHSA costs; 2) passage of federal legislation required by the KHSA; and 3) approval by the Internal Revenue Service of the trust funds PacifiCorp requested be set up.<sup>18</sup>

With regards to the KHSA as a whole, the Conservation Groups, all of whom are parties to this proceeding as well as signatories to the KHSA, approve of the KHSA.<sup>19</sup>

DRA supports its position by stating that "a formidable army of parties" are opposed to the KHSA and the bond measure, which DRA states could result in the termination of the KHSA.<sup>20</sup> In evidentiary hearings, DRA witness Mark Loy responded to questions regarding the above statement, and agreed that no parties to the current case are opposed the KHSA, and even though

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<sup>18</sup> Exhibit DRA-001R at 2 and 14.

<sup>19</sup> CG-1R at 5.

<sup>20</sup> Exhibit DRA-001R at 9.

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attempted, he had not been able to contact other signatories to the KHSA to determine the other signatories' positions.<sup>21</sup>

In response to questions regarding who he had spoken with to determine that there was no sponsor for the federal legislation required by the KHSA, Witness Loy stated that he had not consulted with any member of Congress regarding their consideration of introduction of such federal legislation, and in particular, had not consulted any member of the California or Oregon Federal delegations or their staffs whose districts encompass the Klamath Basin.<sup>22</sup>

DRA presented no evidence in testimony regarding its request to dismiss the current application that would have us reconsider the assigned Commissioner's original ruling not to do so. The KHSA is supported by the Conservation Groups and PacifiCorp, both of whom are signatories to the KHSA and parties to the current case. Also, since the customer surcharge is the first source of funding pursuant to the KHSA, and California bond funding will only be used to the extent if any, that the cost of removal exceeds the Oregon and California customer contributions,<sup>23</sup> there is no reason to hold up consideration of the reasonableness of the customer surcharge. Indeed, by its nature, the ratepayer surcharge must be collected over a period of time before the funds are needed, while the State of California's share of the funding need not be collected over time. This is another reason why we decline to delay our consideration of PacifiCorp's application until the State of California's share has been secured.

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<sup>21</sup> RT 46-47.

<sup>22</sup> RT 99-100.

<sup>23</sup> Exhibit PPL-105 at 7-8 and KHSA Section 4.1.

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And, although DRA states there is no evidence of a sponsor for the federal legislation required to implement the KHSA, that does not mean there will never be a sponsor, especially since DRA did not consult with federal legislators from California and Oregon that would be most interested in this proposed legislation. As quoted in Conservation Groups' Opening Brief, Carl Sagan stated it eloquently, the "absence of evidence is not evidence of absence."<sup>24</sup>

Therefore, we see no reason to disturb our prior ruling which denied DRA's motion to hold in abeyance this proceeding or to dismiss the current application.

**4. Should the Commission Authorize a Surcharge to Recover the Costs of Removing the Klamath Assets?**

Pursuant to Section 4.1.1 of the KHSA, PacifiCorp requests that the Commission establish a non-bypassable refundable rate surcharge to collect \$13.76 million from its California customers to fund the removal of the Klamath assets. PacifiCorp's proposed total surcharge estimate of \$13.76 million represents California ratepayer's approximately 8% share of customer contributions (Oregon and California customers combined) and an approximately 3% share of the \$450 million cap on the total removal cost, settled upon in the KHSA.

PacifiCorp states that the surcharge and the terms of the KHSA provide significant benefits to PacifiCorp's customers, in particular the cost cap which protects ratepayers from the uncertain costs of relicensing, litigation, decommissioning, and removal that customers may be responsible for absent the KHSA. More specifically, PacifiCorp references the benefit of cost protection

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<sup>24</sup> Conservation Group Opening Brief at 16.

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regarding dam removal cost, and the avoidance of the risks of possible litigation due to controversies in the Klamath Basin region regarding the operation of the dam's and FERC relicensing costs.

The Conservation Groups agree with PacifiCorp's recommendation, stating that implementation of the KHSA will provide substantial benefits to ratepayers in comparison to the alternative of relicensing the Klamath assets. In support of its position, the Conservation Groups state that the cost of removal was established based on the terms of the KHSA and is shared among a number of parties, while in the case of relicensing, the total cost, including such items as compliance with water quality certifications, legal costs, and possible decommissioning, would most likely be borne alone by PacifiCorp and its ratepayers.<sup>25</sup>

We find that authorization of the proposed surcharge pursuant to the terms of the KHSA provides the most cost effective method of collecting the funds necessary to resolve conflicts over resources in the Klamath Basin. Through the use of the KHSA cost cap, ratepayers are protected from the uncertain costs of relicensing, litigation, and decommissioning that customers may be responsible for sans the KHSA. If the KHSA surcharge is not instituted, the KHSA may be terminated,<sup>26</sup> and ratepayers would then be exposed to an uncertain amount of costs in addressing what to do with PacifiCorp's Klamath assets.

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<sup>25</sup> Exhibit CG-1R at 5-15.

<sup>26</sup> KHSA at Section 8.11.1.D.

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## **5. How Should a Surcharge be Recovered?**

PacifiCorp proposes to spread the estimated \$13.76 million surcharge equally over a nine-year period resulting in annual collections of approximately \$1.53 million/year, which translates into a bill increase of about \$1.61/month for the average residential customer.<sup>27</sup> In support of its request to collect the proposed surcharge over nine years, PacifiCorp states that the KHSA has a target start date for removal of the Klamath assets of January 1, 2020.<sup>28</sup> Additionally, by collecting the surcharge over nine years and collecting interest on the balance of those funds, the difference between the estimated cost allocable to California customers (\$16 million) and what PacifiCorp is actually charging the ratepayers (\$13.76 million) is reduced.<sup>29</sup>

PacifiCorp requests that the rate design of its proposed surcharge be based on an allocation among customers classes based on each class's share of generation revenues, which PacifiCorp believes is equitable.<sup>30</sup> Conservation Groups support PacifiCorp's proposed surcharge allocation methodology.<sup>31</sup>

DRA initially recommended that, if a surcharge is instituted, it be recovered over 18 years, in order to: 1) reflect what it considers the risks and uncertainties identified in the KHSA and elsewhere that may result in the United States Secretary of the Interior terminating the KHSA; and 2) safeguard against overcollection of surcharge revenues from PacifiCorp's California

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<sup>27</sup> A.10-03-015 at 4-5.

<sup>28</sup> KHSA at Section 7.3.1 and A.10-03-015 at 4.

<sup>29</sup> A.10-03-015 at 2 and KHSA at Section 4.1.1.E.

<sup>30</sup> Exhibit PPL-200 at 8-9 and A.10-03-015 at 5.

<sup>31</sup> Conservation Group Opening Brief at 17.



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customers in order to minimize ratepayer exposure to any unrealized costs.<sup>32</sup> In its Opening Brief, DRA does not oppose PacifiCorp's proposed surcharge rate design allocation method, but only if dam removal begins in 2020.<sup>33</sup>

It is impossible to determine at this time whether dam removal will actually begin in 2020, however, that is the planned date. In order to ensure that sufficient funds are available to pay for dam removal as it occurs, it is necessary to begin collecting the surcharge well before the estimated date for beginning dam removal.

PacifiCorp states that the surcharge amount collected from California customers may have to be adjusted in the future to reflect variations in load forecasts, but the annual surcharge revenue will not exceed 2% of the authorized annual revenue requirement as of January 1, 2010. PacifiCorp also proposes that if there are funds remaining in the trust accounts after removal of the Klamath assets or if the KHSA does not come to fruition, these funds must be used for the benefit of customers through refunds, the funding of beneficial programs associated with the Klamath assets, or to fund relicensing of the Klamath assets.<sup>34</sup> PacifiCorp did not propose in what forum it would request any future adjustment to or refund of the surcharge.<sup>35</sup>

We find that it is essential that the surcharge of \$13.76 million be collected over nine years, not to exceed the 2% limit of the authorized annual revenue requirement as of January 1, 2010, in order to support the anticipated KHSA

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<sup>32</sup> Exhibit DRA-001R at 3.

<sup>33</sup> DRA Opening Brief at 14.

<sup>34</sup> A.10-03-015 at 6 and KHSA at Section 4.4.3.

<sup>35</sup> Exhibit PPL-200 at 8.

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removal start date, and to accrue sufficient interest to make up the difference between the surcharge collected from California customers and the amount allocated to PacifiCorp's California customers by the KHSA. By collecting the surcharge over nine years, there is time for interest to accrue on the amount collected, which is intended to allow California ratepayers to pay less in rates. Any other option for collecting the surcharge would either result in not having sufficient funds at the target start date for removal of the Klamath assets or require ratepayers to pay more of the cost attributable to California customers. For example, if the ratepayers were to pay the surcharge beginning at a date closer to the target start of removal of the Klamath assets, there would be less time for interest to accrue on the surcharge collected, which would result in California ratepayers having to pay more in order to have sufficient funds by the target start date of removal. In addition, beginning the surcharge closer to the target start of removal would require a higher monthly surcharge just to accrue the same principal amount by the target start of removal.

PacifiCorp's proposed rate design methodology, which allocates the surcharge to customer classes based on authorized generation revenues is reasonable and is adopted herein, because it is based on already authorized revenue allocations. In order to be consistent with the calculation of the surcharge limit of 2%, which is based on an authorized figure as of January 1, 2010, the allocation of the surcharge among customer classes adopted herein should also be based on the authorized inputs (in this case the authorized allocation of generation revenues) as of January 1, 2010. As shown in Exhibit PPL-201, the resulting surcharge revenue requirement for each class will be collected from customers within that class based on the number of kilowatt hours consumed. Within 30 days after this decision is issued, PacifiCorp must

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file a Tier 1 advice letter requesting approval of revised tariff sheets that add the surcharge ordered herein. However, the surcharge will not be effective until the Energy Division determines that the filed tariff changes are in compliance with this decision and Commission staff informs the assigned ALJ and service list of the current proceeding that the California Klamath Trust Accounts have been established. Within 30 days of the latter of (i) the Energy Division's determination of compliance and (ii) Commission staff notification of the California Klamath Trust Accounts establishment, PacifiCorp must begin collecting the surcharge from its California customers, and collect such surcharge over nine years.

The surcharge authorized herein together with the interest accrued, is refundable if the KHSA is terminated, protecting ratepayer funds from being used for purposes other than the benefit of ratepayers. The amount of the surcharge may also be revised, which will protect both ratepayers and PacifiCorp. If PacifiCorp collects too much money, a reduction in the surcharge amount may be requested, protecting ratepayers from being overcharged. If PacifiCorp does not collect enough funds, an increase in the surcharge amount within the 2% limit discussed above may be requested.<sup>36</sup> Any consideration of how to refund the surcharge or any revision to the amount of the surcharge must be requested through an application, with notice to all parties of record in the current proceeding, in order for all interested parties to have an opportunity to weigh in on how the funds should be refunded or revised.

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<sup>36</sup> KHSA at Section 4.1.1.C, E.

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**6. How should Surcharge Funds  
be Administered?**

Pursuant to Section 4.2.2 of the KHSA, PacifiCorp requests that the Commission create the interest bearing California Klamath Trust Accounts and appoint a trustee. PacifiCorp would remit the funds to the trustee, who would hold and manage the funds in the California Klamath Trust Accounts, and disburse funds from the California Klamath Trust Accounts to the Dam Removal Entity (DRE) as required by the trustee instructions and the KHSA, for dam removal. The Commission would establish the trust accounts and be the trustor. Interest earned on the surcharge collected in the California Klamath Trust Accounts would go towards funding the California customer portion of the removal cost pursuant to the KHSA.<sup>37</sup> Pursuant to Section 4.2.2.A of the KHSA, the California Klamath Trust Accounts should be set up so that the surcharge funds are not considered taxable revenues to PacifiCorp. In regards to the creation of the trusts, PacifiCorp also requested that the Commission direct its Executive Director to take the steps necessary to create the California Klamath Trust Accounts as provided for in the KHSA. Witness Andrea L. Kelly for PacifiCorp stated that the Commission's Legal Division had indicated that it would assist in this process if the Commission ordered the trusts to be set up.<sup>38</sup>

Conservation Groups support PacifiCorp's request, stating that the trusts are necessary to assure that the surcharge funds collected are held in trust pending accomplishment of the conditions required by the KHSA.

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<sup>37</sup> A.10-03-015 at 2.

<sup>38</sup> RT 20-21.

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Since the surcharge will be collected over a number of years, are being collected for a specific purpose, and will not begin to be needed for nine years, these funds need to be held separately from other PacifiCorp funds, in order to ensure these funds are available for their authorized purpose.

Therefore, pursuant to our authority under Pub. Util. Code 1701<sup>39</sup> and consistent with the KHSA, the Commission will direct its Executive Director to create the California Klamath Trust Accounts as discussed herein, and appoint a trustee to manage and administer the California Klamath Trust Accounts, in which the surcharge ordered herein will be deposited. The Executive Director may select the California State Treasurer as the trustee.

Once the Energy Division determines that the filed tariff changes are in compliance with this decision and Commission staff informs the assigned ALJ and service list of the current proceeding that the California Klamath Trust Accounts have been established, PacifiCorp will start collecting the surcharge ordered herein. Thereafter, PacifiCorp must remit surcharge funds that it collects on a monthly basis to the trustee no later than the 15th day of the following calendar month. Consistent with the KHSA, 75% of the surcharge funds collected should be deposited to the California Copco I and II/Iron Gate Dams Trust Account and 25% of the surcharge funds collected should be deposited to the California J.C. Boyle Dam Trust Account.

In its Reply Comments, PacifiCorp cited opinions in several court cases in support of its contention that the surcharge funds would not constitute taxable

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<sup>39</sup> <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=9979219881+0+0+0&WAISaction=retrieve>.

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gross income to PacifiCorp.<sup>40</sup> For example, in *Illinois Power Co. v. Commissioner*,<sup>41</sup> the United States Court of Appeals for the Seventh Circuit (Seventh Circuit) states that if the taxpayer had been ordered to place the revenues at issue in a trust account for the benefit of its ratepayers, then such revenues would not be considered income to the taxpayer. The Seventh Circuit went on to state that “The underlying principle is that the taxpayer is allowed to exclude from his income money received under an unequivocal contractual, statutory, or regulatory duty to repay it, so that he really is just the custodian of the money.”<sup>42</sup> The Seventh Circuit relied, in part, on the opinion of the United States Court of Appeals for the Ninth Circuit in *Mutual Tel. Co. v. United States*,<sup>43</sup> which found that if the funds were not received “under a claim of right and without restriction as to its disposition” the funds were not taxable income.<sup>44</sup> In the current case, pursuant to the KHSA and our opinion herein, PacifiCorp is only the custodian of the funds from the date of collection to deposit with the trustee, and cannot, by its regulatory and contractual duty, dispose of it in any other way than deposit with the trustee.

In any event, there will be no net tax effect on PacifiCorp, because if the receipt of the surcharge funds is considered taxable income, the payment to the trustee would be an equal and offsetting business expense. We are therefore satisfied that the surcharge funds will not be taxable income to PacifiCorp.

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<sup>40</sup> PacifiCorp Reply Comments at 3-4.

<sup>41</sup> 792 F.2d 683 (7<sup>th</sup> Cir. 1986).

<sup>42</sup> 792 F.2d at 689.

<sup>43</sup> 204 F.2d 160, 161 (9<sup>th</sup> Cir. 1953).

<sup>44</sup> 204 F.2d at 161.

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## **7. How should the Klamath Assets be Depreciated?**

PacifiCorp requests approval of an accelerated depreciation schedule to depreciate Klamath assets and amortize the relicensing and settlement process costs on a straight-line basis over the same period as the surcharge.<sup>45</sup> This is consistent with the provisions of the KHSA which contemplates fully depreciating each Klamath asset based on the assumption that each of the assets will be removed in 2020, and that the depreciation schedule should be changed at any time if removal of an asset will occur in a year other than 2020.<sup>46</sup> In support of its request, PacifiCorp states that the Commission has already approved this adjustment to implement PacifiCorp's proposed accelerated depreciation for the Klamath assets and amortization of the relicensing and settlement process costs as part of the settlement adopted in PacifiCorp's recent General Rate Case (GRC) decision, D.10-09-010. PacifiCorp goes on to state that if the anticipated remaining lives of the Klamath assets change, the Commission can adjust the depreciation lives of the Klamath assets in a future GRC, to ensure that customers do not overpay the depreciation allowance.<sup>47</sup>

The Conservation Groups support PacifiCorp's request,<sup>48</sup> while DRA believes that it is premature to begin depreciating Klamath assets at an accelerated rate at this time. DRA's concerns regarding accelerated depreciation

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<sup>45</sup> A.10-03-015 at 6-7.

<sup>46</sup> KHSA at Section 4.5.2.

<sup>47</sup> Exhibit PPL-203 at 2-3.

<sup>48</sup> Conservation Groups Opening Brief at 18.

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are similar to the concerns it has with the surcharge – the risk of the KHSA being terminated at some point in the future.<sup>49</sup>

If the Commission does authorize accelerated depreciation of the Klamath assets in the current case, DRA recommends that the period over which the assets are depreciated should be extended from nine to 18 years, to reflect what it considers the risks and uncertainties identified in the KHSA and elsewhere that may result in termination of the KHSA.

Pursuant to D.10-09-020, PacifiCorp is already authorized to amortize the relicensing and settlement process costs and recover depreciation on KHSA assets over a shorter length of time than the original useful life of the assets, so that they will be completely depreciated by the target date for dam removal of 2020. We see no reason to change our previous order. DRA's argument here is essentially the same reasoning it used to support (i) rejection of the surcharge, or (ii) extension of recovery of the surcharge over a longer period of time, proposals which we have already rejected, as discussed in Sections 3 through 5 of this decision. We therefore affirm D.10-09-020 regarding the depreciation authorized for the Klamath assets and amortization of the relicensing and settlement process costs.

We also require PacifiCorp to adjust the depreciation of the Klamath assets and amortization of the relicensing and settlement process costs in any GRC application, if, in the future, the anticipated remaining life of the Klamath assets change. PacifiCorp must also identify the annual and cumulative balance of accelerated depreciation on the Klamath assets and amortized relicensing and

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<sup>49</sup> Exhibit DRA-001R at 13.



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settlement processing costs in all future GRC applications, until the Klamath assets are totally depreciated and the costs amortized.

**8. How Should KHSA Assets  
be Disposed of?**

PacifiCorp requests authorization, pursuant to Public Utilities (Pub. Util.) Code § 851 (Section 851) to transfer the Klamath assets at a later date to a DRE, conditioned upon completion of specific milestones set forth in the KHSA. PacifiCorp requests the authorization to transfer be accomplished via a separate Tier 1 advice letter confirming the attainment of the milestones listed below.<sup>50</sup> PacifiCorp states that delaying Section 851 approval to a later date as part of a separate application would create another regulatory precondition of the KHSA, which may heighten uncertainty to KHSA implementation as a whole.

PacifiCorp requests that the milestones include:<sup>51</sup>

- a. The passage of federal legislation which contains provisions that are materially consistent with Section 2.1.1.A of the KHSA;
- b. The availability of sufficient funds to cover estimated costs of dam removal, provided by California and Oregon customers, as set forth in Section 4.1 of the KHSA;
- c. An Affirmative Determination by the United States Secretary of the Interior determining that the costs of dam removal will not exceed available funds, removal of the dams will advance restoration of the salmon fisheries of the Klamath basin, and removal of the dams is in the public interest as required in Section 3 of the KHSA; and
- d. The issuance by the Dam Removal Entity (DRE) of the DRE Notice, as defined in Section 7.4.1 of the KHSA, at such

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<sup>50</sup> A.10-03-015 at 7-9.

<sup>51</sup> A.10-03-015 at 7-8.

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time as all necessary permits and approvals have been obtained for the removal of a main stem dam, all contracts necessary for facility removal have been finalized, and facility removal is ready to commence.

DRA recommends that the Commission (i) grant PacifiCorp conditional approval of its request for the transfer of Klamath assets, provided PacifiCorp files a an annual status report on the risks, uncertainties and milestones identified in the KHSA and elsewhere, and (ii) require PacifiCorp to file a Section 851 application 60 days prior to a Klamath asset transfer.<sup>52</sup> This is due to DRA's concern that there are significant risks that the KHSA will be terminated or the terms and conditions of the KHSA altered. DRA also states that decision makers are entitled to information regarding KHSA related events that occur subsequent to this proceeding, before authorizing the transfer of Klamath assets.<sup>53</sup>

Conservation Groups support PacifiCorp's Section 851 request, and believe that DRA's request for further review is duplicative and unnecessary to protect PacifiCorp's ratepayers.<sup>54</sup>

In their Reply Comments, PacifiCorp<sup>55</sup> and the Conservation Groups<sup>56</sup> state that the inclusion of milestone d listed above may conflict with the timely removal of the Klamath assets, and that only milestones a, b, and c should be fulfilled and milestone d be expected to be fulfilled within six months, before

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<sup>52</sup> Exhibit DRA-001R at 12.

<sup>53</sup> DRA Opening Brief at 16-17.

<sup>54</sup> Conservation Groups Opening Brief at 19 and Conservation Group Reply Brief at 6.

<sup>55</sup> PacifiCorp Reply Comments at 5.

<sup>56</sup> Conservation Groups Reply Comments at 1.

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PacifiCorp may file a Tier 3 advice letter requesting disposition of the Klamath assets.

Given the amount of time that will pass between the current decision and disposition of the Klamath assets, as well as the controversial nature of the issues addressed by the KHSA, a more detailed review of the request for transfer is required. During this time, events may occur that affect disposition of the Klamath assets. We find, though, that since the Commission has performed a review of PacifiCorp's KHSA requests in the current proceeding, it and the parties will only need to review events that occur subsequent to this proceeding in regards to whether the Klamath assets should be transferred or not. We find that this limited review can be performed in a Tier 3 advice letter review, which balances the need for a limited review with PacifiCorp's request for a quicker final approval of the transfer the Klamath assets.

In an effort to balance PacifiCorp's request for a quicker and less detailed Tier 1 advice letter filing and DRA's recommendation of a new application to resolve the disposition of the Klamath assets, as well as our finding that a review, albeit a limited review of events that occur subsequent to the issuance of this decision should be performed, we approve herein the later transfer of the Klamath assets to the DRE, subject to PacifiCorp's compliance with the conditions noted below and the Commission's determination by resolution that those conditions have been met. We therefore require PacifiCorp to file a Tier 3 advice letter to request authority to dispose of each individual Klamath asset after milestones a - c listed above are met, all permits, approvals, and contracts other than those granted by this Commission regarding the specific Klamath asset have been received, and the transfer of the specific Klamath asset is expected to occur within six months. We have modified milestone d listed

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above, since inclusion of milestone d as originally requested by PacifiCorp would create a circular requirement, where achievement of milestone d would be required to request our approval for the transfer, but milestone d would not be achieved until Commission approval is granted. We have therefore modified milestone d, to eliminate both the requirement for this Commission's approval and the requirement for the DRE notice, which also appears to require advance approval by this Commission. As thus revised condition d will require a showing that:

d. All necessary permits and approvals have been obtained for the removal of a main stem dam, except for the approval of the California Public Utilities Commission; all contracts necessary for that facility's removal have been finalized and that facility's removal is ready to commence within 6 months; and the DRE is prepared to issue the DRE Notice, as defined in Section 7.4.1 of the KHSA, after receipt of this Commission's approval of the transfer of the facility.

While we incorporate PacifiCorp's suggestion that the advice letter can be filed at a time when dam removal is expected to begin within six months, we decline to delete the requirement that all other permits are in hand and that all contracts have been finalized before PacifiCorp files the advice letter. The Commission wants to be sure that at the time it authorizes the actual transfer of the Klamath Assets to the DRE, the dam removal will occur and is not subject to the risk that some other approval will not be obtained. Use of a Tier 3 advice letter should require much less time to process than an application, while providing all parties the opportunity to provide input on the process and the Commission to perform a more informed review to determine PacifiCorp's compliance with all applicable requirements closer to the time of disposition.

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**9. Should PacifiCorp Report on the Status of the KHSA?**

PacifiCorp proposes that it provide an annual report filed with the Commission on May 1<sup>st</sup> of each year that identifies the status of key milestones of the KHSA, including those listed in Exhibit 2 to Exhibit PPL-104 titled *Sequence of Performance Chart*. PacifiCorp states that this information would provide the Commission with a comprehensive update on the progress of implementation of the KHSA.<sup>57</sup> DRA agrees that PacifiCorp should file an annual status report, but recommends that the content include a discussion of the risks, uncertainties, and milestones identified in the KHSA and elsewhere.<sup>58</sup>

Alternatively, the Conservation Groups recommend that PacifiCorp submit a semi-annual report on KHSA implementation (served on all parties to the current proceeding) that addresses, at a minimum: 1) enactment of conforming federal legislation; 2) the Interior Secretary's determination to proceed with dam removal; 3) designation of a DRE; 4) concurrence of Oregon and California in that determination and designation; 5) securing of state funds through rates and California Bond as needed to perform dam removal up to \$450 million; 6) DRE's development of a detailed plan to effect dam removal consistent with budget and liability controls; 7) securing of all permits and funding necessary to perform the detailed plan; and 8) any other items that in PacifiCorp's judgment bear on the probability, schedule, and cost of implementing the KHSA.<sup>59</sup>

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<sup>57</sup> PacifiCorp Opening Brief at 23.

<sup>58</sup> Exhibit DRA-001R at 14.

<sup>59</sup> Exhibit CG-01R at 15-16.

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We find that, given the extended time over which the KHSA implementation will take place, the multiple events that are proposed to take place, and the timing of those events, it is important for parties to be kept informed of the progress towards achievement of the goals of the KHSA. We therefore require PacifiCorp to file a Status Report as an information only filing with the Energy Division on an annual basis beginning May 1, 2012, and serve this Status Report on the service list of the current proceeding. At a minimum, the Status Report must address:

- a. All items listed in Exhibit 2 to Exhibit PPL-104;
- b. The enactment of conforming federal legislation;
- c. The enactment of California legislation to authorize the issuance of a California Bond;
- d. The availability of sufficient funds to cover estimated costs of dam removal, provided by California and Oregon customers, as set forth in Section 4.1 of the KHSA;
- e. An Affirmative Determination by the United States Secretary of the Interior determining that the costs of dam removal will not exceed available funds, removal of the dams will advance restoration of the salmon fisheries of the Klamath basin, and removal of the dams is in the public interest as required in Section 3 of the KHSA;
- f. A list of all necessary permits, approvals, and contracts for removal of the Klamath assets and the date PacifiCorp receives, or expects to receive each;
- g. The Interior Secretary's determination to proceed with dam removal;
- h. The concurrence of Oregon and California in that determination and designation of a DRE;
- i. The securing of California state funds through a California Bond or other form of state funding;
- j. The DRE's development of a detailed plan to effect dam removal consistent with budget and liability controls;

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- k. The securing of all permits and funding necessary to perform the detailed plan;
- l. The amount of surcharge revenue collected in California by year and cumulatively;
- m. Both the amounts of interest accrued on the balances in the California Klamath Trust Accounts since the last Status Report and the cumulative total of interest earned to date;
- n. Whether the combined total of surcharge collected and interest earned to date is expected to equal \$16 million by the start of dam removal;
- o. Based on the surcharge collected and interest earned to date, what adjustment, if any, should be made to the surcharge if it appears that there will be either more or less than \$16 million by the start of dam removal;
- p. Any other items that bear on the probability, schedule, and cost of implementing the KHSA; and
- q. Any other significant events related to the KHSA that have occurred in the past 12 months.

Since PacifiCorp will now be required to file and serve an annual Status Report, we will no longer require PacifiCorp to file and serve the monthly status report it has been filing during the processing of this application. Requiring a report on an annual basis will provide important and time sensitive information to stakeholders. By doing so, all stakeholders in the current case, as well as the Commission, will remain informed regarding progress of the KHSA, and be able to act promptly on events as necessary.

#### **10. Comments on the Proposed Decision**

As provided by Rule 14.3 of our Rules of Practice and Procedure and Pub. Util. Code § 311(g) (1), the draft decision of the ALJ in this matter was mailed to the parties on February 22, 2010. Opening and Reply Comments were filed by PacifiCorp, DRA, and the Conservation Groups on March 14, 2011 and

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March 21, 2011, respectively. Comments received have been addressed throughout this decision as needed.

### **11. Assignment of Proceeding**

Michael Peevey is the Assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. In January 2008, PacifiCorp and over 40 federal, state, county, tribal, irrigation, conservation, and fishing organizations started focused negotiations that resulted in the a final KHSA executed by the parties involved in February 2010.

2. On March 18, 2010, PacifiCorp filed this application, in which it requests authorization, pursuant to the KHSA, to: 1) institute a surcharge of \$13.76 million; 2) institute the California Klamath Trust Accounts for the deposit of the surcharge; 3) depreciate the rate base, and amortize the relicensing and settlement costs associated with the Klamath River Project, on an accelerated basis; and 4) transfer the Klamath River Project assets to an entity designated to remove the dams in question.

3. On April 26, 2010, DRA filed a Motion requesting that the assigned ALJ hold A.10-03-015 in abeyance until after the Bond Measure is voted on by the California voters or the state of California finds another source of funding for the cost of removal allocated to the state in the KHSA.

4. On April 26, 2010, DRA filed a protest to the application requesting that A.10-03-015 be either denied without prejudice and PacifiCorp directed to file a new application after California financing had been secured, or that DRA's Motion be approved.

5. Both DRA's Motion and protest were denied by the assigned Commissioner in his Scoping Memo.



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6. DRA presented no evidence in testimony regarding its request to dismiss the current application that would have us reconsider the assigned Commissioner's original ruling not to do so.

7. The KHSA is supported by the Conservation Groups and PacifiCorp, both of whom are signatories to the KHSA and parties to the current case.

8. Through the use of the KHSA cost cap, ratepayers are protected from the uncertain costs of relicensing, litigation, and decommissioning that customers may be responsible for sans the KHSA. If the KHSA surcharge is not instituted, ratepayers would be exposed to an uncertain amount of costs.

9. In order for PacifiCorp to collect sufficient surcharge funds for the DRE to begin removal of the Klamath assets proposed in the KHSA in a timely fashion and to accrue sufficient interest on the surcharge funds to make up the difference between the collected customer surcharge and the amount required by the KHSA, the surcharge must be recovered over nine years.

10. PacifiCorp's proposed rate design method of allocating the surcharge to customer classes is based on authorized generation revenues.

11. Pursuant to the KHSA, the surcharge paid by customers is the first source of funding for the KHSA, and the California bond funding is a source of funding that will only be used to the extent if any, that the cost of removal exceeds the Oregon and California customer contributions.

12. DRA did not consult with any member of Congress regarding introduction of federal legislation to implement the KHSA and, in particular, did not consult with any member of the California or Oregon Federal delegations, or their staffs, whose districts encompass the Klamath Basin.

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13. Pursuant to D.10-09-020, PacifiCorp is already authorized to recover depreciation and amortization related to the Klamath River Project assets over a shorter length of time.

14. Given the extended time over which the KHSA process takes place, it is important for parties to be kept informed of the progress towards achievement of the terms of the KHSA.

**Conclusions of Law**

1. The proposed surcharge of \$13.76 million collected over nine years from PacifiCorp's California customers should be authorized.

2. Since the customer surcharge is the first source of funding pursuant to the KHSA, and California bond funding will only be used to the extent if any, that the cost of removal exceeds the Oregon and California customer contributions, there is no reason to hold up consideration of the reasonableness of the customer surcharge while approval of California Bond funding is pending.

3. By its nature, the ratepayer surcharge must be collected over a period of time before the funds are needed, while the State of California's share of the funding need not be collected over time.

4. By collecting the surcharge over nine years, there is time for interest to accrue on the amount collected, which is intended to allow California ratepayers to pay less in rates.

5. Even though there may not currently be a sponsor for the federal legislation required by the KHSA, that does not mean there will never be a sponsor for such legislation.

6. The denial of DRA's motion to hold in abeyance and protest to dismiss the current application should be confirmed.

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7. Within 30 days of this decision being issued, PacifiCorp should file a Tier 1 advice letter requesting approval of revised tariffs, adding the surcharge authorized herein. PacifiCorp should not collect this surcharge until the Commission's Energy Division has determined that the revised tariffs are in compliance with this decision, and Commission staff has informed the assigned ALJ and service list of the current proceeding that the California Klamath Trust Accounts have been established. Within 30 days of the latter of (i) the Energy Division's determination of compliance and (ii) Commission staff notification of the California Klamath Trust Accounts establishment, PacifiCorp should begin collecting the surcharge from its California customers.

8. PacifiCorp's proposed method of allocating the surcharge to customer classes, using the authorized allocation of generation revenues as of January 1, 2010, as discussed in Section 5 of this decision, is reasonable and should be adopted. The resulting surcharge revenue requirement for each class should be collected from customers within that class based on the number of kilowatt hours consumed.

9. By collecting the surcharge over nine years, there is time for interest to accrue on the amount collected, which is intended to allow California ratepayers to pay less in rates.

10. The surcharge authorized herein together with accrued interest should be refundable to California customers, and should be used only for the benefit of ratepayers through, for example, customer refunds, the funding of beneficial programs associated with the Klamath assets, or to fund relicensing of the Klamath assets.

11. Consideration of how to revise the Klamath surcharge, or use it to benefit customers through a means other than implementation of the KHSA, should be

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requested through an application, with notice to all parties of record in the current proceeding. The amount of the surcharge may be revised, subject to the annual limit on surcharge revenue of 2% of the authorized annual revenue requirement as of January 1, 2010.

12. Pursuant to our authority under Pub. Util. Code §1701 and consistent with the KHSA, the Commission should direct its Executive Director to create the interest bearing California Klamath Trust Accounts and appoint a trustee to manage and administer the interest bearing California Klamath Trust Accounts, in which the surcharge authorized herein should be held.

13. Surcharge funds collected from California customers should not be taxable income to PacifiCorp.

14. Once PacifiCorp begins collecting the surcharge, PacifiCorp should remit the surcharge on a monthly basis to the trustee, no later than the 15th day of the following calendar month.

15. Consistent with the KHSA, 75% of the surcharge funds collected should be deposited to the California Copco I and II/Iron Gate Dams Trust Account and 25% of the surcharge funds collected should be deposited to the California J.C. Boyle Dam Trust Account.

16. D.10-09-020 authorized accelerated depreciation for Klamath assets and amortization for relicensing and settlement process costs.

17. PacifiCorp should identify the annual and cumulative balance of accelerated depreciation on the Klamath assets and the relicensing and settlement process costs in all future GRC applications, until the Klamath assets are totally depreciated and the costs totally amortized.

18. Further review of PacifiCorp's request to dispose of the Klamath assets is necessary, given the amount of time that will pass between the current decision

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and disposition of the Klamath assets, as well as the controversial nature of the issues addressed by the KHSA.

19. Since the Commission has performed a review of PacifiCorp's KHSA requests in the current proceeding, it and the parties will only need to review events that occur subsequent to this proceeding in regards to whether the Klamath assets should be transferred or not. This limited review can be performed in a Tier 3 advice letter review. Use of a Tier 3 advice letter should require much less time to process than an application, while providing all parties the opportunity to provide input on the process and the Commission to perform a more informed review to determine PacifiCorp's compliance with all applicable requirements closer to the time of disposition.

20. The inclusion of milestone d as a criterion for transfer of the Klamath assets as originally requested by PacifiCorp would create a circular requirement, where achievement of the requested milestone d would be required to request our approval for the transfer, but this milestone d would not be achieved until Commission approval is granted. Since the only item making this criterion circular is the authority granted by the Commission, instead of completely omitting the requested milestone d, we modify it so that the remaining parts of the criteria, which provide valuable information regarding whether the Klamath assets should be transferred, remain.

21. While we incorporate PacifiCorp's suggestion that the advice letter can be filed at a time when dam removal is expected to begin within six months, we decline to delete the requirement that all other permits are in hand and that all contracts have been finalized before PacifiCorp files the advice letter. The Commission wants to be sure that at the time it authorizes the actual transfer of

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the Klamath assets to the DRE that dam removal will occur and is not subject to the risk that some other approval will not be obtained.

22. PacifiCorp should file a Tier 3 advice letter to request authority to dispose of each Klamath asset after the milestones listed below are met. These milestones are:

- a. The passage of federal legislation which contain provisions that are materially consistent with Section 2.1.1.A of the KHSA;
- b. The availability of sufficient funds to cover estimated costs of dam removal, provided by California and Oregon customers, as set forth in Section 4.1 of the KHSA;
- c. An Affirmative Determination by the United States Secretary of the Interior determining that the costs of dam removal will not exceed available funds, removal of the dams will advance restoration of the salmon fisheries of the Klamath basin, and removal of the dams is in the public interest as required in Section 3 of the KHSA; and
- d. All necessary permits and approvals have been obtained for the removal of a main stem dam, except for the approval of the California Public Utilities Commission; all contracts necessary for that facility's removal have been finalized and that facility's removal is ready to commence within 6 months; and the DRE is prepared to issue the DRE Notice, as defined in Section 7.4.1 of the KHSA, after receipt of this Commission's approval of the transfer of the facility.

23. PacifiCorp should file a Status Report as an information only filing with the Energy Division on an annual basis, and serve this Status Report on the service list of this proceeding on an annual basis, due May 1st of each year. The filing of this compliance filing should not reopen the record of this proceeding.

24. As of the date of this decision, PacifiCorp should no longer file and serve the monthly status report it has been providing during the processing of A.10-03-015.

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25. The annual Status Report should address, at a minimum, events regarding and progress toward achievement of:

- a. All items listed in Exhibit 2 to Exhibit PPL-104;
- b. The enactment of conforming federal legislation;
- c. The enactment of California legislation to authorize the issuance of a California Bond;
- d. The availability of sufficient funds to cover estimated costs of dam removal, provided by California and Oregon customers, as set forth in Section 4.1 of the KHSA;
- e. An Affirmative Determination by the United States Secretary of the Interior determining that the costs of dam removal will not exceed available funds, removal of the dams will advance restoration of the salmon fisheries of the Klamath basin, and removal of the dams is in the public interest as required in Section 3 of the KHSA;
- f. A list of all necessary permits, approvals, and contracts for removal of the Klamath assets and the date PacifiCorp receives, or expects to receive each;
- g. The Interior Secretary's determination to proceed with dam removal;
- h. The concurrence of Oregon and California in that determination and designation of a DRE;
- i. The securing of California state funds through a California Bond or other form of state funding;
- j. The DRE's development of a detailed plan to effect dam removal consistent with budget and liability controls;
- k. The securing of all permits and funding necessary to perform the detailed plan;
- l. The amount of surcharge revenue collected in California by year and cumulatively;
- m. Both the amounts of interest accrued on the balances in the California Klamath Trust Accounts since the last Status Report and the cumulative total of interest earned to date;

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- n. Whether the combined total of surcharge collected and interest earned to date is expected to equal \$16 million by the start of dam removal;
  - o. Based on the surcharge collected and interest earned to date, what adjustment, if any, should be made to the surcharge if it appears that there will be either more or less than \$16 million by the start of dam removal;
  - p. Any other items that bear on the probability, schedule, and cost of implementing the KHSA; and
  - q. Any other significant events related to the KHSA that have occurred in the past 12 months.
26. Application 10-03-015 should remain open.

**ORDER**

**IT IS ORDERED** that:

1. Pursuant to the Klamath Hydroelectric Settlement Agreement, PacifiCorp is authorized to institute a Klamath surcharge, to collect \$13.76 million over nine years from its California customers.
2. PacifiCorp must allocate the \$13.76 million Klamath surcharge to customer classes, based on each customer class's authorized allocation of generation revenues as of January 1, 2010. The resulting surcharge revenue requirement for each class must be collected from customers within that class based on the number of kilowatt hours consumed.
3. Within 30 days after the effective date of this decision, PacifiCorp is authorized to file a Tier 1 advice letter requesting approval of revised tariffs adding the Klamath surcharge authorized herein. PacifiCorp must not collect the surcharge until the California Public Utilities Commissions (Commission) Energy Division has determined that the revised tariffs are in compliance with this decision, and the Commission staff has informed the assigned



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Administrative Law Judge and service list of the current proceeding by letter that the California Copco I and II/Iron Gate Dams Trust Account and the California J.C. Boyle Dam Trust Account, both of which are interest bearing, have been established.

4. Within 30 days of the latter of (i)the California Public Utilities Commissions (Commission) Energy Division's determination that the revised tariffs are in compliance with this decision and Commission staff has informed the assigned Administrative Law Judge and service list of the current proceeding by letter that the California Copco I and II/Iron Gate Dams Trust Account and the California J.C. Boyle Dam Trust Account have been established, PacifiCorp must then start collecting the Klamath surcharge.

5. The \$13.76 million Klamath surcharge together with accrued interest is refundable to California customers, and must be used only for the benefit of ratepayers. Such benefits must be provided through customer refunds, the funding of beneficial programs associated with the Klamath assets, or to fund relicensing of the Klamath Hydroelectric Project assets.

6. The amount of the Klamath surcharge may be revised, subject to the annual limit on surcharge revenue of 2% of the authorized annual revenue requirement as of January 1, 2010.

7. Consideration of how to revise the Klamath surcharge, or use it to benefit customers through a means other than implementation of the Klamath Hydroelectric Settlement Agreement, must be requested through an application, with notice to all parties of record in the current proceeding.

8. The Division of Ratepayer Advocate's Motion to Hold in Abeyance is denied.

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9. The California Public Utilities Commission directs its Executive Director to create the interest bearing California Copco I and II/Iron Gate Dams Trust Account and the interest bearing California J.C. Boyle Dam Trust Account, and appoint a trustee to manage the California Copco I and II/Iron Gate Dams Trust Account and the California J.C. Boyle Dam Trust Account, in which the Klamath surcharge must be held and administered.

10. Once PacifiCorp begins collecting the surcharge, PacifiCorp must remit all Klamath surcharge funds to the trustee on a monthly basis, no later than the 15<sup>th</sup> day of the following calendar month, to be deposited in the California Copco I and II/Iron Gate Dams Trust Account and the California J.C. Boyle Dam Trust Account, pursuant to the Klamath Hydroelectric Settlement Agreement. Consistent with the Klamath Hydroelectric Settlement Agreement, 75% of the surcharge funds collected must be deposited to the California Copco I and II/Iron Gate Dams Trust Account and 25% of the surcharge funds collected must be deposited to the California J.C. Boyle Dam Trust Account.

11. PacifiCorp is required to adjust the depreciation of the Klamath Hydroelectric Project assets and amortization of relicensing and settlement process costs in any General Rate Case application, if, in the future, the anticipated useful lives of the Klamath Hydroelectric Project assets changes.

12. PacifiCorp must identify the annual and cumulative balance of accelerated depreciation on the Klamath Hydroelectric Project assets and amortized relicensing and settlement process costs in all future General Rate Case applications, until the Klamath Hydroelectric Project assets are totally depreciated and the costs totally amortized.

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13. PacifiCorp must file a Tier 3 advice letter to request authority to dispose of each Klamath Hydroelectric Project asset after the milestones listed below are met. These milestones are:

- a. The passage of federal legislation which contain provisions that are materially consistent with Section 2.1.1.A of the Klamath Hydroelectric Settlement Agreement;
- b. The availability of sufficient funds to cover estimated costs of dam removal, provided by California and Oregon, as set forth in Section 4.1 of the Klamath Hydroelectric Settlement Agreement;
- c. An Affirmative Determination by the United States Secretary of the Interior determining that the costs of dam removal will not exceed available funds, removal of the dams will advance restoration of the salmon fisheries of the Klamath basin, and removal of the dams is in the public interest as required in Section 3 of the Klamath Hydroelectric Settlement Agreement; and
- d. All necessary permits and approvals have been obtained for the removal of a main stem dam, except for the approval of the California Public Utilities Commission; all contracts necessary for that facility's removal have been finalized and that facility's removal is ready to commence within 6 months; and the DRE is prepared to issue the DRE Notice, as defined in Section 7.4.1 of the KHSA, after receipt of this Commission's approval of the transfer of the facility.

14. PacifiCorp must file a Status Report as an information only filing with the Commission's Energy Division on an annual basis, and serve this Status Report on the service list of Application 10-03-015, due May 1<sup>st</sup> of each year, starting on May 1, 2012.

15. The annual Status Report must address, at a minimum, events regarding and progress toward achievement of:

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- a. All items listed in Exhibit 2 to Exhibit PPL-104;
- b. The enactment of conforming federal legislation;
- c. The enactment of California legislation to authorize the issuance of a California Bond;
- d. The availability of sufficient funds to cover estimated costs of dam removal, provided by California and Oregon customers, as set forth in Section 4.1 of the KHSA;
- e. An Affirmative Determination by the United States Secretary of the Interior determining that the costs of dam removal will not exceed available funds, removal of the dams will advance restoration of the salmon fisheries of the Klamath basin, and removal of the dams is in the public interest as required in Section 3 of the KHSA;
- f. A list of all necessary permits, approvals, and contracts for removal of the Klamath assets and the date PacifiCorp receives, or expects to receive each;
- g. The Interior Secretary's determination to proceed with dam removal;
- h. The concurrence of Oregon and California in that determination and designation of a Dam Removal Entity;
- i. The securing of California state funds through a California Bond or other form of state funding;
- j. The Dam Removal Entity's development of a detailed plan to effect dam removal consistent with budget and liability controls;
- k. The securing of all permits and funding necessary to perform the detailed plan;
- l. The amount of surcharge revenue collected in California by year and cumulatively;
- m. Both the amounts of interest accrued on the balances in the California Copco I and II/Iron Gate Dams Trust Account and the J.C. Boyle Dam Trust Account since the last Status Report and the cumulative total of interest earned to date;

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- n. Whether the combined total of surcharge collected and interest earned to date is expected to equal \$16 million by the start of dam removal;
- o. Based on the surcharge collected and interest earned to date, what adjustment, if any, should be made to the surcharge if it appears that there will be either more or less than \$16 million by the start of dam removal;
- p. Any other items that bear on the probability, schedule, and cost of implementing the Klamath Hydroelectric Settlement Agreement; and
- q. Any other significant events related to the Klamath Hydroelectric Settlement Agreement that have occurred in the past 12 months.

16. As of the date of this decision, PacifiCorp need no longer file and serve the monthly status report it has been providing during the processing of Application 10-03-015.

17. Application 10-03-015 remains open.

This order is effective today.

Dated May 5, 2011, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK FERRON

Commissioners

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## Attachment A

List of Testimony and Exhibits  
Entered into Record in A.10-03-015

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**(ATTACHMENT A)**

<b>Exhibit No.</b>	<b>Sponsor/Witness</b>	<b>Description</b>
<b>Party - PacifiCorp</b>		
PPL-100	Dean S. Brockbank	Direct Testimony
PPL-101	Dean S. Brockbank	Map of Klamath Project
PPL-102	Dean S. Brockbank	Klamath Chronology
PPL-103	Dean S. Brockbank	Summary of KHSA
PPL-104	Dean S. Brockbank	Klamath Hydroelectric Settlement Agreement
PPL-105	Dean S. Brockbank	Rebuttal Testimony
PPL-200	Andrea L. Kelly	Direct Testimony
PPL-201	Andrea L. Kelly	Proposed Schedule 199 - Klamath Dam Removal Surcharge and supporting calculations
PPL-202	Andrea L. Kelly	Supplemental Testimony
PPL-203	Andrea L. Kelly	Rebuttal Testimony
PPL-300	Cory E. Scott	Direct Testimony
PPL-301	Cory E. Scott	Klamath Document Inventory
<b>Party - Division of Ratepayer Advocates</b>		
DRA-001	Mark Loy	Direct Testimony
DRA-001R	Mark Loy	Direct Testimony - Revised
DRA-002	Mark Loy	Errata to Direct Testimony
<b>Party - American Rivers, California Trout, Trout Unlimited, Pacific Coast Federation of Fishermen's Associations, and Institute for Fisheries Resources</b>		
CG-1	Steve Rothert	Direct Testimony
CG-1R	Steve Rothert	Direct Testimony - Revised
CG-2	Steve Rothert	Errata to Direct Testimony

**(END OF ATTACHMENT A)**

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**Joint Application for Approval of License Amendment and License Transfer**

## **Attachment K.5**

**Decision 12-10-028, Docket No. A.10-03-015 (Cal.  
Pub. Utils. Comm'n, Nov. 1, 2012)**



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**Date of Issuance 11/1/2012**

Decision 12-10-028 October 25, 2012

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of  
PacifiCorp (U901E), an Oregon Company,  
for an Order Authorizing a Rate Increase  
Effective January 1, 2011 and Granting  
Conditional Authorization to Transfer  
Assets, pursuant to the Klamath  
Hydroelectric Settlement Agreement.

Application 10-03-015  
(Filed March 18, 2010)

**DECISION GRANTING PACIFICORP'S REQUEST TO  
MODIFY DECISION 11-05-002 IN ORDER TO REVISE THE  
KLAMATH SURCHARGE RATE AND PERIOD OVER WHICH SUCH  
SURCHARGE IS COLLECTED**

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**DECISION GRANTING PACIFICORP'S REQUEST TO  
MODIFY DECISION 11-05-002 IN ORDER TO REVISE THE  
KLAMATH SURCHARGE RATE AND PERIOD OVER WHICH SUCH  
SURCHARGE IS COLLECTED**

**1. Summary**

Due to the delayed institution of the Klamath surcharge and PacifiCorp's need to collect a required amount of Klamath surcharge by December 31, 2019 and for the reasons discussed herein, the Commission grants PacifiCorp's requested modifications to Decision (D.) 11-05-002. In particular, this decision authorizes PacifiCorp to revise its Klamath surcharge to collect \$13.76 million over a period of less than eight years from its California customers. We also authorize PacifiCorp's requested modifications to D.11-05-002, and make further modifications required to conform PacifiCorp's requested modifications with the balance of D.11-05-002.

**2. Background**

In Decision (D.) 11-05-002, the Commission approved PacifiCorp's request, for: 1) a surcharge of \$13.76 million collected over nine years, not to exceed the two percent limit of the authorized annual revenue requirement as of January 1, 2010; 2) institution of two trust accounts for the deposit of the surcharge; and 3) depreciation of the rate base of the Klamath River Project assets, and amortization of the relicensing and settlement costs associated with the Klamath River Project, on an accelerated basis. These requests were approved to allow PacifiCorp to fulfill requirements of the Klamath Hydroelectric Settlement Agreement (KHSA) that affect its California customers. In D.11-05-002, we also recognized that the Klamath Klamath surcharge rate may be revised and provided that a change in the Klamath surcharge rate must be

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requested through an application, with notice to all parties of record in this proceeding.

Pursuant to Ordering Paragraph (OP) 3 of D.11-05-002, PacifiCorp had to wait until the trust accounts were established before implementing the Klamath surcharge

On June 6, 2011, in compliance with D.11-05-002, PacifiCorp filed Advice Letter (AL) 444-E to implement the Klamath Dam Removal Surcharge in rates, which was subsequently approved by the Commission's Staff. On January 3, 2012, the Commission formally notified PacifiCorp that the trust accounts had been established, and on January 10, 2012, PacifiCorp began collecting the surcharge.

On January 13, 2012, PacifiCorp timely filed a petition for modification of D.11-05-002, in which it requests that the \$13.76 million Klamath surcharge it was authorized to collect in D.11-05-002 be recovered over less than eight years instead of the currently authorized nine years, in order to collect the entire authorized amount by December 31, 2019. On February 10 and 13, 2012, respectively, the County of Siskiyou and the Division of Ratepayer Advocates (DRA) filed responses to the petition. On February 23, 2012, PacifiCorp filed a reply to these responses.

On May 18, 2012, the assigned Administrative Law Judge (ALJ) issued a ruling which stated that PacifiCorp's request would be treated as an application to modify D.11-05-002,<sup>1</sup> as required by OP 7 of that decision.

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<sup>1</sup> As PacifiCorp's petition to modify is treated as an application to modify, is referred to throughout this decision as a "request."

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A prehearing conference (PHC) was held on June 19, 2012 to discuss the scope of the proceeding and develop a procedural timetable for the management of the proceeding. In addition to existing Parties to Application 10-03-015,<sup>2</sup> Siskiyou County Water Users Association and Rich Marshal (jointly referred to as SCWUA) were granted Party Status.

An Assigned Commissioner's Scoping Memo and Ruling Regarding Petition to Modify Decision 11-05-002 (Scoping Memo) was issued on June 29, 2012. Pursuant to the Scoping Memo, no hearings would take place, and the record would consist of documents filed to date as well as Opening and Reply Briefs. Pursuant to the Scoping Memo, the scope of this proceeding is limited to: 1) Whether the period over which the Klamath surcharge is amortized should be revised; and 2) As a result of that change, whether the amount of the Klamath surcharge should be revised. All other issues raised by interested parties, including but not limited to any possible delay in achievement of project milestones, are not within the scope of the current proceeding.

Opening Briefs were filed on July 10, 2012 by DRA; PacifiCorp; County of Siskiyou; SKWUA; jointly by PCFFA, IFR, and the Karuk tribe; and jointly by AR, CT, and TU. Reply Briefs were filed on July 20, 2012 by PacifiCorp; County of Siskiyou; SKWUA; jointly by PCFFA, IFR, and the Karuk tribe; and jointly by AR, CT, and TU.

We affirm all rulings made by the assigned ALJ and Commissioner herein.

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<sup>2</sup> DRA, County of Siskiyou (including Siskiyou County Flood Control and Water Conservation District and Siskiyou Power Authority), Karuk Tribe, Yurok Tribe, Klamath Water Users Association (KWUA), Pacific Coast Federation of Fishermen's Associations (PCFFA), Institute for Fisheries Resources (IFR), American Rivers (AR), California Trout (CT), and Trout Unlimited (TU).

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### **2.1. Limited Scope of the Current Proceeding**

Pursuant to both the assigned ALJ's May 18, 2012 ruling, statements by the assigned ALJ at the PHC, and the Scoping Memo, the scope of the current proceeding is limited to:

1. Whether the period over which the Klamath surcharge is amortized should be revised; and
2. As a result of that change, whether the amount of the Klamath surcharge should be revised.

If parties addressed anything outside the scope of this proceeding, it is not considered in the current proceeding.

### **3. Procedural Requirements Under Rule 16.4**

Rule 16.4 governs the process for the filing and consideration of petitions for modification. Rule 16.4(b) requires that a petition for modification concisely state the justification for the proposed relief and to propose specific wording for all requested modifications. PacifiCorp's request contained a concise but thorough statement of justification for the proposed modifications related to the time period over which the Klamath surcharge would be collected, pursuant to OP 1 of D.11-05-002. Even though PacifiCorp complied with the letter of Rule 16.4 by providing specific working changes to selected ordering paragraphs of D.11-05-002, we find that further revisions to D.11-05-002 are necessary to conform PacifiCorp's requested modification with the remainder of D.11-05-002. We discuss these further modifications in Section 6.1 herein.

Rule 16.4(d) states if more than one year has elapsed since the effective date of the decision, then the petition must explain why it could not have been presented within one year of the effective date of the decision. PacifiCorp filed its Petition within one year, and is therefore in compliance with this rule.

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We conclude that PacifiCorp's request has complied with the procedural requirements of Rule 16.4 regarding the requested modifications related to OP 1 of D.11-05-002.

**4. Requested Modification to Number of Years Over which Surcharge is Collected and Resulting Change to Surcharge Rate**

In particular, PacifiCorp requests modification to OP 1 of D.11-05-002, as follows:

Pursuant to the Klamath Hydroelectric Settlement Agreement PacifiCorp is authorized to institute a Klamath surcharge, to collect \$13.76 million over [nine years](#) a period of less than eight years from its California customers.

By so doing, PacifiCorp would adjust the Klamath surcharge so that it is able to collect the \$13.76 million Klamath surcharge by December 31, 2019, as required by the KHSA.

The currently authorized Klamath surcharge rate was calculated assuming an effective date of January 1, 2011. However, the decision authorizing the surcharge was not issued until May 6, 2011. The Klamath surcharge rate authorized in D.11-05-002 equates to \$1.53 million per year, or an increase in residential customer rates of \$19.32 per year. Furthermore, as a result of the passage of time between the issuance of D.11-05-002 and the creation of the trust accounts, PacifiCorp states that approximately eight months of potential surcharge collection have been lost. PacifiCorp calculates that the current Klamath surcharge rate, as authorized in D.11-05-002, will be insufficient to collect \$13.76 million by December 31, 2019. Specifically, PacifiCorp estimates a total deficit in collections from customers of \$1.57 million if the time over which the surcharge is collected is not revised.

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PacifiCorp requests that an adjustment to the Klamath surcharge rate, based on the revised number of years over which the surcharge is collected, be applied to all rate schedules effective April 1, 2012, to make up the estimated surcharge shortfall. For residential services, the Klamath surcharge rate would be increased from 0.179 to 0.202 cents per kilowatt hour (kWh). PacifiCorp calculates that the Klamath surcharge rate revision will increase the bill of an average residential customer using 900 kWhs per month by approximately \$0.21 per month.<sup>3</sup> The increase in the Klamath surcharge rate will result in the \$13.76 million being collected equally over a period of less than eight years (93 months), which will result in an annual collection rate of approximately \$1.73 million per year over the nearly eight-year period.

PacifiCorp has compared the annual surcharge collections at the proposed Klamath surcharge rate against its revenue requirement in California as of January 1, 2010 of \$86.6 million and confirmed that its proposed annual surcharge collections do not exceed two percent.

PacifiCorp's requested modifications to D.11-05-002 would result in the Klamath surcharge being within several hundred dollars of the two percent cap required by the KHSA and adopted by the Commission in OP 6 of D.11-05-002.

## **5. Interested Parties Positions**

DRA, SCWUA, and the County of Siskiyou recommend that the Commission deny PacifiCorp's requests to shorten the recovery period and increase the amount of the Klamath surcharge. DRA specifically refers to the fact

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<sup>3</sup> The Klamath surcharge rate authorized in D.11-05-002 translates into an average bill increase of about \$1.61/month. The requested modification would translate into an average bill increase of \$1.82/month (\$1.61 + \$0.21).



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that the required federal legislation related to the Klamath River Project has not been passed, the California Bond measure has been delayed again until November 2012, that the Affirmative Determination of the Secretary of the Interior has not been issued, and that necessary permits for the Klamath River Project have not been received. SCWUA and the County of Siskiyou also reference the delay in the California Bond vote.

DRA states that there is no compelling evidence that the conditions required by the KHSA have been met, which indicates an uncertain future for the KHSA. DRA also references Section 4.3 of the KHSA, which it contends, requires that a change in the Klamath surcharge may only occur after the Secretary of the Interior's Affirmative Determination is issued. DRA also states that even though \$0.21 per month increase does not appear material, it still is material in the still struggling economy.

The County of Siskiyou states that PacifiCorp's request should be denied because it is an imposition on ratepayers and because of uncertainties regarding progress toward KHSA milestones. The County of Siskiyou also references a petition filed by the Hoopa Valley Tribe with the Federal Energy Regulatory Commission (FERC), seeking a declaratory order that would effectively set aside the KHSA, and posits the question of how the Commission can approve an increase in the Klamath surcharge when, from its point of view, the entire KHSA may be rendered moot by impending FERC action. The County of Siskiyou recommends that PacifiCorp be required to negotiate revisions to the KHSA with other signatories to the KHSA, and only return to the Commission when a clear path to implementing the KHSA has been established. The County of Siskiyou reiterates this position in its Reply Brief, and also contends that PacifiCorp's proposed increase in the Klamath surcharge rate and revision to the amortization

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period over which it is collected, will not result in the collection of the required amount of funds pursuant to the KHSA by December 31, 2019. The County of Siskiyou also asserts that PacifiCorp will not be able to increase its Klamath surcharge further, given that the proposed increase would bring the Klamath surcharge so close to the two percent cap required by the KHSA.

SCWUA states that dam removal is remote; and is also concerned that, pursuant to D.11-05-002, PacifiCorp is required to transfer surcharge funds by the 15th of each month, giving PacifiCorp the use of that money for 15 days, which adds up to four years over the life of the surcharge. SCWUA wonders why the funds cannot be transferred immediately in our electronic age. In its Reply Brief, SCWUA supports the various points made by DRA and the County of Siskiyou in their Opening Briefs, by arguing that the lack of progress towards KHSA milestones and the Hoopa Valley Tribe petition before the FERC support rejection of PacifiCorp's requested modifications.

PCFFA, IFR, and the Karuk tribe jointly support what they state is a minor adjustment to rates that is timely, proven, and warranted. AR, CT, and TU also support PacifiCorp's request. PCFFA, IFR, and the Karuk tribe state that the delay in creating the Trusts was outside PacifiCorp's control, and that it would be much better for ratepayer to make an adjustment now rather than later, since funds collected now would earn interest for a longer period than funds collected later. PCFFA, IFR, and the Karuk Tribe also state that speculation regarding the target start date for dam removal is outside the scope of the current request. Both PCFFA, IFR, and the Karuk Tribe, and AR, CT, and TU rebut the various concerns raised by DRA, the County of Siskiyou, and SCWUA, finding many of them outside the scope of the current proceeding. AR, CT, and TU believe that the Commission should disregard arguments by these parties that are outside the

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scope of the current proceeding, such as uncertainty about progress towards KHSA implementation and the proposal that transfers of the Klamath surcharge funds to the trusts should occur on a daily basis. PCFFA, IFR, and the Karuk Tribe state that progress has been made towards achievement of KHSA milestones, such as introduction of federal legislation, and preparation of analysis and documentation required by the National Environmental Policy Act and California Environmental Quality Act, for the Secretary of the Interior's Determination. AR, CT, and TU also believe the County of Siskiyou does not provide accounting data to substantiate its statement that it will be impossible to collect the Klamath in surcharge in time, and that Section 4.3 of the KHSA does not affect the Commission's ability to adjust the Klamath surcharge independent of the Secretarial Determination.

## **6. Discussion**

### **6.1. Modification of D.11-05-002**

Pursuant to the KHSA, PacifiCorp must recover \$16 million from its California ratepayers by December 31, 2019. In an effort to reduce the amount actually collected from customers, PacifiCorp was authorized to collect \$13.76 million over the next nine years, earning interest on the balance collected. By earning this interest on the balance collected, PacifiCorp is able to reduce the amount actually collected from ratepayers. If PacifiCorp does not collect \$13.76 million by December 31, 2019, it will not earn enough interest to make up the difference between the \$13.76 million collected and the \$16 million required by the KHSA. We also note that PacifiCorp is not requesting a change to the total amount of the surcharge to be collected from its customers, \$13.76 million, but only to the period over which it is collected. Since that amount is collected over a shorter period of time, the Klamath surcharge rate

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will increase, but the total amount paid by ratepayers over the now approximately eight years will not exceed the currently authorized total Klamath surcharge of \$13.76 million.

While DRA shows that the economy in PacifiCorp territory is struggling, it does not show that it would be a financial hardship for these customers to pay an additional \$0.21 per month (on average) in their electric bills. As discussed in D.11-05-002, if the KHSA is not implemented, these ratepayers would be exposed to paying the uncertain costs of relicensing, litigation, and decommissioning of the four dams.<sup>4</sup> We also note that, due to the delay in institution of the trusts, these same customers did not have to pay for the authorized Klamath surcharge for eight months that they otherwise would have paid. The County of Siskiyou is concerned with how close PacifiCorp's request would bring the authorized Klamath surcharge to the two percent cap, and that based on the time remaining prior to December 31, 2019, PacifiCorp will not be able to collect the required \$13.76 million by the KHSA due date of December 31, 2019. The County of Siskiyou's criticisms provide no alternatives besides revisiting the KHSA itself, and the notion that breaches of the KHSA will occur.

We appreciate DRA, SCWUA's and the County of Siskiyou's concerns and suggestions regarding other related issues, such as achievement of milestones, revisions to the deposit date of the Klamath surcharge, revisions to the KHSA, and a petition to FERC to set aside the KHSA, but as stated in the Scoping Memo and as discussed at the PHC, this proceeding is limited to whether the period over which the surcharge is collected and the amount of the surcharge should be

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<sup>4</sup> D.11-05-002 at 12.

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changed, assuming no other changes to D.11-05-002. While properly outside the scope of the current proceeding, even if we were to look at these concerns regarding the achievement of milestones in order to determine whether to grant PacifiCorp's request, these concerns would not change our conclusion. As to SCWUA's suggestion that the deposit date of the Klamath surcharge should be revised, that has nothing to do with whether or not PacifiCorp should collect the authorized total surcharge of \$13.76 million over a shorter period of time.

Contrary to DRA's assertions, significant progress has been made in the implementation of the KHSA to date. For example, on November 10, 2011 legislation that would implement both the KHSA and Klamath Basin Restoration Agreement was introduced in the United States Senate and House of Representatives and on September 21, 2011 the Department of the Interior released a Draft Environmental Impact Statement/Environmental Impact Report and related scientific/technical reports as a preliminary step in reaching the Secretarial Determination. Further, the milestone of obtaining permits and approvals was not one that was expected to be met at this time. Also, as stated in D.11-05-002, we rejected arguments that the collection of the surcharge should be delayed until "1) approval of a bond measure or alternative source of funding for the State of California's share of the KHSA costs; [and] 2) passage of federal legislation required by the KHSA."<sup>5</sup> That decision also made the surcharge subject to refund to allow for the possibility that dam removal might not occur. In short, our prior decision recognized that there were some uncertainties

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<sup>5</sup> See D.11-05-002 at 10.

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relating to dam removal, but that, for the reasons explained therein, it is better to proceed with surcharge collection.

None of the facts referred to by the parties show any more uncertainty about dam removal than at the time of our prior decision. Accordingly, the Klamath surcharge should be modified in order for PacifiCorp to collect \$13.76 million in order to support the anticipated KHSA removal start date. Similarly, suggesting that the terms of the KHSA be reconsidered or that the KHSA might be set aside are not alternatives to PacifiCorp's proposed revisions to the Klamath surcharge rate or recovery period. In our prior decision, we determined that it was in ratepayer's interest for us to proceed with our part in implementing the KHSA. Nothing stated by the parties shows any reason to depart from that approach.

We disagree with DRA's concern that Section 4.3 of the KHSA requires that revisions to the KHSA surcharge only occur after a Secretarial Determination is made. Section 4.3 of the KHSA states:

Upon review of the Secretarial Determination described in Section 3 of this Settlement, or as appropriate thereafter (such as, for example, in the event of a significant change in the relative revenues between California and Oregon), the States shall consult with each other, PacifiCorp, and the Federal Parties regarding adjustments to the California Klamath Surcharge or Oregon Klamath Surcharges necessitated by or appropriate considering the Secretarial Determination or other circumstances. Following such consultation, PacifiCorp will request that the California PUC and Oregon PUC adjust the Klamath Surcharges to be consistent with the recommendations developed through the consultation. Any adjustment shall not alter the maximum level of the Customer Contribution or State Cost Cap.

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The first sentence does not limit when the Commission, which is not a party to the KHSA, can adjust the California Klamath surcharge. Rather, it requires several of the parties to the KHSA to consult with each other after the Secretarial Determination and possibly at other times thereafter, to discuss whether the Secretarial determination, or other circumstances, makes it advisable to adjust the surcharge. The next two sentences then: 1) describe what PacifiCorp must do thereafter if those parties determine that the surcharge should be revised; and 2) reiterate, that several limits provided by the KHSA must still remain in effect.

Thus, the purpose of this section is to ensure that once the Secretarial Determination has been made, the relevant parties will meet to discuss whether it is necessary or appropriate to adjust the surcharge, and if so, to make sure that the appropriate action is taken.

This section evinces no intent to prevent the Commission, which is not a party to the KHSA, from adjusting the California Klamath surcharge at an earlier time, due to the fact that intervening events have made some of the assumptions underlying the Commissions own prior decision no longer accurate.

As discussed in Section 2 above, since the trusts required by the KHSA and D.11-05-002 were not established until January 2012, and PacifiCorp was not authorized to collect the Klamath surcharge until the trusts were created, PacifiCorp was not able to collect the Klamath surcharge until January of 2012, approximately eight months after the issuance of D.11-05-002 and one year after the assumed date upon which the Klamath surcharge was based.

Since: (i) the delay in collecting the authorized surcharge was out of PacifiCorp's control; (ii) the concerns raised by interested parties are outside the scope of the current proceeding; (iii) PacifiCorp's requested revision to the

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Klamath surcharge is within the two percent limit required by the KHSA; and (iv) PacifiCorp is required pursuant to the KHSA to collect \$13.76 million from California customers by December 31, 2019, the Commission authorizes PacifiCorp's proposed modifications to D.11-05-002 as shown in Attachment A to this decision. Because of the need to collect the already authorized total amount of \$13.76 million over a shorter period of time, it is just and reasonable to change the amount of the monthly Klamath surcharge. We authorize PacifiCorp to collect the Klamath surcharge over less than eight years and to revise the amount collected each month from its California customers, within the two percent cap required pursuant to OP 6 of D.11-05-002.

We therefore grant PacifiCorp's request, and require PacifiCorp to file a Tier 1 advice letter to institute the revised collection period and Klamath surcharge amount, as well as revise all affected tariff sheets. In particular, we grant PacifiCorp requested modification to OP 1 of D.11-05-002 (see Attachment A to this decision), as follows:

Pursuant to the Klamath Hydroelectric Settlement Agreement PacifiCorp is authorized to institute a Klamath surcharge, to collect \$13.76 million over [a period of less than eight years](#) from its California customers.

These modifications, the authorized Klamath surcharge will be within several hundred dollars of the two percent cap.

In order to conform PacifiCorp's requested revision to OP 1 of D.11-05-002, we also modify Sections 1, 5, and 6, Finding of Fact (FOF) 9 and Conclusions of Law (COL) 1, 4, and 10; and add new FOF 10 and COL 9 (see Attachment A to this decision) as follows:

1. Page 2, Section 1, top of paragraph should now read:  
This decision approves the request by PacifiCorp, an



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- Oregon Company, for: 1) a surcharge of \$13.76 million collected [over a period of less than eight](#) years; 2) institution of two trust accounts for the deposit of the surcharge; and 3) depreciation of the rate base of the Klamath River Project assets, and amortization of the relicensing and settlement costs associated with the Klamath River Project, on an accelerated basis.
2. Pages 12-13, Section 5, first two paragraph should now read: PacifiCorp proposes to spread the estimated \$13.76 million surcharge equally [over a period of less than eight-years](#) resulting in annual collections of approximately ~~\$1.53~~ [1.73](#) million/year, which translates into [an average](#) bill increase of about ~~\$1.61~~ [1.82](#)/month for the average residential customer.<sup>6</sup> In support of its request to collect the proposed surcharge [over a period of less than eight years](#), PacifiCorp states that the KHSA has a target start date for removal of the Klamath assets of January 1, 2020.<sup>7</sup> Additionally, by collecting the surcharge [over a period of less than eight years](#) and collecting interest on the balance of those funds, the difference between the estimated cost allocable to California customers (\$16 million) and what PacifiCorp is actually charging the ratepayers (\$13.76 million) is reduced.<sup>8</sup> [The California Copco I and II/Iron Gate Dams Trust Accounts were not established until January 2012, approximately eight months after the issuance of D.11-05-002. Given the amount of time it took to establish the California Copco I and II/Iron Gate Dams Trust Accounts, PacifiCorp should collect the surcharge over a period of less than eight years.](#)

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<sup>6</sup> Application (A.) 10-03-015 at 4-5, [and the Petition of PacifiCorp for Modification of Decision 11-05-002 and Expedited Request for Consideration.](#)

<sup>7</sup> KHSA at Section 7.3.1 and A.10-03-015 at 4.

<sup>8</sup> A.10-03-015 at 2 and KHSA at Section 4.1.1.E.

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3. Page 14, Section 5, top of third full paragraph should now read: We find that it is essential that the surcharge of \$13.76 million be collected over a period of less than eight years, not to exceed the two percent limit of the authorized annual revenue requirement as of January 1, 2010, in order to support the anticipated KHSA removal start date, and to accrue sufficient interest to make up the difference between the surcharge collected from California customers and the amount allocated to PacifiCorp's California customers by the KHSA. By collecting the surcharge over a period of less than eight years, there is time for interest to accrue on the amount collected, which is intended to allow California ratepayers to pay less in rates.
4. Page 16, Section 5, middle of page should now read: Within 30 days of the latter of (i) the Energy Division's determination of compliance, and (ii) Commission staff notification of the California Klamath Trust Accounts establishment, PacifiCorp must begin collecting the surcharge from its California customers, and collect such surcharge over a period of less than eight years.

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5. Pages 17-18, Section 6, should now read: Since the surcharge will be collected over a number of years, is being collected for a specific purpose, and will not begin to be needed [until after December 31, 2019](#), these funds need to be held separately from other PacifiCorp funds, in order to ensure these funds are available for their authorized purpose.
6. Page 29, FOF 9 should now read: In order for PacifiCorp to collect sufficient surcharge funds for the DRE to begin removal of the Klamath assets proposed in the KHSA in a timely fashion and to accrue sufficient interest on the surcharge funds to make up the difference between the collected customer surcharge and the amount required by the KHSA, the surcharge must be recovered [over a period of less than eight years](#).
7. Page 30, FOF 10 should be added as follows and the balance renumbered: The California Copco I and II/Iron Gate Dams Trust Accounts were not established until January 2012, approximately eight months after the issuance of D.11-05-002.
8. Page 30, COL 1 should now read: The proposed surcharge of \$13.76 million collected [over a period of less than eight years](#) from PacifiCorp's California customers should be authorized.
9. Page 31, COL 4 should now read: By collecting the surcharge [over a period of less than eight years](#), there is time for interest to accrue on the amount collected, which is intended to allow California ratepayers to pay less in rates.
10. Page 32, COL 9 should be added as follows and the balance renumbered: The surcharge should be collected over a period of less than eight years, given the amount of time it took to establish the California Copco I and II/Iron Gate Dams Trust Account.
11. Page 32, COL 10 should now read: By collecting the surcharge [over a period of less than eight years](#), there is time for interest to accrue on the amount collected, which

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is intended to allow California ratepayers to pay less in rates.

## **7. Comments on Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Opening comments were filed on October 11, 2012 by DRA; PacifiCorp; jointly by AR, CT, and TU; and jointly by PCFFA, IFR, and the Karuk Tribe. On October 16, 2012, reply comments were filed jointly by AR, CT, and TU. Comments have been considered herein.

## **8. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. In D.11-05-002, the Commission approved PacifiCorp's request, for: 1) a surcharge of \$13.76 million collected over nine years, not to exceed the two percent limit of the authorized annual revenue requirement as of January 1, 2010; 2) institution of two trust accounts for the deposit of the surcharge; and 3) depreciation of the rate base of the Klamath River Project assets, and amortization of the relicensing and settlement costs associated with the Klamath River Project, on an accelerated basis.

2. In D.11-05-002, we recognized that the Klamath Klamath surcharge rate may be revised and provided that a change in the Klamath surcharge rate must be requested through an application, with notice to all parties of record in this proceeding.

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3. Pursuant to OP 3 of D.11-05-002, PacifiCorp had to wait until the trust accounts were established before implementing the Klamath surcharge.

4. Pursuant to OP 6 of D.11-05-002, revisions to the Klamath surcharge must limit the surcharge to two percent of the authorized annual revenue requirement as of January 1, 2010.

5. PacifiCorp's request complies with the two percent cap requirement.

6. Pursuant to OPs 7 of D.11-05-002, the Klamath surcharge rate may be revised through an application, with notice to all parties of record in the proceeding.

7. On June 6, 2011, in compliance with D.11-05-002, PacifiCorp filed AL 444-E to implement the Klamath Dam Removal Surcharge in rates. The Commission staff approved AL 444-E.

8. On January 3, 2012, the Commission formally notified PacifiCorp that the trust accounts had been established, and on January 10, 2012, PacifiCorp began collecting the surcharge.

9. On January 13, 2012, PacifiCorp filed a petition for modification of D.11-05-002. PacifiCorp requests that the \$13.76 million Klamath surcharge it was authorized to collect in D.11-05-002 be recovered over less than eight years instead of the currently authorized nine years, in order to collect the entire authorized amount by December 31, 2019.

10. On May 18, 2012, the assigned ALJ issued a ruling which stated that PacifiCorp's request would be treated as an application to modify D.11-05-002, as required by OP 7 of that decision.

11. The scoping memo established that the scope of this proceeding is limited to: 1) Whether the period over which the Klamath surcharge is amortized should be revised; and 2) As a result of that change, whether the amount of the Klamath

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surcharge should be revised. All other issues raised by interested parties, including but not limited to any possible delay in achievement of project milestones, is not within the scope of the current proceeding.

12. The concerns raised by DRA, the County of Siskiyou, and SCWUA that are outside the scope of the current proceeding include but are not limited to:

- a. Lack of achievement towards milestones required by the KHSA, such as passing of federal legislation and the California Bond measure, issuance of the Affirmative Determination of the Secretary of the Interior and necessary permits;
- b. Occurrence of events that may affect achievement of the KHSA, such as the filing of a petition by the Hoopa Valley Tribe with FERC which seeks a declaratory order that would effectively set aside the KHSA;
- c. A request that PacifiCorp be required to negotiate revisions to the KHSA with other signatories to the KHSA; and
- d. A request to modify D.11-05-002, so that instead of requiring PacifiCorp to transfer surcharge funds by the 15th of each month, it would require PacifiCorp to transfer surcharge fund as soon as they are received.

13. As discussed in D.11-05-002, if the KHSA is not implemented, PacifiCorp's ratepayers would be exposed to paying the uncertain costs of relicensing, litigation, and decommissioning of the four dams.

14. Significant progress has been made in the implementation of the KHSA to date. For example, on November 10, 2011 legislation that would implement both the KHSA and Klamath Basin Restoration Agreement was introduced in the United States Senate and House of Representatives and on September 21, 2011 the Department of the Interior released a Draft Environmental Impact Statement/Environmental Impact Report and related scientific/technical reports

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as a preliminary step in reaching the Secretarial Determination. The milestone of obtaining permits and approvals was not one that was expected to be met at this time.

15. As stated in D.11-05-002, we rejected arguments that the collection of the surcharge should be delayed until “1) approval of a bond measure or alternative source of funding for the State of California’s share of the KHSA costs; [and] 2) passage of federal legislation required by the KHSA.” That decision also made the surcharge subject to refund to allow for the possibility that dam removal might not occur. In short, our prior decision recognized that there were some uncertainties relating to dam removal, but that, for the reasons explained therein, it is better to proceed with surcharge collection.

16. None of the facts referred to by the parties show any more uncertainty about dam removal than at the time of our prior decision.

17. In our prior decision, we determined that it was in ratepayer’s interest for us to proceed with our part in implementing the KHSA. Nothing stated by the parties shows any reason to depart from that approach.

18. Pursuant to Rule 16.4, PacifiCorp’s request contained a concise but thorough statement of justification for the proposed modifications related to the time period over which the Klamath surcharge would be collected, pursuant to OP 1 of D.11-05-002, and was filed within one year after the issuance of D.11-05-002.

19. PCFFA, IFR, and the Karuk Tribe state that progress has been made towards achievement of KHSA milestones, such as introduction of Federal legislation, and preparation of analysis and documentation required by the National Environmental Policy Act and California Environmental Quality Act, for the Secretary of the Interior’s Determination.

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20. DRA, the County of Siskiyou, and SCWUA support denial of PacifiCorp's request.

21. PCFFA, IFR, the Karuk Tribe, AR, CT, and TU support adoption of PacifiCorp's request.

22. The currently authorized Klamath surcharge rate was calculated assuming an effective date of January 1, 2011.

23. As a result of the passage of time between the issuance of D.11-05-002 and the creation of the trust accounts in January 2012, and since PacifiCorp was not authorized to collect the Klamath surcharge until the trusts were created, PacifiCorp was not able to collect the Klamath surcharge until January of 2012, approximately eight months after the issuance of D.11-05-002 and one year after the assumed date upon which the Klamath surcharge was based.

24. Pursuant to the KHSA, PacifiCorp must recover \$16 million from its California ratepayers by December 31, 2019. In an effort to reduce the amount actually collected from its customers, PacifiCorp was authorized, in D.11-05-002, to collect \$13.76 million over the next nine years, earning interest on the balance collected. By earning this interest on the balance collected, PacifiCorp is able to reduce the amount actually collected from ratepayers.

25. If PacifiCorp does not collect \$13.76 million by December 31, 2019, it will not earn enough interest to make up the difference between the \$13.76 million collected and the \$16 million required by the KHSA.

26. PacifiCorp is not requesting a change to the total amount of the surcharge to be collected over the time period of \$13.76 million, but to the years over which it is collected and the amount of the monthly Klamath surcharge (which does not change the total authorized amount collected of \$13.76 million). Since that amount would be collected over a shorter period of time, the Klamath surcharge



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rate would increase, but the total amount paid by ratepayers over the now approximately eight years will not change.

27. PacifiCorp's requested modifications to D.11-05-002 would result in the Klamath surcharge being within several hundred dollars of the two percent cap required by the KHSA and adopted by us in OP 6 of D.11-05-002.

28. Section 4.3 of the KHSA does not limit when the Commission, which is not a party to the KHSA, can adjust the California Klamath surcharge.

**Conclusions of Law**

1. We should affirm all rulings made by the assigned Commissioner and assigned ALJ in this proceeding.

2. PacifiCorp complied with Rule 16.4 by providing specific working changes to selected ordering paragraphs of D.11-05-002 and filed its Petition within one year of the issuance of D.11-05-002.

3. Since: (a) the delay in collecting the authorized surcharge was out of PacifiCorp's control; (b) PacifiCorp is required pursuant to the KHSA to collect \$13.76 million from California customers by December 31, 2019; and (c) PacifiCorp's proposed revised Klamath surcharge is within the two percent cap, the Commission should grant PacifiCorp's request to modify D.11-05-002 as shown in Attachment A to this decision; collect the Klamath surcharge over less than eight years; and revise the amount collected each month from its California customers, within the two percent annual cap required pursuant to OP 6 of D.11-05-002 and Section 4.1.1.B of the KHSA.

4. Section 4.3 of the KHSA does not limit when the Commission, which is not a party to the KHSA, can adjust the California Klamath surcharge.

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5. While DRA shows that the economy in PacifiCorp territory is struggling, it does not show that it would be a financial hardship for these customers to pay an additional \$0.21 per month (on average) in their electric bills.

6. Because of the need to collect the already authorized total amount of \$13.76 million over a shorter period of time, it is just and reasonable to change the amount of the monthly Klamath surcharge.

7. Suggesting that the terms of the KHSA be reconsidered or that the KHSA might be set aside, are not alternatives to PacifiCorp's proposed revisions to the Klamath surcharge rate or recovery period.

8. While properly outside the scope of the current proceeding, even if we were to look at the parties concerns regarding the achievement of milestones in order to determine whether to grant PacifiCorp's current request, these concerns would not change our conclusion.

9. SCWUA's suggestion that the deposit date of the Klamath surcharge should be revised has nothing to do with whether or not PacifiCorp should collect the authorized total surcharge of \$13.76 million over a shorter period of time.

10. Due to the delay in institution of the trusts, PacifiCorp's California customers did not have to pay for the authorized Klamath surcharge for eight months that they otherwise would have paid.

11. Because the purpose of Section 4.3 of the KHSA is to ensure that certain adjustments are made, after consultation among the relevant parties to the KHSA after the Secretarial Determination, this section evinces no intent to prevent the Commission, which is not a party to the KHSA, from adjusting the California Klamath surcharge at an earlier time, due to the fact that intervening events have

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made some of the assumptions underlying the Commission's own prior decision, no longer accurate.

12. PacifiCorp's requested modification to OP 1 of D.11-05-002 should be granted as set forth in the Ordering Paragraphs.

13. Further modifications to D.11-05-002 should be made, as set forth in the Ordering Paragraphs.

14. The modified D.11-05-002, printed in its entirety as Attachment B, should be cited as "Decision 11-05-002, as modified by Decision 12-10-028."

15. PacifiCorp's should file a Tier 1 advice letter to institute the revised Klamath collection period, Klamath surcharge rate, and all affected tariff sheets.

**O R D E R**

**IT IS ORDERED** that:

1. PacifiCorp's January 13, 2012 Petition to Modify Decision 11-05-002 is granted as set forth in this Ordering Paragraph (OP) and in OPs 2-5 below. We grant PacifiCorp authority to collect the Klamath surcharge over less than eight years and revise the Klamath surcharge amount collected each month from its California customers within the two percent annual cap required pursuant to OP 6 of Decision 11-05-002 and Section 4.1.1.B of the Klamath Hydroelectric Settlement Agreement.

2. We modify Ordering Paragraph 1 of Decision 11-05-002 as shown in Attachment A to this decision as follows:

- a. Pursuant to the Klamath Hydroelectric Settlement Agreement PacifiCorp is authorized to institute a Klamath surcharge, to collect \$13.76 million over a period of less than eight years from its California customers.

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3. In order to conform PacifiCorp's requested modification to Ordering Paragraph 1 of Decision 11-05-002, we also modify Sections 1, 5, and 6, Finding of Fact (FOF) 9 and Conclusions of Law (COL) 1, 4, and 10; and add new FOF 10 and COL 9 (shown in Attachment A) as follows:

- a. Page 2, Section 1, top of paragraph must now read: This decision approves the request by PacifiCorp, an Oregon Company, for: 1) a surcharge of \$13.76 million collected over a period of less than eight years; 2) institution of two trust accounts for the deposit of the surcharge; and 3) depreciation of the rate base of the Klamath River Project assets, and amortization of the relicensing and settlement costs associated with the Klamath River Project, on an accelerated basis.
- b. Pages 12-13, Section 5, first two paragraphs must now read: PacifiCorp proposes to spread the estimated \$13.76 million surcharge equally over a period of less than eight-years resulting in annual collections of approximately \$1.73 million/year, which translates into an average bill increase of about \$1.82/month for the average residential customer.<sup>9</sup> In support of its request to collect the proposed surcharge over a period of less than eight years, PacifiCorp states that the Klamath Hydroelectric Settlement Agreement (KHSA) has a target start date for removal of the Klamath assets of January 1, 2020.<sup>10</sup> Additionally, by collecting the surcharge over a period of less than eight years and collecting interest on the balance of those funds, the difference between the estimated cost allocable to California customers (\$16 million) and what PacifiCorp is actually charging the ratepayers (\$13.76 million) is

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<sup>9</sup> A.10-03-015 at 4-5, and the Petition of PacifiCorp for Modification of Decision 11-05-002 and Expedited Request for Consideration.

<sup>10</sup> KHSA at Section 7.3.1 and A.10-03-015 at 4.

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reduced.<sup>11</sup> The California Copco I and II/Iron Gate Dams Trust Accounts were not established until January 2012, approximately eight months after the issuance of D.11-05-002. Given the amount of time it took to establish the California Copco I and II/Iron Gate Dams Trust Accounts, PacifiCorp should collect the surcharge over a period of less than eight years.

- c. Page 14, Section 5, top of third full paragraph must now read: We find that it is essential that the surcharge of \$13.76 million be collected over a period of less than eight years, not to exceed the two percent limit of the authorized annual revenue requirement as of January 1, 2010, in order to support the anticipated KHSA removal start date, and to accrue sufficient interest to make up the difference between the surcharge collected from California customers and the amount allocated to PacifiCorp's California customers by the KHSA. By collecting the surcharge over a period of less than eight years, there is time for interest to accrue on the amount collected, which is intended to allow California ratepayers to pay less in rates.
- d. Page 16, Section 5, middle of page must now read: Within 30 days of the latter of (i) the Energy Division's determination of compliance and (ii) Commission staff notification of the California Klamath Trust Accounts establishment, PacifiCorp must begin collecting the surcharge from its California customers, and collect such surcharge over a period of less than eight years.
- e. Page 17-18, Section 6, must now read: Since the surcharge funds will be collected over a number of years, is being collected for a specific purpose, and will not begin to be needed until after December 31, 2019, these funds need to be held separately from other PacifiCorp

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<sup>11</sup> A.10-03-015 at 2 and KHSA at Section 4.1.1.E.

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funds, in order to ensure these funds are available for their authorized purpose.

- f. Page 29, FOF 9 must now read: In order for PacifiCorp to collect sufficient surcharge funds for the DRE to begin removal of the Klamath assets proposed in the KHSA in a timely fashion and to accrue sufficient interest on the surcharge funds to make up the difference between the collected customer surcharge and the amount required by the KHSA, the surcharge must be recovered over a period of less than eight years.
- g. Page 30, FOF 10 must be added as follows and the balance renumbered: The California Copco I and II/Iron Gate Dams Trust Accounts were not established until January 2012, approximately eight months after the issuance of D.11-05-002.
- h. Page 30, COL 1 must now read: The proposed surcharge of \$13.76 million collected over a period of less than eight years from PacifiCorp's California customers should be authorized.
- i. Page 31, COL 4 must now read: By collecting the surcharge over a period of less than eight years, there is time for interest to accrue on the amount collected, which is intended to allow California ratepayers to pay less in rates.
- j. Page 32, COL 9 must be added as follows and the balance renumbered: The surcharge should be collected over a period of less than eight years, given the amount of time it took to establish the California Copco I and II/Iron Gate Dams Trust Account.
- k. Page 32, COL 10 must now read: By collecting the surcharge over a period of less than eight years, there is time for interest to accrue on the amount collected, which is intended to allow California ratepayers to pay less in rates.

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4. PacifiCorp is authorized to file, within 60 days of the effective date of this decision, a Tier 1 advice letter to revise its tariffs to change the Klamath surcharge rate to reflect the revised Klamath collection period authorized in Ordering Paragraph (OP) 1 of this decision, subject to the two percent annual cap required by OP 6 of D.11-05-002. PacifiCorp must include with its advice letter workpapers showing that the revised Klamath surcharge rate is consistent with that two percent annual cap.

5. The modified Decision 11-05-002 printed in its entirety as Attachment B, must be cited as "Decision 11-05-002, as modified by Decision 12-10-028."

6. All rulings are affirmed.

7. Application 10-03-015 is closed.

This order is effective today.

Dated October 25, 2012, at Irvine, California.

MICHAEL R. PEEVEY  
President  
TIMOTHY ALAN SIMON  
MICHEL PETER FLORIO  
CATHERINE J.K. SANDOVAL  
MARK J. FERRON  
Commissioners

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**ATTACHMENT A**  
**Modifications to Decision 11-05-002**



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1. Ordering Paragraph 1 now reads: Pursuant to the Klamath Hydroelectric Settlement Agreement PacifiCorp is authorized to institute a Klamath surcharge, to collect \$13.76 million over a period of less than eight years from its California customers.
2. Page 2, Section 1, top of paragraph now reads: This decision approves the request by PacifiCorp, an Oregon Company, for: 1) a surcharge of \$13.76 million collected over a period of less than eight years; 2) institution of two trust accounts for the deposit of the surcharge; and 3) depreciation of the rate base of the Klamath River Project assets, and amortization of the relicensing and settlement costs associated with the Klamath River Project, on an accelerated basis.
3. Pages 12-13, Section 5, first two paragraphs now read: PacifiCorp proposes to spread the estimated \$13.76 million surcharge equally over a period of less than eight-years resulting in annual collections of approximately ~~\$1.53~~ 1.73 million/year, which translates into an average bill increase of about ~~\$1.61~~ 1.82/month for the average residential customer.<sup>1</sup> In support of its request to collect the proposed surcharge over a period of less than eight years, PacifiCorp states that the KHSA has a target start date for removal of the Klamath assets of January 1, 2020.<sup>2</sup> Additionally, by collecting the surcharge over a period of less than eight years and collecting interest on the balance of those funds, the difference between the estimated cost allocable to California customers (\$16 million) and what PacifiCorp is actually charging the ratepayers (\$13.76 million) is reduced.<sup>3</sup> The California Copco I and II/Iron Gate Dams Trust Accounts were not established until January 2012, approximately eight months after the issuance of D.11-05-002. Given the amount of time it took to establish the California Copco I and II/Iron Gate Dams Trust Accounts, PacifiCorp should collect the surcharge over a period of less than eight years.

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<sup>1</sup> A.10-03-015 at 4-5, and the Petition of PacifiCorp for Modification of Decision 11-05-002 and Expedited Request for Consideration.

<sup>2</sup> KHSA at Section 7.3.1 and A.10-03-015 at 4.

<sup>3</sup> A.10-03-015 at 2 and KHSA at Section 4.1.1.E.

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4. Page 14, Section 5, top of third full paragraph now reads: We find that it is essential that the surcharge of \$13.76 million be collected [over a period of less than eight years](#), not to exceed the two percent limit of the authorized annual revenue requirement as of January 1, 2010, in order to support the anticipated KHSA removal start date, and to accrue sufficient interest to make up the difference between the surcharge collected from California customers and the amount allocated to PacifiCorp's California customers by the KHSA. By collecting the surcharge [over a period of less than eight years](#), there is time for interest to accrue on the amount collected, which is intended to allow California ratepayers to pay less in rates.
5. Page 16, Section 5, middle of page now reads: Within 30 days of the latter of (i) the Energy Division's determination of compliance, and (ii) Commission staff notification of the California Klamath Trust Accounts establishment, PacifiCorp must begin collecting the surcharge from its California customers, and collect such surcharge [over a period of less than eight years](#).
6. Pages 17-18, Section 6, now reads: Since the surcharge will be collected over a number of years, is being collected for a specific purpose, and will not begin to be needed [until after December 31, 2019](#), these funds need to be held separately from other PacifiCorp funds, in order to ensure these funds are available for their authorized purpose.
7. Page 29, Finding of Fact 9 now reads: In order for PacifiCorp to collect sufficient surcharge funds for the DRE to begin removal of the Klamath assets proposed in the KHSA in a timely fashion and to accrue sufficient interest on the surcharge funds to make up the difference between the collected customer surcharge and the amount required by the KHSA, the surcharge must be recovered [over a period of less than eight years](#).
8. Page 30, Finding of Fact 10 is added as follows and the balance renumbered: The California Copco I and II/Iron Gate Dams Trust Accounts were not established until January 2012, approximately eight months after the issuance of D.11-05-002.
9. Page 30, Conclusion of Law 1 now reads: The proposed surcharge of \$13.76 million collected [over a period of less than eight years](#) from PacifiCorp's California customers should be authorized.
10. Page 31, Conclusion of Law 4 now reads: By collecting the surcharge [over a period of less than eight years](#), there is time for interest to accrue on the

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amount collected, which is intended to allow California ratepayers to pay less in rates.

11. Page 32, Conclusion of Law 9 is added as follows and the balance renumbered: The surcharge should be collected over a period of less than eight years, given the amount of time it took to establish the California Copco I and II/Iron Gate Dams Trust Account.
12. Page 32, Conclusion of Law 10 now reads: By collecting the surcharge over a period of less than eight years, there is time for interest to accrue on the amount collected, which is intended to allow California ratepayers to pay less in rates.

(END OF ATTACHMENT A)

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**ATTACHMENT B**  
**Decision 11-05-002 as modified by**  
**Decision 12-10-028**

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ALJ/SMW/avs

**Date of Issuance 5/6/2011**

Decision 11-05-002 May 5, 2011

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of PACIFICORP (U901E), an Oregon Company, for an Order Authorizing a Rate Increase Effective January 1, 2011 and Granting Conditional Authorization to Transfer Assets, pursuant to the Klamath Hydroelectric Settlement Agreement.

Application 10-03-015  
(Filed March 18, 2010)

**DECISION 11-05-002, AS MODIFIED BY DECISION 12-10-028**  
**DECISION APPROVING A RATE INCREASE FOR PACIFICORP PURSUANT**  
**TO THE KLAMATH HYDROELECTRIC SETTLEMENT AGREEMENT**

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Attachment A - List Of Testimony And Exhibits Entered Into Record In A.10-03-015

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**DECISION 11-05-002, AS MODIFIED BY DECISION 12-10-028**  
**DECISION APPROVING A RATE INCREASE FOR PACIFICORP PURSUANT**  
**TO THE KLAMATH HYDROELECTRIC SETTLEMENT AGREEMENT**

## **1. Summary**

This decision approves the request by PacifiCorp, an Oregon Company, for: 1) a surcharge of \$13.76 million collected **over a period of less than eight years**; 2) institution of two trust accounts for the deposit of the surcharge; and 3) depreciation of the rate base of the Klamath River Project assets, and amortization of the relicensing and settlement costs associated with the Klamath River Project, on an accelerated basis. Approval of these requests will allow PacifiCorp to fulfill requirements of the Klamath Hydroelectric Settlement Agreement that affect its California customers. PacifiCorp must also file a separate Tier 3 advice letters at later dates requesting authority to transfer the Klamath River Project assets. On an annual basis, PacifiCorp must file a Status Report as an information only filing which identifies the status of key milestones in achieving the goals of the Klamath Hydroelectric Settlement Agreement. This proceeding remains open.

## **2. Background**

The Federal Energy Regulatory Commission (FERC) licenses each non-federal hydropower project.<sup>1</sup> The Klamath Hydroelectric Project, which includes four PacifiCorp owned dams as well as related plant (Klamath assets), received its original license in 1954. The Klamath assets are located in the Klamath Basin, which consists of the lands tributary to the Klamath River,

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<sup>1</sup> Pursuant to the Federal Power Act Part I, 16 U.S.C. §§ 791 et seq. Such a license has a term of not more than 50 years, subject to renewal. FERC must assure that the project will comply with laws applicable at the time the new license is authorized.

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straddling southern Oregon and northern California. PacifiCorp serves approximately 555,000 customers in Oregon and 45,000 customers in California.<sup>2</sup> PacifiCorp's Klamath assets complied with laws applicable at the time of their original licensing at both the state and federal level. There are now many laws that did not exist in 1954, which the Klamath assets would have to comply with in order to be granted a new license.<sup>3</sup> Prior to the Klamath Hydroelectric Settlement Agreement (KHSA), the FERC Final Environmental Impact Statement found that the Klamath assets would require substantial modifications to be in compliance with current law and the requirements of a new FERC license.<sup>4</sup>

For many years, the Klamath assets have been at the center of controversy in the Klamath Basin, with numerous entities calling for the removal of the dams. Native American tribes, environmental groups, and organizations that promote the conservation and health of fish have protested and filed lawsuits, complaining that the Klamath assets threaten, among other things, water quality and the health and availability of local species of fish, such as Klamath River salmon. For example, these fish require cold clean water with sufficient oxygen in order to survive and spawn, and these groups have stated that the dams affect the natural flow of the river, which reduces the flushing of spawning gravel downstream, and causes the water temperature to rise and toxic algae to bloom, threatening the survival of the fish.

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<sup>2</sup> In addition to serving customers in California and Oregon, PacifiCorp provides service in the states of Utah, Washington, Idaho and Wyoming.

<sup>3</sup> These laws include but are not limited to the: Clean Water Act (1972); Endangered Species Act (1973); National Environmental Policy Act (1969); Coastal Zone Management Act (1972); and, Forest Land Planning and Management Act (1976).

<sup>4</sup> Exhibit CG-1R at 8-11.



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In December 2000, prior to the 2006 expiration of its FERC license to operate the Klamath assets, PacifiCorp filed its Notice of Intent to begin the relicensing process, which could take anywhere from eight to 30 years to resolve.<sup>5</sup> After starting the FERC relicensing process, PacifiCorp met with stakeholders in the Klamath Basin to discuss relicensing of, and possible alternatives to relicensing of, the Klamath assets, such as removal of the dams, as well as the costs of the various alternatives. Parties also discussed how to resolve numerous related controversies within the Klamath Basin, such as how to address water conservation, water quality, irrigation, hydropower, and restoration of fisheries and wildlife habitats, all of which have been the subject of litigation for many years.

After years of negotiation, in February 2010, PacifiCorp and over 40 federal, state, county, tribal, irrigation, conservation, and fishing organizations, including the states of California and Oregon, executed a final KHSA, which provides an economical framework for resolution of many long-standing and contentious issues faced in the Klamath Basin. By physically removing the Klamath assets pursuant to the KHSA, the cost to ratepayers of resolving issues in the Klamath Basin is capped, protecting ratepayers from the unknown cost of relicensing the dams; and the water of the Klamath River will be able to flow freely downstream, allowing spawning gravel downstream to be flushed clean and the water temperature to return to normal.

In part, as it relates to PacifiCorp's California ratepayers, the KHSA proposes that, instead of pursuing the unknown cost of and timeline of relicensing, the Klamath assets be transferred to a trustee who would be

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<sup>5</sup> Exhibit PPL-100 at 4.

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responsible for their removal, after selected milestones are met. Pursuant to the KHSA, the first source of funding for removal would be from PacifiCorp's California and Oregon customers,<sup>6</sup> the customer cost would be capped, and the funds collected from customers would be held in trust over the period between authorization of the funding and the target start of removal in 2020. The KHSA also proposes that, in order for the Klamath assets to be completely depreciated by the estimated removal date of 2020, depreciation of the Klamath assets be accelerated over the same period that the funding is proposed to be collected. In order to fulfill the requirements of the KHSA, PacifiCorp must request authority from this Commission.

On March 18, 2010, PacifiCorp did just that when it filed this application, in which it requests, pursuant to the KHSA: 1) authorization to institute a surcharge of \$13.76 million; 2) institution of the California Copco I and II/Iron Gate Dams Trust Account and the California J.C. Boyle Dam Trust Account<sup>7</sup> (California Klamath Trust Accounts) for the deposit of the surcharge; 3) authorization to depreciate the rate base of the Klamath assets and to amortize the relicensing and settlement costs associated with the Klamath River Project on an accelerated basis; and 4) authority to transfer the Klamath River Project assets

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<sup>6</sup> KHSA Section 4.1.2.A states that the difference between: i) the surcharges collected from both Oregon and California customers; and ii) the actual cost to complete removal of the Klamath assets, would be funded with a California bond or another appropriate California financing mechanism, not to exceed \$250 million.

<sup>7</sup> KHSA at Section 4.2.2(a) - These two trust accounts are named after PacifiCorp owned dams in the Klamath Basin. The California J.C. Boyle Dam Trust Account would hold 25% of the surcharge funds collected from PacifiCorp's California customers, and the California Copco I and II/Iron Gate Dams Trust Account would hold 75% of the surcharge funds collected from PacifiCorp's California customers.

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to an entity designated to remove the dams in question. These specific elements are designed to implement the ratemaking and regulatory requirements of the KHSA as they relate to PacifiCorp's California ratepayers, and to allow the Klamath assets to be removed and the KHSA to come to fruition.

On April 26, 2010, the Division of Ratepayer Advocates (DRA) filed a *Motion to Hold in Abeyance* (Motion), requesting that the assigned ALJ hold A.10-03-015 in abeyance until after the *Safe, Clean, and Reliable Drinking Water Supply Act of 2010* (Bond Measure)<sup>8</sup> had been voted on by the California voters in the November 2010 election; or the State of California finds another source of funding for the cost of removal allocated to the State in the KHSA. On that same day, a protest to the application was filed by DRA, requesting that A.10-03-015 be either denied without prejudice and PacifiCorp directed to file a new application after California financing had been secured, or that DRA's Motion be approved. PacifiCorp filed a response to the Motion and a reply to the protest on May 6, 2010.

On May 19, 2010, a prehearing conference (PHC) took place in San Francisco to establish the service list for the proceeding, discuss the scope of the proceeding, and develop a procedural timetable for the management of the proceeding. At the PHC, the assigned ALJ granted party status to The Utility Reform Network (TURN), Institute of Fisheries Resources,<sup>9</sup> Pacific Coast

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<sup>8</sup> The Bond Measure was originally scheduled to be part of the November 2010 ballot as Proposition 18. However, on August 9, 2010, the State Legislature voted to postpone the vote to the November 2012 ballot.

<sup>9</sup> Institute of Fisheries Resources is a California non-profit salmon and marine conservation organization, loosely affiliated with the Pacific Coast Federation of Fishermen's Associations, which has been working for a number of years to restore

*Footnote continued on next page*

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Federation of Fisherman's Association,<sup>10</sup> Trout Unlimited,<sup>11</sup> California Trout,<sup>12</sup> American Rivers,<sup>13</sup> the Karuk Tribe,<sup>14</sup> the Yurok Tribe,<sup>15</sup> and the Klamath Water Users Association.<sup>16</sup> The Institute of Fisheries Resources, Pacific Coast

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salmon runs to the Klamath River that it states have been damaged by the impacts of the Klamath assets on the Klamath River.

<sup>10</sup> The Pacific Coast Federation of Fishermen's Associations is a California non-profit organization that is the largest trade organization of commercial fishing families on the west coast, many of whose member groups and members are PacifiCorp customers.

<sup>11</sup> Trout Unlimited is a national coldwater fish conservation organization with over 140,000 members nationwide, including approximately 9,000 members in California. Trout Unlimited is a non-profit corporation whose mission is to conserve, protect, and restore North America's trout and salmon fisheries and their water sheds.

<sup>12</sup> California Trout is a statewide organization whose purpose is to protect and restore California's wild trout, native steelhead, and their habitats. California Trout has approximately 7,000 members, and fifty affiliate local angling clubs representing approximately 10,000 more persons.

<sup>13</sup> American Rivers is a non-profit conservation organization whose mission is to restore and protect the nation's rivers for the benefit of fish, wildlife, and people. American Rivers has approximately 30,000 members nationwide and approximately 5,000 members in California.

<sup>14</sup> The Karuk Tribe is a federally recognized Indian Tribe. The Karuk Tribe is a PacifiCorp ratepayer with a vested interest in both maintaining affordable power rates and a reliable power supply, as well as the restoration of Klamath River fisheries which the Karuk Indians have relied on for time beyond record.

<sup>15</sup> The Yurok Tribe is a federally recognized tribe having 5,579 members located along the Klamath River. Tribal headquarters, housing, schooling, police, court, watershed, fisheries, cultural, and Yurok offices are all within the PacifiCorp service area. The Yurok Tribal membership depends on the fish of the Klamath River for their livelihood, culture, and way of life.

<sup>16</sup> The Klamath Water Users Association is a non-profit corporation organized to preserve, protect, and defend the water and power rights of landowners of the Klamath Basin, and to promote wise management of resources. Members of the Klamath Water Users Association, who are also customers of PacifiCorp, include irrigation districts and similar public and quasi-public agencies in Oregon and California, who receive water through the Klamath Reclamation Project in the Upper Klamath Basin.

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Federation of Fisherman's Association, Trout Unlimited, California Trout, and American Rivers, are collectively referred to as Conservation Groups.<sup>17</sup>

The Assigned Commissioner's Ruling and Scoping Memo (Scoping Memo) issued on June 18, 2010, set forth the procedural schedule, assigned the presiding officer, and addressed the scope of this proceeding and other procedural matters following the PHC. The Scoping Memo also confirmed the preliminary determination of ratesetting and the necessity for hearings. In the Scoping Memo, the Assigned Commissioner denied DRA's motion to hold A.10-03-015 in abeyance and its request to dismiss A.10-03-015 and require PacifiCorp to file a new application after California state funding has been secured. We confirm his ruling herein.

On July 9, 2010, a workshop was held in San Francisco to discuss the background and details of the KHSA. Status Reports filed by PacifiCorp on July 1, July 30, August 31, October 1, November 1, December 2, and December 29, 2010, and February 1, March 1, and April 1, 2011, addressed progress made by PacifiCorp regarding the formation of the requested trust accounts, development of trustee instructions, and the receipt of permissions required for the proposed surcharge revenues to be deemed tax-free.

On July 30, 2010, PacifiCorp served its supplemental testimony. On September 10, 2010, DRA and the Conservation Groups each served testimony. On October 6, 2010, PacifiCorp served its rebuttal testimony. Evidentiary hearings were held on October 18, 2010. Opening Briefs were filed on

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<sup>17</sup> The Conservation Groups have intervened in past Commission proceedings regarding PacifiCorp, and have more recently intervened in PacifiCorp's application to the FERC for relicensing of the Klamath assets.

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November 17, 2010 and Reply Briefs were filed on November 24, 2010 by PacifiCorp, DRA, and Conservation Groups.

**3. Should the Commission Require PacifiCorp to File a New Application at a Later Date, after Selected Conditions are Met?**

As discussed in the Scoping Memo, DRA's motion to hold A.10-03-015 in abeyance and its request to dismiss the current application were denied. DRA again recommended in its testimony that the Commission require PacifiCorp to file a new application after several conditions, are met, including: 1) approval of a bond measure or alternative source of funding for the State of California's share of the KHSA costs; 2) passage of federal legislation required by the KHSA; and 3) approval by the Internal Revenue Service of the trust funds PacifiCorp requested be set up.<sup>18</sup>

With regards to the KHSA as a whole, the Conservation Groups, all of whom are parties to this proceeding as well as signatories to the KHSA, approve of the KHSA.<sup>19</sup>

DRA supports its position by stating that "a formidable army of parties" are opposed to the KHSA and the bond measure, which DRA states could result in the termination of the KHSA.<sup>20</sup> In evidentiary hearings, DRA witness Mark Loy responded to questions regarding the above statement, and agreed that no parties to the current case are opposed the KHSA, and even though

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<sup>18</sup> Exhibit DRA-001R at 2 and 14.

<sup>19</sup> CG-1R at 5.

<sup>20</sup> Exhibit DRA-001R at 9.

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attempted, he had not been able to contact other signatories to the KHSA to determine the other signatories' positions.<sup>21</sup>

In response to questions regarding who he had spoken with to determine that there was no sponsor for the federal legislation required by the KHSA, Witness Loy stated that he had not consulted with any member of Congress regarding their consideration of introduction of such federal legislation, and in particular, had not consulted any member of the California or Oregon Federal delegations or their staffs whose districts encompass the Klamath Basin.<sup>22</sup>

DRA presented no evidence in testimony regarding its request to dismiss the current application that would have us reconsider the assigned Commissioner's original ruling not to do so. The KHSA is supported by the Conservation Groups and PacifiCorp, both of whom are signatories to the KHSA and parties to the current case. Also, since the customer surcharge is the first source of funding pursuant to the KHSA, and California bond funding will only be used to the extent if any, that the cost of removal exceeds the Oregon and California customer contributions,<sup>23</sup> there is no reason to hold up consideration of the reasonableness of the customer surcharge. Indeed, by its nature, the ratepayer surcharge must be collected over a period of time before the funds are needed, while the State of California's share of the funding need not be collected over time. This is another reason why we decline to delay our consideration of PacifiCorp's application until the State of California's share has been secured.

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<sup>21</sup> RT 46-47.

<sup>22</sup> RT 99-100.

<sup>23</sup> Exhibit PPL-105 at 7-8 and KHSA Section 4.1.

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And, although DRA states there is no evidence of a sponsor for the federal legislation required to implement the KHSA, that does not mean there will never be a sponsor, especially since DRA did not consult with federal legislators from California and Oregon that would be most interested in this proposed legislation. As quoted in Conservation Groups' Opening Brief, Carl Sagan stated it eloquently, the "absence of evidence is not evidence of absence."<sup>24</sup>

Therefore, we see no reason to disturb our prior ruling which denied DRA's motion to hold in abeyance this proceeding or to dismiss the current application.

**4. Should the Commission Authorize a Surcharge to Recover the Costs of Removing the Klamath Assets?**

Pursuant to Section 4.1.1 of the KHSA, PacifiCorp requests that the Commission establish a non-bypassable refundable rate surcharge to collect \$13.76 million from its California customers to fund the removal of the Klamath assets. PacifiCorp's proposed total surcharge estimate of \$13.76 million represents California ratepayer's approximately 8% share of customer contributions (Oregon and California customers combined) and an approximately 3% share of the \$450 million cap on the total removal cost, settled upon in the KHSA.

PacifiCorp states that the surcharge and the terms of the KHSA provide significant benefits to PacifiCorp's customers, in particular the cost cap which protects ratepayers from the uncertain costs of relicensing, litigation, decommissioning, and removal that customers may be responsible for absent the KHSA. More specifically, PacifiCorp references the benefit of cost protection

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<sup>24</sup> Conservation Group Opening Brief at 16.



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regarding dam removal cost, and the avoidance of the risks of possible litigation due to controversies in the Klamath Basin region regarding the operation of the dam's and FERC relicensing costs.

The Conservation Groups agree with PacifiCorp's recommendation, stating that implementation of the KHSA will provide substantial benefits to ratepayers in comparison to the alternative of relicensing the Klamath assets. In support of its position, the Conservation Groups state that the cost of removal was established based on the terms of the KHSA and is shared among a number of parties, while in the case of relicensing, the total cost, including such items as compliance with water quality certifications, legal costs, and possible decommissioning, would most likely be borne alone by PacifiCorp and its ratepayers.<sup>25</sup>

We find that authorization of the proposed surcharge pursuant to the terms of the KHSA provides the most cost effective method of collecting the funds necessary to resolve conflicts over resources in the Klamath Basin. Through the use of the KHSA cost cap, ratepayers are protected from the uncertain costs of relicensing, litigation, and decommissioning that customers may be responsible for sans the KHSA. If the KHSA surcharge is not instituted, the KHSA may be terminated,<sup>26</sup> and ratepayers would then be exposed to an uncertain amount of costs in addressing what to do with PacifiCorp's Klamath assets.

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<sup>25</sup> Exhibit CG-1R at 5-15.

<sup>26</sup> KHSA at Section 8.11.1.D.

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## **5. How Should a Surcharge be Recovered?**

PacifiCorp proposes to spread the estimated \$13.76 million surcharge equally [over a period of less than eight years](#) resulting in annual collections of approximately \$1.73 million/year, which translates into [an average](#) bill increase of about \$1.82/month for the average residential customer.<sup>27</sup> In support of its request to collect the proposed surcharge [over a period of less than eight years](#), PacifiCorp states that the KHSA has a target start date for removal of the Klamath assets of January 1, 2020.<sup>28</sup> Additionally, by collecting the surcharge [over a period of less than eight years](#) and collecting interest on the balance of those funds, the difference between the estimated cost allocable to California customers (\$16 million) and what PacifiCorp is actually charging the ratepayers (\$13.76 million) is reduced.<sup>29</sup> [The California Copco I and II/Iron Gate Dams Trust Accounts were not established until January 2012, approximately eight months after the issuance of D.11-05-002. Given the amount of time it took to establish the California Copco I and II/Iron Gate Dams Trust Accounts, PacifiCorp should collect the surcharge over a period of less than eight years.](#)

PacifiCorp requests that the rate design of its proposed surcharge be based on an allocation among customers classes based on each class's share of generation revenues, which PacifiCorp believes is equitable.<sup>30</sup> Conservation Groups support PacifiCorp's proposed surcharge allocation methodology.<sup>31</sup>

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<sup>27</sup> A.10-03-015 at 4-5, [and the Petition of PacifiCorp for Modification of Decision 11-05-002 and Expedited Request for Consideration](#).

<sup>28</sup> KHSA at Section 7.3.1 and A.10-03-015 at 4.

<sup>29</sup> A.10-03-015 at 2 and KHSA at Section 4.1.1.E.

<sup>30</sup> Exhibit PPL-200 at 8-9 and A.10-03-015 at 5.

<sup>31</sup> Conservation Group Opening Brief at 17.

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DRA initially recommended that, if a surcharge is instituted, it be recovered over 18 years, in order to: 1) reflect what it considers the risks and uncertainties identified in the KHSA and elsewhere that may result in the United States Secretary of the Interior terminating the KHSA; and 2) safeguard against overcollection of surcharge revenues from PacifiCorp's California customers in order to minimize ratepayer exposure to any unrealized costs.<sup>32</sup> In its Opening Brief, DRA does not oppose PacifiCorp's proposed Klamath surcharge rate design allocation method, but only if dam removal begins in 2020.<sup>33</sup>

It is impossible to determine at this time whether dam removal will actually begin in 2020, however, that is the planned date. In order to ensure that sufficient funds are available to pay for dam removal as it occurs, it is necessary to begin collecting the surcharge well before the estimated date for beginning dam removal.

PacifiCorp states that the surcharge amount collected from California customers may have to be adjusted in the future to reflect variations in load forecasts, but the annual surcharge revenue will not exceed 2% of the authorized annual revenue requirement as of January 1, 2010. PacifiCorp also proposes that if there are funds remaining in the trust accounts after removal of the Klamath assets or if the KHSA does not come to fruition, these funds must be used for the benefit of customers through refunds, the funding of beneficial programs associated with the Klamath assets, or to fund relicensing of the Klamath assets.<sup>34</sup>

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<sup>32</sup> Exhibit DRA-001R at 3.

<sup>33</sup> DRA Opening Brief at 14.

<sup>34</sup> A.10-03-015 at 6 and KHSA at Section 4.4.3.

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PacifiCorp did not propose in what forum it would request any future adjustment to or refund of the surcharge.<sup>35</sup>

We find that it is essential that the surcharge of \$13.76 million be collected **over a period of less than eight years**, not to exceed the 2% limit of the authorized annual revenue requirement as of January 1, 2010, in order to support the anticipated KHSA removal start date, and to accrue sufficient interest to make up the difference between the surcharge collected from California customers and the amount allocated to PacifiCorp's California customers by the KHSA. By collecting the surcharge **over a period of less than eight years**, there is time for interest to accrue on the amount collected, which is intended to allow California ratepayers to pay less in rates. Any other option for collecting the surcharge would either result in not having sufficient funds at the target start date for removal of the Klamath assets or require ratepayers to pay more of the cost attributable to California customers. For example, if the ratepayers were to pay the surcharge beginning at a date closer to the target start of removal of the Klamath assets, there would be less time for interest to accrue on the surcharge collected, which would result in California ratepayers having to pay more in order to have sufficient funds by the target start date of removal. In addition, beginning the surcharge closer to the target start of removal would require a higher monthly surcharge just to accrue the same principal amount by the target start of removal.

PacifiCorp's proposed rate design methodology, which allocates the surcharge to customer classes based on authorized generation revenues is reasonable and is adopted herein, because it is based on already authorized

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<sup>35</sup> Exhibit PPL-200 at 8.

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revenue allocations. In order to be consistent with the calculation of the surcharge limit of 2%, which is based on an authorized figure as of January 1, 2010, the allocation of the surcharge among customer classes adopted herein should also be based on the authorized inputs (in this case the authorized allocation of generation revenues) as of January 1, 2010. As shown in Exhibit PPL-201, the resulting surcharge revenue requirement for each class will be collected from customers within that class based on the number of kilowatt hours consumed. Within 30 days after this decision is issued, PacifiCorp must file a Tier 1 advice letter requesting approval of revised tariff sheets that add the surcharge ordered herein. However, the surcharge will not be effective until the Energy Division determines that the filed tariff changes are in compliance with this decision and Commission staff informs the assigned ALJ and service list of the current proceeding that the California Klamath Trust Accounts have been established. Within 30 days of the latter of (i) the Energy Division's determination of compliance and (ii) Commission staff notification of the California Klamath Trust Accounts establishment, PacifiCorp must begin collecting the surcharge from its California customers, and collect such surcharge [over a period of less than eight years](#).

The surcharge authorized herein together with the interest accrued, is refundable if the KHSA is terminated, protecting ratepayer funds from being used for purposes other than the benefit of ratepayers. The amount of the surcharge may also be revised, which will protect both ratepayers and PacifiCorp. If PacifiCorp collects too much money, a reduction in the surcharge amount may be requested, protecting ratepayers from being overcharged. If PacifiCorp does not collect enough funds, an increase in the surcharge amount

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within the 2% limit discussed above may be requested.<sup>36</sup> Any consideration of how to refund the surcharge or any revision to the amount of the surcharge must be requested through an application, with notice to all parties of record in the current proceeding, in order for all interested parties to have an opportunity to weigh in on how the funds should be refunded or revised.

**6. How should Surcharge Funds be Administered?**

Pursuant to Section 4.2.2 of the KHSA, PacifiCorp requests that the Commission create the interest bearing California Klamath Trust Accounts and appoint a trustee. PacifiCorp would remit the funds to the trustee, who would hold and manage the funds in the California Klamath Trust Accounts, and disburse funds from the California Klamath Trust Accounts to the Dam Removal Entity (DRE) as required by the trustee instructions and the KHSA, for dam removal. The Commission would establish the trust accounts and be the trustor. Interest earned on the surcharge collected in the California Klamath Trust Accounts would go towards funding the California customer portion of the removal cost pursuant to the KHSA.<sup>37</sup> Pursuant to Section 4.2.2.A of the KHSA, the California Klamath Trust Accounts should be set up so that the surcharge funds are not considered taxable revenues to PacifiCorp. In regards to the creation of the trusts, PacifiCorp also requested that the Commission direct its Executive Director to take the steps necessary to create the California Klamath Trust Accounts as provided for in the KHSA. Witness Andrea L. Kelly for

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<sup>36</sup> KHSA at Section 4.1.1.C, E.

<sup>37</sup> A.10-03-015 at 2.

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PacifiCorp stated that the Commission's Legal Division had indicated that it would assist in this process if the Commission ordered the trusts to be set up.<sup>38</sup>

Conservation Groups support PacifiCorp's request, stating that the trusts are necessary to assure that the surcharge funds collected are held in trust pending accomplishment of the conditions required by the KHSA.

Since the surcharge will be collected over a number of years, **is** being collected for a specific purpose, and will not begin to be needed **until after December 31, 2019**, these funds need to be held separately from other PacifiCorp funds, in order to ensure these funds are available for their authorized purpose.

Therefore, pursuant to our authority under Pub. Util. Code 1701<sup>39</sup> and consistent with the KHSA, the Commission will direct its Executive Director to create the California Klamath Trust Accounts as discussed herein, and appoint a trustee to manage and administer the California Klamath Trust Accounts, in which the surcharge ordered herein will be deposited. The Executive Director may select the California State Treasurer as the trustee.

Once the Energy Division determines that the filed tariff changes are in compliance with this decision and Commission staff informs the assigned ALJ and service list of the current proceeding that the California Klamath Trust Accounts have been established, PacifiCorp will start collecting the surcharge ordered herein. Thereafter, PacifiCorp must remit surcharge funds that it collects on a monthly basis to the trustee no later than the 15th day of the following calendar month. Consistent with the KHSA, 75% of the surcharge

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<sup>38</sup> RT 20-21.

<sup>39</sup> <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=9979219881+0+0+0&WAISaction=retrieve>.

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funds collected should be deposited to the California Copco I and II/Iron Gate Dams Trust Account and 25% of the surcharge funds collected should be deposited to the California J.C. Boyle Dam Trust Account.

In its Reply Comments, PacifiCorp cited opinions in several court cases in support of its contention that the surcharge funds would not constitute taxable gross income to PacifiCorp.<sup>40</sup> For example, in *Illinois Power Co. v. Commissioner*,<sup>41</sup> the United States Court of Appeals for the Seventh Circuit (Seventh Circuit) states that if the taxpayer had been ordered to place the revenues at issue in a trust account for the benefit of its ratepayers, then such revenues would not be considered income to the taxpayer. The Seventh Circuit went on to state that “The underlying principle is that the taxpayer is allowed to exclude from his income money received under an unequivocal contractual, statutory, or regulatory duty to repay it, so that he really is just the custodian of the money.”<sup>42</sup> The Seventh Circuit relied, in part, on the opinion of the United States Court of Appeals for the Ninth Circuit in *Mutual Tel. Co. v. United States*,<sup>43</sup> which found that if the funds were not received “under a claim of right and without restriction as to its disposition” the funds were not taxable income.<sup>44</sup> In the current case, pursuant to the KHSA and our opinion herein, PacifiCorp is only the custodian of the funds from the date of collection to deposit with the trustee, and cannot,

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<sup>40</sup> PacifiCorp Reply Comments at 3-4.

<sup>41</sup> 792 F.2d 683 (7<sup>th</sup> Cir. 1986).

<sup>42</sup> 792 F.2d at 689.

<sup>43</sup> 204 F.2d 160, 161 (9<sup>th</sup> Cir. 1953).

<sup>44</sup> 204 F.2d at 161.



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by its regulatory and contractual duty, dispose of it in any other way than deposit with the trustee.

In any event, there will be no net tax effect on PacifiCorp, because if the receipt of the surcharge funds is considered taxable income, the payment to the trustee would be an equal and offsetting business expense. We are therefore satisfied that the surcharge funds will not be taxable income to PacifiCorp.

**7. How should the Klamath Assets be Depreciated?**

PacifiCorp requests approval of an accelerated depreciation schedule to depreciate Klamath assets and amortize the relicensing and settlement process costs on a straight-line basis over the same period as the surcharge.<sup>45</sup> This is consistent with the provisions of the KHSA which contemplates fully depreciating each Klamath asset based on the assumption that each of the assets will be removed in 2020, and that the depreciation schedule should be changed at any time if removal of an asset will occur in a year other than 2020.<sup>46</sup> In support of its request, PacifiCorp states that the Commission has already approved this adjustment to implement PacifiCorp's proposed accelerated depreciation for the Klamath assets and amortization of the relicensing and settlement process costs as part of the settlement adopted in PacifiCorp's recent General Rate Case (GRC) decision, D.10-09-010. PacifiCorp goes on to state that if the anticipated remaining lives of the Klamath assets change, the Commission

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<sup>45</sup> A.10-03-015 at 6-7.

<sup>46</sup> KHSA at Section 4.5.2.

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can adjust the depreciation lives of the Klamath assets in a future GRC, to ensure that customers do not overpay the depreciation allowance.<sup>47</sup>

The Conservation Groups support PacifiCorp's request,<sup>48</sup> while DRA believes that it is premature to begin depreciating Klamath assets at an accelerated rate at this time. DRA's concerns regarding accelerated depreciation are similar to the concerns it has with the surcharge – the risk of the KHSA being terminated at some point in the future.<sup>49</sup>

If the Commission does authorize accelerated depreciation of the Klamath assets in the current case, DRA recommends that the period over which the assets are depreciated should be extended from nine to 18 years, to reflect what it considers the risks and uncertainties identified in the KHSA and elsewhere that may result in termination of the KHSA.

Pursuant to D.10-09-020, PacifiCorp is already authorized to amortize the relicensing and settlement process costs and recover depreciation on KHSA assets over a shorter length of time than the original useful life of the assets, so that they will be completely depreciated by the target date for dam removal of 2020. We see no reason to change our previous order. DRA's argument here is essentially the same reasoning it used to support (i) rejection of the surcharge, or (ii) extension of recovery of the surcharge over a longer period of time, proposals which we have already rejected, as discussed in Sections 3 through 5 of this decision. We therefore affirm D.10-09-020 regarding the depreciation authorized

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<sup>47</sup> Exhibit PPL-203 at 2-3.

<sup>48</sup> Conservation Groups Opening Brief at 18.

<sup>49</sup> Exhibit DRA-001R at 13.

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for the Klamath assets and amortization of the relicensing and settlement process costs.

We also require PacifiCorp to adjust the depreciation of the Klamath assets and amortization of the relicensing and settlement process costs in any GRC application, if, in the future, the anticipated remaining life of the Klamath assets change. PacifiCorp must also identify the annual and cumulative balance of accelerated depreciation on the Klamath assets and amortized relicensing and settlement processing costs in all future GRC applications, until the Klamath assets are totally depreciated and the costs amortized.

**8. How Should KHSA Assets be Disposed of?**

PacifiCorp requests authorization, pursuant to Public Utilities (Pub. Util.) Code § 851 (Section 851) to transfer the Klamath assets at a later date to a DRE, conditioned upon completion of specific milestones set forth in the KHSA. PacifiCorp requests the authorization to transfer be accomplished via a separate Tier 1 advice letter confirming the attainment of the milestones listed below.<sup>50</sup> PacifiCorp states that delaying Section 851 approval to a later date as part of a separate application would create another regulatory precondition of the KHSA, which may heighten uncertainty to KHSA implementation as a whole.

PacifiCorp requests that the milestones include:<sup>51</sup>

- a. The passage of federal legislation which contains provisions that are materially consistent with Section 2.1.1.A of the KHSA;

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<sup>50</sup> A.10-03-015 at 7-9.

<sup>51</sup> A.10-03-015 at 7-8.

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- b. The availability of sufficient funds to cover estimated costs of dam removal, provided by California and Oregon customers, as set forth in Section 4.1 of the KHSA;
- c. An Affirmative Determination by the United States Secretary of the Interior determining that the costs of dam removal will not exceed available funds, removal of the dams will advance restoration of the salmon fisheries of the Klamath basin, and removal of the dams is in the public interest as required in Section 3 of the KHSA; and
- d. The issuance by the Dam Removal Entity (DRE) of the DRE Notice, as defined in Section 7.4.1 of the KHSA, at such time as all necessary permits and approvals have been obtained for the removal of a main stem dam, all contracts necessary for facility removal have been finalized, and facility removal is ready to commence.

DRA recommends that the Commission (i) grant PacifiCorp conditional approval of its request for the transfer of Klamath assets, provided PacifiCorp files an annual status report on the risks, uncertainties and milestones identified in the KHSA and elsewhere, and (ii) require PacifiCorp to file a Section 851 application 60 days prior to a Klamath asset transfer.<sup>52</sup> This is due to DRA's concern that there are significant risks that the KHSA will be terminated or the terms and conditions of the KHSA altered. DRA also states that decision makers are entitled to information regarding KHSA related events that occur subsequent to this proceeding, before authorizing the transfer of Klamath assets.<sup>53</sup>

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<sup>52</sup> Exhibit DRA-001R at 12.

<sup>53</sup> DRA Opening Brief at 16-17.

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Conservation Groups support PacifiCorp's Section 851 request, and believe that DRA's request for further review is duplicative and unnecessary to protect PacifiCorp's ratepayers.<sup>54</sup>

In their Reply Comments, PacifiCorp<sup>55</sup> and the Conservation Groups<sup>56</sup> state that the inclusion of milestone d listed above may conflict with the timely removal of the Klamath assets, and that only milestones a, b, and c should be fulfilled and milestone d be expected to be fulfilled within six months, before PacifiCorp may file a Tier 3 advice letter requesting disposition of the Klamath assets.

Given the amount of time that will pass between the current decision and disposition of the Klamath assets, as well as the controversial nature of the issues addressed by the KHSA, a more detailed review of the request for transfer is required. During this time, events may occur that affect disposition of the Klamath assets. We find, though, that since the Commission has performed a review of PacifiCorp's KHSA requests in the current proceeding, it and the parties will only need to review events that occur subsequent to this proceeding in regards to whether the Klamath assets should be transferred or not. We find that this limited review can be performed in a Tier 3 advice letter review, which balances the need for a limited review with PacifiCorp's request for a quicker final approval of the transfer the Klamath assets.

In an effort to balance PacifiCorp's request for a quicker and less detailed Tier 1 advice letter filing and DRA's recommendation of a new application to

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<sup>54</sup> Conservation Groups Opening Brief at 19 and Conservation Group Reply Brief at 6.

<sup>55</sup> PacifiCorp Reply Comments at 5.

<sup>56</sup> Conservation Groups Reply Comments at 1.

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resolve the disposition of the Klamath assets, as well as our finding that a review, albeit a limited review of events that occur subsequent to the issuance of this decision should be performed, we approve herein the later transfer of the Klamath assets to the DRE, subject to PacifiCorp's compliance with the conditions noted below and the Commission's determination by resolution that those conditions have been met. We therefore require PacifiCorp to file a Tier 3 advice letter to request authority to dispose of each individual Klamath asset after milestones a - c listed above are met, all permits, approvals, and contracts other than those granted by this Commission regarding the specific Klamath asset have been received, and the transfer of the specific Klamath asset is expected to occur within six months. We have modified milestone d listed above, since inclusion of milestone d as originally requested by PacifiCorp would create a circular requirement, where achievement of milestone d would be required to request our approval for the transfer, but milestone d would not be achieved until Commission approval is granted. We have therefore modified milestone d, to eliminate both the requirement for this Commission's approval and the requirement for the DRE notice, which also appears to require advance approval by this Commission. As thus revised condition d will require a showing that:

- d. All necessary permits and approvals have been obtained for the removal of a main stem dam, except for the approval of the California Public Utilities Commission; all contracts necessary for that facility's removal have been finalized and that facility's removal is ready to commence within 6 months; and the DRE is prepared to issue the DRE Notice, as defined in Section 7.4.1 of the KHSA, after receipt of this Commission's approval of the transfer of the facility.

While we incorporate PacifiCorp's suggestion that the advice letter can be filed at a time when dam removal is expected to begin within six months, we

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decline to delete the requirement that all other permits are in hand and that all contracts have been finalized before PacifiCorp files the advice letter. The Commission wants to be sure that at the time it authorizes the actual transfer of the Klamath Assets to the DRE, the dam removal will occur and is not subject to the risk that some other approval will not be obtained. Use of a Tier 3 advice letter should require much less time to process than an application, while providing all parties the opportunity to provide input on the process and the Commission to perform a more informed review to determine PacifiCorp's compliance with all applicable requirements closer to the time of disposition.

**9. Should PacifiCorp Report on the Status of the KHSA?**

PacifiCorp proposes that it provide an annual report filed with the Commission on May 1<sup>st</sup> of each year that identifies the status of key milestones of the KHSA, including those listed in Exhibit 2 to Exhibit PPL-104 titled *Sequence of Performance Chart*. PacifiCorp states that this information would provide the Commission with a comprehensive update on the progress of implementation of the KHSA.<sup>57</sup> DRA agrees that PacifiCorp should file an annual status report, but recommends that the content include a discussion of the risks, uncertainties, and milestones identified in the KHSA and elsewhere.<sup>58</sup>

Alternatively, the Conservation Groups recommend that PacifiCorp submit a semi-annual report on KHSA implementation (served on all parties to the current proceeding) that addresses, at a minimum: 1) enactment of conforming federal legislation; 2) the Interior Secretary's determination to

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<sup>57</sup> PacifiCorp Opening Brief at 23.

<sup>58</sup> Exhibit DRA-001R at 14.

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proceed with dam removal; 3) designation of a DRE; 4) concurrence of Oregon and California in that determination and designation; 5) securing of state funds through rates and California Bond as needed to perform dam removal up to \$450 million; 6) DRE's development of a detailed plan to effect dam removal consistent with budget and liability controls; 7) securing of all permits and funding necessary to perform the detailed plan; and 8) any other items that in PacifiCorp's judgment bear on the probability, schedule, and cost of implementing the KHSA.<sup>59</sup>

We find that, given the extended time over which the KHSA implementation will take place, the multiple events that are proposed to take place, and the timing of those events, it is important for parties to be kept informed of the progress towards achievement of the goals of the KHSA. We therefore require PacifiCorp to file a Status Report as an information only filing with the Energy Division on an annual basis beginning May 1, 2012, and serve this Status Report on the service list of the current proceeding. At a minimum, the Status Report must address:

- a. All items listed in Exhibit 2 to Exhibit PPL-104;
- b. The enactment of conforming federal legislation;
- c. The enactment of California legislation to authorize the issuance of a California Bond;
- d. The availability of sufficient funds to cover estimated costs of dam removal, provided by California and Oregon customers, as set forth in Section 4.1 of the KHSA;
- e. An Affirmative Determination by the United States Secretary of the Interior determining that the costs of dam removal will not exceed available funds, removal of the

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<sup>59</sup> Exhibit CG-01R at 15-16.



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- dams will advance restoration of the salmon fisheries of the Klamath basin, and removal of the dams is in the public interest as required in Section 3 of the KHSA;
- f. A list of all necessary permits, approvals, and contracts for removal of the Klamath assets and the date PacifiCorp receives, or expects to receive each;
  - g. The Interior Secretary's determination to proceed with dam removal;
  - h. The concurrence of Oregon and California in that determination and designation of a DRE;
  - i. The securing of California state funds through a California Bond or other form of state funding;
  - j. The DRE's development of a detailed plan to effect dam removal consistent with budget and liability controls;
  - k. The securing of all permits and funding necessary to perform the detailed plan;
  - l. The amount of surcharge revenue collected in California by year and cumulatively;
  - m. Both the amounts of interest accrued on the balances in the California Klamath Trust Accounts since the last Status Report and the cumulative total of interest earned to date;
  - n. Whether the combined total of surcharge collected and interest earned to date is expected to equal \$16 million by the start of dam removal;
  - o. Based on the surcharge collected and interest earned to date, what adjustment, if any, should be made to the surcharge if it appears that there will be either more or less than \$16 million by the start of dam removal;
  - p. Any other items that bear on the probability, schedule, and cost of implementing the KHSA; and
  - q. Any other significant events related to the KHSA that have occurred in the past 12 months.

Since PacifiCorp will now be required to file and serve an annual Status Report, we will no longer require PacifiCorp to file and serve the monthly status

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report it has been filing during the processing of this application. Requiring a report on an annual basis will provide important and time sensitive information to stakeholders. By doing so, all stakeholders in the current case, as well as the Commission, will remain informed regarding progress of the KHSA, and be able to act promptly on events as necessary.

#### **10. Comments on the Proposed Decision**

As provided by Rule 14.3 of our Rules of Practice and Procedure and Pub. Util. Code § 311(g) (1), the draft decision of the ALJ in this matter was mailed to the parties on February 22, 2010. Opening and Reply Comments were filed by PacifiCorp, DRA, and the Conservation Groups on March 14, 2011 and March 21, 2011, respectively. Comments received have been addressed throughout this decision as needed.

#### **11. Assignment of Proceeding**

Michael Peevey is the Assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. In January 2008, PacifiCorp and over 40 federal, state, county, tribal, irrigation, conservation, and fishing organizations started focused negotiations that resulted in the a final KHSA executed by the parties involved in February 2010.
2. On March 18, 2010, PacifiCorp filed this application, in which it requests authorization, pursuant to the KHSA, to: 1) institute a surcharge of \$13.76 million; 2) institute the California Klamath Trust Accounts for the deposit of the surcharge; 3) depreciate the rate base, and amortize the relicensing and settlement costs associated with the Klamath River Project, on an accelerated basis; and 4) transfer the Klamath River Project assets to an entity designated to remove the dams in question.

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3. On April 26, 2010, DRA filed a Motion requesting that the assigned ALJ hold A.10-03-015 in abeyance until after the Bond Measure is voted on by the California voters or the state of California finds another source of funding for the cost of removal allocated to the state in the KHSA.

4. On April 26, 2010, DRA filed a protest to the application requesting that A.10-03-015 be either denied without prejudice and PacifiCorp directed to file a new application after California financing had been secured, or that DRA's Motion be approved.

5. Both DRA's Motion and protest were denied by the assigned Commissioner in his Scoping Memo.

6. DRA presented no evidence in testimony regarding its request to dismiss the current application that would have us reconsider the assigned Commissioner's original ruling not to do so.

7. The KHSA is supported by the Conservation Groups and PacifiCorp, both of whom are signatories to the KHSA and parties to the current case.

8. Through the use of the KHSA cost cap, ratepayers are protected from the uncertain costs of relicensing, litigation, and decommissioning that customers may be responsible for sans the KHSA. If the KHSA surcharge is not instituted, ratepayers would be exposed to an uncertain amount of costs.

9. In order for PacifiCorp to collect sufficient surcharge funds for the DRE to begin removal of the Klamath assets proposed in the KHSA in a timely fashion and to accrue sufficient interest on the surcharge funds to make up the difference between the collected customer surcharge and the amount required by the KHSA, the surcharge must be recovered [over a period of less than eight years](#).

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10. The California Copco I and II/Iron Gate Dams Trust Accounts were not established until January 2012, approximately eight months after the issuance of D.11-05-002.

11. PacifiCorp's proposed rate design method of allocating the surcharge to customer classes is based on authorized generation revenues.

12. Pursuant to the KHSA, the surcharge paid by customers is the first source of funding for the KHSA, and the California bond funding is a source of funding that will only be used to the extent if any, that the cost of removal exceeds the Oregon and California customer contributions.

13. DRA did not consult with any member of Congress regarding introduction of federal legislation to implement the KHSA and, in particular, did not consult with any member of the California or Oregon Federal delegations, or their staffs, whose districts encompass the Klamath Basin.

14. Pursuant to D.10-09-020, PacifiCorp is already authorized to recover depreciation and amortization related to the Klamath River Project assets over a shorter length of time.

15. Given the extended time over which the KHSA process takes place, it is important for parties to be kept informed of the progress towards achievement of the terms of the KHSA.

**Conclusions of Law**

1. The proposed surcharge of \$13.76 million collected over a period of less than eight years from PacifiCorp's California customers should be authorized.

2. Since the customer surcharge is the first source of funding pursuant to the KHSA, and California bond funding will only be used to the extent if any, that the cost of removal exceeds the Oregon and California customer contributions,

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there is no reason to hold up consideration of the reasonableness of the customer surcharge while approval of California Bond funding is pending.

3. By its nature, the ratepayer surcharge must be collected over a period of time before the funds are needed, while the State of California's share of the funding need not be collected over time.

4. By collecting the surcharge [over a period of less than eight years](#), there is time for interest to accrue on the amount collected, which is intended to allow California ratepayers to pay less in rates than they otherwise would.

5. Even though there may not currently be a sponsor for the federal legislation required by the KHSA, that does not mean there will never be a sponsor for such legislation.

6. The denial of DRA's motion to hold in abeyance and protest to dismiss the current application should be confirmed.

7. Within 30 days of this decision being issued, PacifiCorp should file a Tier 1 advice letter requesting approval of revised tariffs, adding the surcharge authorized herein. PacifiCorp should not collect this surcharge until the Commission's Energy Division has determined that the revised tariffs are in compliance with this decision, and Commission staff has informed the assigned ALJ and service list of the current proceeding that the California Klamath Trust Accounts have been established. Within 30 days of the latter of (i) the Energy Division's determination of compliance and (ii) Commission staff notification of the California Klamath Trust Accounts establishment, PacifiCorp should begin collecting the surcharge from its California customers.

8. PacifiCorp's proposed method of allocating the surcharge to customer classes, using the authorized allocation of generation revenues as of January 1, 2010, as discussed in Section 5 of this decision, is reasonable and

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should be adopted. The resulting surcharge revenue requirement for each class should be collected from customers within that class based on the number of kilowatt hours consumed.

9. The surcharge should be collected over a period of less than eight years, given the amount of time it took to establish the California Copco I and II/Iron Gate Dams Trust Account.

10. By collecting the surcharge over a period of less than eight years, there is time for interest to accrue on the amount collected, which is intended to allow California ratepayers to pay less in rates.

11. The surcharge authorized herein together with accrued interest should be refundable to California customers, and should be used only for the benefit of ratepayers through, for example, customer refunds, the funding of beneficial programs associated with the Klamath assets, or to fund relicensing of the Klamath assets.

12. Consideration of how to revise the Klamath surcharge, or use it to benefit customers through a means other than implementation of the KHSA, should be requested through an application, with notice to all parties of record in the current proceeding. The amount of the surcharge may be revised, subject to the annual limit on surcharge revenue of 2% of the authorized annual revenue requirement as of January 1, 2010.

13. Pursuant to our authority under Pub. Util. Code §1701 and consistent with the KHSA, the Commission should direct its Executive Director to create the interest bearing California Klamath Trust Accounts and appoint a trustee to manage and administer the interest bearing California Klamath Trust Accounts, in which the surcharge authorized herein should be held.

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14. Surcharge funds collected from California customers should not be taxable income to PacifiCorp.

15. Once PacifiCorp begins collecting the surcharge, PacifiCorp should remit the surcharge on a monthly basis to the trustee, no later than the 15th day of the following calendar month.

16. Consistent with the KHSA, 75% of the surcharge funds collected should be deposited to the California Copco I and II/Iron Gate Dams Trust Account and 25% of the surcharge funds collected should be deposited to the California J.C. Boyle Dam Trust Account.

17. D.10-09-020 authorized accelerated depreciation for Klamath assets and amortization for relicensing and settlement process costs.

18. PacifiCorp should identify the annual and cumulative balance of accelerated depreciation on the Klamath assets and the relicensing and settlement process costs in all future GRC applications, until the Klamath assets are totally depreciated and the costs totally amortized.

19. Further review of PacifiCorp's request to dispose of the Klamath assets is necessary, given the amount of time that will pass between the current decision and disposition of the Klamath assets, as well as the controversial nature of the issues addressed by the KHSA.

20. Since the Commission has performed a review of PacifiCorp's KHSA requests in the current proceeding, it and the parties will only need to review events that occur subsequent to this proceeding in regards to whether the Klamath assets should be transferred or not. This limited review can be performed in a Tier 3 advice letter review. Use of a Tier 3 advice letter should require much less time to process than an application, while providing all parties the opportunity to provide input on the process and the Commission to perform

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a more informed review to determine PacifiCorp's compliance with all applicable requirements closer to the time of disposition.

21. The inclusion of milestone d as a criterion for transfer of the Klamath assets as originally requested by PacifiCorp would create a circular requirement, where achievement of the requested milestone d would be required to request our approval for the transfer, but this milestone d would not be achieved until Commission approval is granted. Since the only item making this criterion circular is the authority granted by the Commission, instead of completely omitting the requested milestone d, we modify it so that the remaining parts of the criteria, which provide valuable information regarding whether the Klamath assets should be transferred, remain.

22. While we incorporate PacifiCorp's suggestion that the advice letter can be filed at a time when dam removal is expected to begin within six months, we decline to delete the requirement that all other permits are in hand and that all contracts have been finalized before PacifiCorp files the advice letter. The Commission wants to be sure that at the time it authorizes the actual transfer of the Klamath assets to the DRE that dam removal will occur and is not subject to the risk that some other approval will not be obtained.

23. PacifiCorp should file a Tier 3 advice letter to request authority to dispose of each Klamath asset after the milestones listed below are met. These milestones are:

- a. The passage of federal legislation which contain provisions that are materially consistent with Section 2.1.1.A of the KHSA;
- b. The availability of sufficient funds to cover estimated costs of dam removal, provided by California and Oregon customers, as set forth in Section 4.1 of the KHSA;



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- c. An Affirmative Determination by the United States Secretary of the Interior determining that the costs of dam removal will not exceed available funds, removal of the dams will advance restoration of the salmon fisheries of the Klamath basin, and removal of the dams is in the public interest as required in Section 3 of the KHSA; and
- d. All necessary permits and approvals have been obtained for the removal of a main stem dam, except for the approval of the California Public Utilities Commission; all contracts necessary for that facility's removal have been finalized and that facility's removal is ready to commence within 6 months; and the DRE is prepared to issue the DRE Notice, as defined in Section 7.4.1 of the KHSA, after receipt of this Commission's approval of the transfer of the facility.

24. PacifiCorp should file a Status Report as an information only filing with the Energy Division on an annual basis, and serve this Status Report on the service list of this proceeding on an annual basis, due May 1st of each year. The filing of this compliance filing should not reopen the record of this proceeding.

25. As of the date of this decision, PacifiCorp should no longer file and serve the monthly status report it has been providing during the processing of A.10-03-015.

26. The annual Status Report should address, at a minimum, events regarding and progress toward achievement of:

- a. All items listed in Exhibit 2 to Exhibit PPL-104;
- b. The enactment of conforming federal legislation;
- c. The enactment of California legislation to authorize the issuance of a California Bond;
- d. The availability of sufficient funds to cover estimated costs of dam removal, provided by California and Oregon customers, as set forth in Section 4.1 of the KHSA;
- e. An Affirmative Determination by the United States Secretary of the Interior determining that the costs of dam

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- removal will not exceed available funds, removal of the dams will advance restoration of the salmon fisheries of the Klamath basin, and removal of the dams is in the public interest as required in Section 3 of the KHSA;
- f. A list of all necessary permits, approvals, and contracts for removal of the Klamath assets and the date PacifiCorp receives, or expects to receive each;
  - g. The Interior Secretary's determination to proceed with dam removal;
  - h. The concurrence of Oregon and California in that determination and designation of a DRE;
  - i. The securing of California state funds through a California Bond or other form of state funding;
  - j. The DRE's development of a detailed plan to effect dam removal consistent with budget and liability controls;
  - k. The securing of all permits and funding necessary to perform the detailed plan;
  - l. The amount of surcharge revenue collected in California by year and cumulatively;
  - m. Both the amounts of interest accrued on the balances in the California Klamath Trust Accounts since the last Status Report and the cumulative total of interest earned to date;
  - n. Whether the combined total of surcharge collected and interest earned to date is expected to equal \$16 million by the start of dam removal;
  - o. Based on the surcharge collected and interest earned to date, what adjustment, if any, should be made to the surcharge if it appears that there will be either more or less than \$16 million by the start of dam removal;
  - p. Any other items that bear on the probability, schedule, and cost of implementing the KHSA; and
  - q. Any other significant events related to the KHSA that have occurred in the past 12 months.
27. Application 10-03-015 should remain open.

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**ORDER**

**IT IS ORDERED** that:

1. Pursuant to the Klamath Hydroelectric Settlement Agreement, PacifiCorp is authorized to institute a Klamath surcharge, to collect \$13.76 million **over a period of less than eight years** from its California customers.
2. PacifiCorp must allocate the \$13.76 million Klamath surcharge to customer classes, based on each customer class's authorized allocation of generation revenues as of January 1, 2010. The resulting surcharge revenue requirement for each class must be collected from customers within that class based on the number of kilowatt hours consumed.
3. Within 30 days after the effective date of this decision, PacifiCorp is authorized to file a Tier 1 advice letter requesting approval of revised tariffs adding the Klamath surcharge authorized herein. PacifiCorp must not collect the surcharge until the California Public Utilities Commissions (Commission) Energy Division has determined that the revised tariffs are in compliance with this decision, and the Commission staff has informed the assigned Administrative Law Judge and service list of the current proceeding by letter that the California Copco I and II/Iron Gate Dams Trust Account and the California J.C. Boyle Dam Trust Account, both of which are interest bearing, have been established.
4. Within 30 days of the latter of (i)the California Public Utilities Commission's (Commission) Energy Division's determination that the revised tariffs are in compliance with this decision and Commission staff has informed the assigned Administrative Law Judge and service list of the current proceeding by letter that the California Copco I and II/Iron Gate Dams Trust Account and

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the California J.C. Boyle Dam Trust Account have been established, PacifiCorp must then start collecting the Klamath surcharge.

5. The \$13.76 million Klamath surcharge together with accrued interest is refundable to California customers, and must be used only for the benefit of ratepayers. Such benefits must be provided through customer refunds, the funding of beneficial programs associated with the Klamath assets, or to fund relicensing of the Klamath Hydroelectric Project assets.

6. The amount of the Klamath surcharge may be revised, subject to the annual limit on surcharge revenue of 2% of the authorized annual revenue requirement as of January 1, 2010.

7. Consideration of how to revise the Klamath surcharge, or use it to benefit customers through a means other than implementation of the Klamath Hydroelectric Settlement Agreement, must be requested through an application, with notice to all parties of record in the current proceeding.

8. The Division of Ratepayer Advocate's Motion to Hold in Abeyance is denied.

9. The California Public Utilities Commission directs its Executive Director to create the interest bearing California Copco I and II/Iron Gate Dams Trust Account and the interest bearing California J.C. Boyle Dam Trust Account, and appoint a trustee to manage the California Copco I and II/Iron Gate Dams Trust Account and the California J.C. Boyle Dam Trust Account, in which the Klamath surcharge must be held and administered.

10. Once PacifiCorp begins collecting the surcharge, PacifiCorp must remit all Klamath surcharge funds to the trustee on a monthly basis, no later than the 15<sup>th</sup> day of the following calendar month, to be deposited in the California Copco I and II/Iron Gate Dams Trust Account and the California J.C. Boyle Dam

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Trust Account, pursuant to the Klamath Hydroelectric Settlement Agreement. Consistent with the Klamath Hydroelectric Settlement Agreement, 75% of the surcharge funds collected must be deposited to the California Copco I and II/Iron Gate Dams Trust Account and 25% of the surcharge funds collected must be deposited to the California J.C. Boyle Dam Trust Account.

11. PacifiCorp is required to adjust the depreciation of the Klamath Hydroelectric Project assets and amortization of relicensing and settlement process costs in any General Rate Case application, if, in the future, the anticipated useful lives of the Klamath Hydroelectric Project assets changes.

12. PacifiCorp must identify the annual and cumulative balance of accelerated depreciation on the Klamath Hydroelectric Project assets and amortized relicensing and settlement process costs in all future General Rate Case applications, until the Klamath Hydroelectric Project assets are totally depreciated and the costs totally amortized.

13. PacifiCorp must file a Tier 3 advice letter to request authority to dispose of each Klamath Hydroelectric Project asset after the milestones listed below are met. These milestones are:

- a. The passage of federal legislation which contain provisions that are materially consistent with Section 2.1.1.A of the Klamath Hydroelectric Settlement Agreement;
- b. The availability of sufficient funds to cover estimated costs of dam removal, provided by California and Oregon, as set forth in Section 4.1 of the Klamath Hydroelectric Settlement Agreement;
- c. An Affirmative Determination by the United States Secretary of the Interior determining that the costs of dam removal will not exceed available funds, removal of the dams will advance restoration of the salmon fisheries of the Klamath basin, and removal of the dams is in the

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public interest as required in Section 3 of the Klamath Hydroelectric Settlement Agreement; and

- d. All necessary permits and approvals have been obtained for the removal of a main stem dam, except for the approval of the California Public Utilities Commission; all contracts necessary for that facility's removal have been finalized and that facility's removal is ready to commence within 6 months; and the DRE is prepared to issue the DRE Notice, as defined in Section 7.4.1 of the KHSA, after receipt of this Commission's approval of the transfer of the facility.

14. PacifiCorp must file a Status Report as an information only filing with the Commission's Energy Division on an annual basis, and serve this Status Report on the service list of Application 10-03-015, due May 1<sup>st</sup> of each year, starting on May 1, 2012.

15. The annual Status Report must address, at a minimum, events regarding and progress toward achievement of:

- a. All items listed in Exhibit 2 to Exhibit PPL-104;
- b. The enactment of conforming federal legislation;
- c. The enactment of California legislation to authorize the issuance of a California Bond;
- d. The availability of sufficient funds to cover estimated costs of dam removal, provided by California and Oregon customers, as set forth in Section 4.1 of the KHSA;
- e. An Affirmative Determination by the United States Secretary of the Interior determining that the costs of dam removal will not exceed available funds, removal of the dams will advance restoration of the salmon fisheries of the Klamath basin, and removal of the dams is in the public interest as required in Section 3 of the KHSA;
- f. A list of all necessary permits, approvals, and contracts for removal of the Klamath assets and the date PacifiCorp receives, or expects to receive each;

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- g. The Interior Secretary's determination to proceed with dam removal;
- h. The concurrence of Oregon and California in that determination and designation of a Dam Removal Entity;
- i. The securing of California state funds through a California Bond or other form of state funding;
- j. The Dam Removal Entity's development of a detailed plan to effect dam removal consistent with budget and liability controls;
- k. The securing of all permits and funding necessary to perform the detailed plan;
- l. The amount of surcharge revenue collected in California by year and cumulatively;
- m. Both the amounts of interest accrued on the balances in the California Copco I and II/Iron Gate Dams Trust Account and the J.C. Boyle Dam Trust Account since the last Status Report and the cumulative total of interest earned to date;
- n. Whether the combined total of surcharge collected and interest earned to date is expected to equal \$16 million by the start of dam removal;
- o. Based on the surcharge collected and interest earned to date, what adjustment, if any, should be made to the surcharge if it appears that there will be either more or less than \$16 million by the start of dam removal;
- p. Any other items that bear on the probability, schedule, and cost of implementing the Klamath Hydroelectric Settlement Agreement; and
- q. Any other significant events related to the Klamath Hydroelectric Settlement Agreement that have occurred in the past 12 months.

16. As of the date of this decision, PacifiCorp need no longer file and serve the monthly status report it has been providing during the processing of Application 10-03-015.

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17. Application 10-03-015 remains open.

This order is effective today.

Dated May 5, 2011, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK FERRON

Commissioners



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## Attachment A

List of Testimony and Exhibits  
Entered into Record in A.10-03-015

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**(ATTACHMENT A)**

<b>Exhibit No.</b>	<b>Sponsor/Witness</b>	<b>Description</b>
<b>Party - PacifiCorp</b>		
PPL-100	Dean S. Brockbank	Direct Testimony
PPL-101	Dean S. Brockbank	Map of Klamath Project
PPL-102	Dean S. Brockbank	Klamath Chronology
PPL-103	Dean S. Brockbank	Summary of KHSA
PPL-104	Dean S. Brockbank	Klamath Hydroelectric Settlement Agreement
PPL-105	Dean S. Brockbank	Rebuttal Testimony
PPL-200	Andrea L. Kelly	Direct Testimony
PPL-201	Andrea L. Kelly	Proposed Schedule 199 - Klamath Dam Removal Surcharge and supporting calculations
PPL-202	Andrea L. Kelly	Supplemental Testimony
PPL-203	Andrea L. Kelly	Rebuttal Testimony
PPL-300	Cory E. Scott	Direct Testimony
PPL-301	Cory E. Scott	Klamath Document Inventory
<b>Party - Division of Ratepayer Advocates</b>		
DRA-001	Mark Loy	Direct Testimony
DRA-001R	Mark Loy	Direct Testimony - Revised
DRA-002	Mark Loy	Errata to Direct Testimony
<b>Party - American Rivers, California Trout, Trout Unlimited, Pacific Coast Federation of Fishermen's Associations, and Institute for Fisheries Resources</b>		
CG-1	Steve Rothert	Direct Testimony
CG-1R	Steve Rothert	Direct Testimony - Revised
CG-2	Steve Rothert	Errata to Direct Testimony

(END OF ATTACHMENT A)

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**DRAFT**

(END OF ATTACHMENT B)

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**Joint Application for Approval of License Amendment and License Transfer**

## **Attachment K.6**

**California Water Code Section 79730-79738 and  
California Budget Act of 2016 (excerpts)**

## WATER CODE

### SECTION 79730-79738

79730. The sum of one billion four hundred ninety-five million dollars (\$1,495,000,000) shall be available, upon appropriation by the Legislature from the fund, in accordance with this chapter, for competitive grants for multibenefit ecosystem and watershed protection and restoration projects in accordance with statewide priorities.

79731. Of the funds authorized by Section 79730, the sum of three hundred twenty-seven million five hundred thousand dollars (\$327,500,000) shall be allocated for multibenefit water quality, water supply, and watershed protection and restoration projects for the watersheds of the state in accordance with the following schedule:

- (a) Baldwin Hills Conservancy, ten million dollars (\$10,000,000).
- (b) California Tahoe Conservancy, fifteen million dollars (\$15,000,000).
- (c) Coachella Valley Mountains Conservancy, ten million dollars (\$10,000,000).
- (d) Ocean Protection Council, thirty million dollars (\$30,000,000).
- (e) San Diego River Conservancy, seventeen million dollars (\$17,000,000).
- (f) San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy, thirty million dollars (\$30,000,000).
- (g) San Joaquin River Conservancy, ten million dollars (\$10,000,000).
- (h) Santa Monica Mountains Conservancy, thirty million dollars (\$30,000,000).
- (i) Sierra Nevada Conservancy, twenty-five million dollars (\$25,000,000).
- (j) State Coastal Conservancy, one hundred million five hundred thousand dollars (\$100,500,000). Eligible watersheds for the funds allocated pursuant to this subdivision include, but are not limited to, those that are in the San Francisco Bay Conservancy region, the Santa Ana River watershed, the Tijuana River watershed, the Otay River watershed, Catalina Island, and the central coast region.
- (k) Sacramento-San Joaquin Delta Conservancy, fifty million dollars (\$50,000,000).

79732. (a) In protecting and restoring California rivers, lakes, streams, and watersheds, the purposes of this chapter are to:

- (1) Protect and increase the economic benefits arising from healthy watersheds, fishery resources, and instream flow.
- (2) Implement watershed adaptation projects in order to reduce the impacts of climate change on California's communities and ecosystems.
- (3) Restore river parkways throughout the state, including, but not limited to, projects pursuant to the California River Parkway Act of 2004 (Chapter 3.8 (commencing with Section 5750) of Division 5 of the Public Resources Code), in the Urban Streams Restoration Program established pursuant to Section 7048, and urban river greenways.
- (4) Protect and restore aquatic, wetland, and migratory bird

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ecosystems, including fish and wildlife corridors and the acquisition of water rights for instream flow.

(5) Fulfill the obligations of the State of California in complying with the terms of multiparty settlement agreements related to water resources.

(6) Remove barriers to fish passage.

(7) Collaborate with federal agencies in the protection of fish native to California and wetlands in the central valley of California.

(8) Implement fuel treatment projects to reduce wildfire risks, protect watersheds tributary to water storage facilities, and promote watershed health.

(9) Protect and restore rural and urban watershed health to improve watershed storage capacity, forest health, protection of life and property, stormwater resource management, and greenhouse gas reduction.

(10) Protect and restore coastal watersheds, including, but not limited to, bays, marine estuaries, and nearshore ecosystems.

(11) Reduce pollution or contamination of rivers, lakes, streams, or coastal waters, prevent and remediate mercury contamination from legacy mines, and protect or restore natural system functions that contribute to water supply, water quality, or flood management.

(12) Assist in the recovery of endangered, threatened, or migratory species by improving watershed health, instream flows, fish passage, coastal or inland wetland restoration, or other means, such as natural community conservation plan and habitat conservation plan implementation.

(13) Assist in water-related agricultural sustainability projects.

(b) Funds provided by this chapter shall only be used for projects that will provide fisheries or ecosystem benefits or improvements that are greater than required applicable environmental mitigation measures or compliance obligations.

79733. Of the funds made available by Section 79730, the sum of two hundred million dollars (\$200,000,000) shall be administered by the Wildlife Conservation Board for projects that result in enhanced stream flows.

79734. For restoration and ecosystem protection projects under this chapter, the services of the California Conservation Corps or a local conservation corps certified by the California Conservation Corps shall be used whenever feasible.

79735. (a) Of the funds authorized by Section 79730, one hundred million dollars (\$100,000,000) shall be available, upon appropriation by the Legislature, for projects to protect and enhance an urban creek, as defined in subdivision (e) of Section 7048, and its tributaries, pursuant to Division 22.8 (commencing with Section 32600) of, and Division 23 (commencing with Section 33000) of, the Public Resources Code and Section 79508.

(b) (1) Of the funds authorized by Section 79730, twenty million dollars (\$20,000,000) shall be made available to the secretary for a competitive program to fund multibenefit watershed and urban rivers enhancement projects in urban watersheds that increase regional and local water self-sufficiency and that meet at least two of the following objectives:

(A) Promote groundwater recharge and water reuse.

(B) Reduce energy consumption.

(C) Use soils, plants, and natural processes to treat runoff.

(D) Create or restore native habitat.

(E) Increase regional and local resiliency and adaptability to

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climate change.

(2) The program under this subdivision shall be implemented by state conservancies, the Wildlife Conservation Board, the state board, or other entities whose jurisdiction includes urban watersheds, as designated by the secretary. Projects funded under the program shall be a part of a plan developed jointly by the conservancies, the Wildlife Conservation Board, the state board, or other designated entities in consultation with the secretary.

(c) At least 25 percent of the funds available pursuant to this section shall be allocated for projects that benefit disadvantaged communities.

(d) Up to 10 percent of the funds available pursuant to this section may be allocated for project planning.

79736. Of the funds authorized by Section 79730, four hundred seventy-five million dollars (\$475,000,000) shall be available to the Natural Resources Agency to support projects that fulfill the obligations of the State of California in complying with the terms of any of the following:

(a) Subsection (d) of Section 3406 of the Central Valley Project Improvement Act (Title 34 of Public Law 102-575).

(b) Interstate compacts set forth in Section 66801 of the Government Code pursuant to Title 7.42 (commencing with Section 66905) of the Government Code.

(c) Intrastate or multiparty water quantification settlement agreement provisions, including ecosystem restoration projects, as set forth in Chapters 611, 612, 613, and 614 of the Statutes of 2003.

(d) The settlement agreement referenced in Section 2080.2 of the Fish and Game Code.

(e) Any intrastate or multiparty settlement agreement related to water acted upon or before December 31, 2013. Priority shall be given to projects that meet one or more of the following criteria:

(1) The project is of statewide significance.

(2) The project restores natural aquatic or riparian functions, or wetlands habitat for birds and aquatic species.

(3) The project protects or promotes the restoration of endangered or threatened species.

(4) The project enhances the reliability of water supplies on a regional or interregional basis.

(5) The project provides significant regional or statewide economic benefits.

79737. (a) Of the funds authorized by Section 79730, two hundred eighty-five million dollars (\$285,000,000) shall be available to the Department of Fish and Wildlife for watershed restoration projects statewide in accordance with this chapter.

(b) For the purposes of this section, watershed restoration includes activities to fund coastal wetland habitat, improve forest health, restore mountain meadows, modernize stream crossings, culverts, and bridges, reconnect historical flood plains, install or improve fish screens, provide fish passages, restore river channels, restore or enhance riparian, aquatic, and terrestrial habitat, improve ecological functions, acquire from willing sellers conservation easements for riparian buffer strips, improve local watershed management, and remove sediment or trash.

(c) For any funds available pursuant to this section that are used to provide grants under the Fisheries Restoration Grant Program, a priority shall be given to coastal waters.

(d) In allocating funds for projects pursuant to this section, the Department of Fish and Wildlife shall only make funds available for water quality, river, and watershed protection and restoration projects of statewide importance outside of the Delta.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

(e) Funds provided by this section shall not be expended to pay the costs of the design, construction, operation, mitigation, or maintenance of Delta conveyance facilities.

(f) Funds provided by this section shall only be used for projects that will provide fisheries or ecosystem benefits or improvements that are greater than required applicable environmental mitigation measures or compliance obligations, except for any water transfers for the benefit of subsection (d) of Section 3406 of the Central Valley Project Improvement Act (Title 34 of Public Law 102-575).

(g) In order to address the unique ecological, flood control, water quality, and hydrological conditions associated with urban creeks and watersheds on the California-Mexico border, the department shall consult with the California-Mexico Border Relations Council to establish criteria to fund projects that improve conditions for cross-border urban creeks and watersheds.

79738. (a) Of the funds authorized by Section 79730, eighty-seven million five hundred thousand dollars (\$87,500,000) shall be available to the Department of Fish and Wildlife for water quality, ecosystem restoration, and fish protection facilities that benefit the Delta, including, but not limited to, the following:

(1) Projects to improve water quality or that contribute to the improvement of water quality in the Delta, including projects in Delta counties that provide multiple public benefits and improve drinking and agricultural water quality or water supplies.

(2) Habitat restoration, conservation, and enhancement projects to improve the condition of special status, at risk, endangered, or threatened species in the Delta and the Delta counties, including projects to eradicate invasive species, and projects that support the beneficial reuse of dredged material for habitat restoration and levee improvements.

(3) Scientific studies and assessments that support the Delta Science Program, as described in Section 85280, or projects under this section.

(b) In implementing this section, the department shall coordinate and consult with the Delta city or Delta county in which a grant is proposed to be expended or an interest in real property is proposed to be acquired.

(c) Acquisitions pursuant to this section shall be from willing sellers only.

(d) In implementing this section state agencies shall prioritize wildlife conservation objectives through projects on public lands or voluntary projects on private lands, to the extent feasible.

(e) Funds available pursuant to this section shall not be used to acquire land via eminent domain.

(f) Funds available pursuant to this section shall not be expended to pay the costs of the design, construction, operation, mitigation, or maintenance of Delta conveyance facilities.





**SB-826 Budget Act of 2016.** (2015-2016)

**Senate Bill No. 826**

CHAPTER 23

An act making appropriations for the support of the government of the State of California and for several public purposes in accordance with the provisions of Section 12 of Article IV of the Constitution of the State of California, relating to the state budget, to take effect immediately, budget bill.

[ Approved by Governor June 27, 2016. Filed with Secretary of State June 27, 2016. ]

LEGISLATIVE COUNSEL'S DIGEST

SB 826, Leno. Budget Act of 2016.

This bill would make appropriations for the support of state government for the 2016–17 fiscal year.

This bill would declare that it is to take effect immediately as a Budget Bill.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.00.** This act shall be known and may be cited as the "Budget Act of 2016."

**SEC. 1.50.** (a) In accordance with Section 13338 of the Government Code, it is the intent of the Legislature that this act and other financial transactions authorized outside of this act utilize a coding scheme or structure compatible with the Governor's Budget and the records of the Controller, and provide for the appropriation of federal funds received by the state and deposited in the State Treasury.

(b) Essentially, the format and style are as follows:

(1) Appropriation item numbers have a structure which is common to all the state's fiscal systems. The meaning of this structure is as follows:

2720—Business Unit (known as organization code in legacy systems, indicates the department or entity) (e.g., 2720 represents the Department of the California Highway Patrol)

001—Reference Code (indicates whether the item is from the Budget Act or some other source and its character (e.g., state operations))

0044—Fund Code (e.g., 0044 represents the Motor Vehicle Account, State Transportation Fund)

(2) Appropriation items are organized in Business Unit order.

(3) All the appropriation items, reappropriation items, and reversion items, if any, for each business unit are adjacent to one another.

(4) Federal funds received by the state and deposited in the State Treasury are appropriated in separate items.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Pages Omitted**

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

0540-001-6083—For support of Secretary of the Natural Resources Agency, payable from the Water Quality, Supply, and Infrastructure Improvement Fund of 2014  
..... 340,432,000

Schedule:

- (1) 0320-Administration of Natural Resources Agency  
..... 340,432,000

Provisions:

- 1. Of the funds available in this item, \$250,000,000 is available for expenditure and encumbrance until June 30, 2019, for support, local assistance, or capital outlay.
- 2. Of the funds available in this item, not including the funds in Provision 1, \$89,900,000 is available for expenditure and encumbrance until June 30, 2019, for support or local assistance.

0540-002-0042—For transfer by the Controller from the State Highway Account, State Transportation Fund, to the Environmental Enhancement and Mitigation Program Fund to be used as specified in Section 164.56 of the Streets and Highways Code ..... (7,000,000)

0540-101-0001—For local assistance, Secretary of the Natural Resources Agency ..... 4,500,000

Schedule:

- (1) 0320-Administration of the Natural Resources Agency ..... 4,500,000
  - (a) Armenian Museum  
..... (1,000,000)
  - (b) Pasadena Playhouse  
..... (1,000,000)
  - (c) Excelsior Auditorium  
..... (2,000,000)
  - (d) Lark Music Society  
..... (500,000)

0540-101-0183—For local assistance, Secretary of the Natural Resources Agency, payable from the Environmental Enhancement and Mitigation Program Fund ..... 6,700,000

Schedule:

- (1) 0320-Administration of Natural Resources Agency  
..... 6,700,000

Provisions:

- 2. Notwithstanding any other provision of law, the funds appropriated in this item shall be available for allocation until June 30, 2017, and available for encumbrance and liquidation by the recipient local agency until June 30, 2021.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Pages Omitted**

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Joint Application for Approval of License Amendment and License Transfer**

## **Attachment K.7**

**Funding Memorandum Prepared by Hawkins  
Delafield & Wood LLP**

## PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED

M E M O R A N D U M

TO: Klamath River Renewal Corporation

FROM: Hawkins Delafield & Wood LLP

DATE: September 22, 2016

RE: License Transfer and Surrender Applications for Lower Klamath Project

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In connection with the above-referenced applications, you have asked us to briefly describe certain matters relating to the funding that is expected to be available to Klamath River Renewal Corporation ("KRRC") for purposes of carrying out the dam removal project (the "Facilities Removal") under the terms of the Klamath Hydroelectric Settlement Agreement, as amended (the "Amended KHSA").

As set forth in more detail in the License Transfer Application, including Paragraphs 8 through 14 of Section V, as well as Exhibit D of the License Surrender Application, the Amended KHSA provides that the States of California and Oregon will make a total of \$450 million available to KRRC for Facilities Removal. These funds are to be comprised of:

- (1) a combination of customer surcharges imposed through the California Public Utilities Commission ("CPUC") and the Oregon Public Utilities Commission ("OPUC"); and
- (2) the proceeds of a California State Bond issue.

We understand that each of the public utilities commissions has imposed and is collecting the customer surcharges, which are being held in segregated accounts for the purpose of application to Facilities Removal. In addition, we understand that the State of California has issued its bonds and has appropriated \$250 million of the bond proceeds for Facilities Removal pursuant to SB-826 Budget Act of 2016. (See attached letter dated September 20, 2016, from Thomas Gibson, General Counsel, California Natural Resources Agency.)

As outside counsel to KRRC we are currently engaged in active and productive negotiations with representatives of both the State of California and the State of Oregon to develop forms of agreements pursuant to which the funds from these various sources will be made available to KRRC in a timely manner and for the sole purpose of carrying out the Facilities Removal. We are very close to finalizing a preliminary agreement for an initial advance of funds held by OPUC. It is our current expectation that negotiations on the remaining funding agreements will be concluded in due course thereafter and, in all events, well before March of 2017.

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**

**Joint Application for Approval of License Amendment and License Transfer**

## **Attachment K.8**

**Letter from T. Gibson, General Counsel,  
California Natural Resources Agency re:  
Availability of Bond Funding**

**PUBLIC VERSION - CONFIDENTIAL INFORMATION HAS BEEN REMOVED**



**EDMUND G. BROWN JR., Governor**  
**JOHN LAIRD, Secretary for Natural Resources**

September 20, 2016

Michael Carrier  
President, Board of Directors  
Klamath River Renewal Corporation  
423 Washington Street, 4<sup>th</sup> Floor  
San Francisco, CA 94111

Re: Bond funding for KHSA implementation

Dear Mr. Carrier:

I am writing to clarify the status of the \$250 million allocation from the California Water Quality, Supply, Treatment, and Storage Projects of 2014 (Proposition 1) bond for implementation of the Klamath Hydroelectric Settlement Agreement (KHSA). This calendar year the Legislature appropriated the \$250 million for distribution by the California Natural Resources Agency (CNRA) for purpose of implementing the KHSA. As a signatory to the KHSA, CNRA is committed to granting these funds to the Klamath River Renewal Corporation (KRRC), consistent with that directive. CNRA and KRRC are diligently working to finalize an agreement within the coming weeks, and once that happens, CNRA estimates funds can be advanced in part to KRRC within 30-45 days of that agreement's execution, with the remaining amount fully encumbered for use by KRRC consistent with that agreement.

Please feel free to contact me with any other questions related to the availability of bond funding. CNRA looks forward to the successful implementation of the KHSA.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. Gibson'.

Thomas Gibson  
General Counsel  
California Natural Resources Agency

1416 Ninth Street, Suite 1311, Sacramento, CA 95814 Ph. 916.653.5656 Fax 916.653.8102 <http://resources.ca.gov>





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