

March 18, 2010

***VIA ELECTRONIC FILING  
AND OVERNIGHT DELIVERY***

Oregon Public Utility Commission  
550 Capitol Street NE, Ste 215  
Salem, OR 97301-2551

Attention: Filing Center

**RE: Application to Implement the Provisions of Senate Bill 76  
Docket UE- \_\_\_\_**

PacifiCorp d.b.a. Pacific Power (“Company”) hereby submits its Application to Implement the Provisions of Senate Bill 76 (“Application”). A signed original letter and five (5) copies, with associated compact discs, will be provided via overnight delivery. This filing is made simultaneously with Advice No. 10-008 (Schedule 199 – Klamath Dam Removal Surcharges).

The purpose of this filing, along with separately filed Advice No. 10-008, is to implement three provisions of Senate Bill 76 (“SB 76”). First, ORS 757.736(1) requires that the Company file a copy of the final agreement, the Klamath Hydroelectric Settlement Agreement (“KHSA”) along with certain analyses and studies not more than 30 days after execution of the final agreement. The final agreement was executed on February 18, 2010. Second, ORS 757.736(2) requires the Commission to allow PacifiCorp to collect two surcharges from its customers for the purpose of funding the costs for removal of Klamath River dams (J. C. Boyle Dam, Copco 1 Dam, Copco 2 Dam, and Iron Gate Dam), and directs the Commission to determine within six months of this filing whether these surcharges result in rates that are fair, just and reasonable. Third, ORS 757.734(1) requires the Commission to determine a new depreciation schedule for the Klamath Project, based upon the assumption that the dams will be removed in 2020.

With the application, the PacifiCorp submits direct testimony of Company witnesses Dean S. Brockbank, Andrea L. Kelly and Cory E. Scott.

It is respectfully requested that all communications related to this filing be addressed to:

PacifiCorp Oregon Dockets  
825 NE Multnomah Street, Ste. 2000  
Portland, OR 97232  
[oregondockets@pacificorp.com](mailto:oregondockets@pacificorp.com)

Jordan A. White  
Legal Counsel  
1407 W North Temple, Ste 320  
Salt Lake City, Utah 84116  
[jordan.white@pacificorp.com](mailto:jordan.white@pacificorp.com)

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Katherine A. McDowell  
McDowell & Rackner PC  
520 SW 6th Ave, Ste. 830  
Portland, OR 97204  
[katherine@mcd-law.com](mailto:katherine@mcd-law.com)

Joelle Steward  
Regulatory Manager  
825 NE Multnomah Street, Ste. 2000  
Portland, OR 97232  
[joelle.steward@pacificorp.com](mailto:joelle.steward@pacificorp.com)

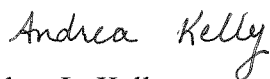
Additionally, PacifiCorp respectfully requests that all data requests regarding this matter be addressed to:

By E-mail (preferred): [datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)

By regular mail: Data Request Response Center  
PacifiCorp  
825 NE Multnomah, Suite 2000  
Portland, OR 97232

Please direct informal correspondence and questions regarding this filing to Joelle Steward, Regulatory Manager at (503) 813-5542.

Sincerely,



Andrea L. Kelly  
Vice President, Regulation

Enclosures

cc: Bob Jenks, Citizens' Utility Board of Oregon  
Melinda Davison, Industrial Customers of Northwest Utilities  
David Hatton, Oregon Department of Justice

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UE \_\_\_\_\_

In the Matter of PacifiCorp's Application to  
Implement Provisions of Senate Bill 76.

**PACIFICORP'S APPLICATION TO  
IMPLEMENT PROVISIONS OF  
SENATE BILL 76**

**I. INTRODUCTION**

1  
2 Pursuant to Senate Bill ("SB") 76,<sup>1</sup> PacifiCorp (the "Company") submits this  
3 Application to Implement Provisions of Senate Bill 76 ("Application") to the Public Utility  
4 Commission of Oregon ("Commission"). With this Application, and concurrently filed  
5 Advice No. 10-008, PacifiCorp seeks to implement three provisions of SB 76.

6 First, the Application complies with the requirement of ORS 757.736(1) that  
7 within 30 days of the execution of the final agreement signed by the states of Oregon and  
8 California, the United States Department of the Interior ("DOI") and PacifiCorp on  
9 February 18, 2010 (also known as the Klamath Hydroelectric Settlement Agreement or  
10 "KHSA", PacifiCorp file a copy of the KHSA with the Commission, along with certain  
11 studies and analyses relating to removing or relicensing the Klamath Hydroelectric Project  
12 ("Project").

13 Second, the Application and Advice No. 10-008 implement the requirement of  
14 ORS 757.736(2) that, with the KHSA filing, the Company include tariffs with immediate  
15 effective dates for the collection of two nonbypassable surcharges for the costs of removing  
16 the Project dams. Consistent with the requirements of ORS 757.736(4), the Company asks  
17 the Commission to hold a hearing under ORS 757.210 and determine within six months, or

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<sup>1</sup> SB 76 is codified at 757.732 through 757.744.

1 by September 18, 2010, that the surcharges result in rates that are fair, just, and reasonable.  
2 The Company requests that this order include a provision that the refund condition now  
3 included in Schedule 199 be removed once the Commission's order has become final.

4 Third, the application implements ORS 757.734, which requires the Commission  
5 to determine a new depreciation schedule for the Project, based on the assumption that the  
6 dams will be removed in 2020. The Company requests that the Commission determine the  
7 depreciation schedule within six months of execution of the KHSA, or by August 18, 2010,  
8 pursuant to ORS 757.734(1). The change in the depreciation schedule would be effective  
9 January 1, 2011, and reflected in rates through the Company's pending general rate case,  
10 Docket UE 217.

11 Additionally, PacifiCorp requests that the Commission issue a disclaimer of  
12 jurisdiction under ORS 757.480, the Commission's property transfer statute, over the  
13 transfer of the Project to the dam removal entity ("DRE"), due to preemption by SB 76. In  
14 the alternative, the Company requests that the Commission approve the transfer of the  
15 Project under ORS 757.480, contingent upon: (1) satisfaction of the conditions precedent  
16 for the transfer outlined in the KHSA; and (2) filing by PacifiCorp of the information  
17 required by OAR 860-027-0025, the rule governing property transfer applications.

18 This Application is supported by the testimony of Company witnesses Mr. Dean  
19 S. Brockbank, Ms. Andrea L. Kelly, and Mr. Cory E. Scott.

## 20 **II. BACKGROUND**

### 21 **A. Agreement in Principle**

22 On November 13, 2008, the states of Oregon and California, the DOI, and  
23 PacifiCorp ("Parties") entered into the Klamath Agreement in Principle ("AIP"). The AIP

1 stated that it was the preliminary view of the United States, Oregon, and California that the  
2 potential benefits of removing the Project outweighed the potential costs of the removal.  
3 The AIP provided a framework for the planned transfer of the dams from PacifiCorp to the  
4 DRE designated by the United States government. Final authority for dam removal would  
5 be determined by the United States by March 31, 2012, after an analysis and confirmation  
6 of the view that the benefits outweighed the potential costs of dam removal. The target  
7 date for initiation of removal was 2020. The Parties agreed to negotiate a final agreement  
8 as soon as possible.

9 **B. Senate Bill 76**

10 On July 14, 2009, the Oregon legislature passed SB 76. The statute requires  
11 PacifiCorp to file a copy of the KHSA with the Commission within 30 days after execution  
12 of the final agreement, along with copies of certain studies and analyses relating to  
13 removing or relicensing Project dams. ORS 757.736(1).

14 PacifiCorp must include with the filing “tariffs for the collection of two  
15 nonbypassable surcharges from its customers for the purpose of paying the costs of  
16 removing Klamath River dams.” ORS 757.736(2). Within six months of the Company’s  
17 filing of the final agreement, analyses, and tariffs, the Commission must conduct a hearing  
18 under ORS 757.210 and enter an order setting forth its decision on whether the imposition  
19 of the surcharges results in fair, just, and reasonable rates. ORS 757.736(4).

20 SB 76 also requires the Commission to determine an accelerated depreciation  
21 schedule for the Project within six months of execution of the KHSA. ORS 757.734(1).  
22 Additional discussion of the requirements of SB 76 and how the Company’s filing  
23 complies with these requirements is found at PPL/200, Kelly/4-6.

1 **C. Final Agreement**

2 On February 18, 2010, the Parties signed the KHSA. The KHSA states that the  
3 Secretary of Interior will use best efforts to make a determination by March 31, 2012 as to  
4 whether the costs of removal will not exceed the \$450 million cost cap, and whether  
5 removal will advance restoration of the Klamath salmon fisheries and is in the public  
6 interest. The KHSA outlines the process for transfer of the dams from PacifiCorp to the  
7 DRE designated by the DOI in anticipation of the DRE beginning to remove the dams in  
8 2020. The terms of the KHSA are discussed in detail in the testimony of Mr. Brockbank.

9 **III. DISCUSSION**

10 **A. Filing of KHSA and Related Analyses and Studies.**

11 A copy of the KHSA is included with this filing, as required by ORS 757.736(1), as  
12 Exhibit PPL/104, attached to the testimony of Mr. Brockbank. The KHSA was signed on  
13 February 18, 2010, so this filing is within the required 30-day window.

14 ORS 757.736(1) also requires the Company to file concurrently with the KHSA  
15 copies of “all analyses or studies that relate to the rate-related costs, benefits and risks for  
16 customers of removing or relicensing Klamath River dams that were reviewed by  
17 PacifiCorp during the decision-making process that led to PacifiCorp’s entering into the  
18 final agreement.” ORS 757.736(1). The Company has included with this filing all such  
19 non-privileged analyses and studies, including the Company’s confidential economic  
20 analysis; in the case of the Company’s highly confidential analyses and studies, the  
21 Company will seek a special protective order under ORS 757.736(6) to govern the filing,  
22 review and use of highly confidential information.

1 An inventory of non-confidential analyses and studies included in this filing is  
2 provided by Mr. Scott in Exhibit PPL/303. Ms. Kelly testifies as to the Company's  
3 primary economic analysis, a summary of which is provided in Confidential Exhibit  
4 PPL/202. In addition, Mr. Scott's testimony presents the estimated costs to customers  
5 under a baseline relicensing scenario and under the KHSA.

6 **B. The Surcharges Proposed by the Company Meet the Requirements of SB 76**  
7 **and Result in Rates that are Fair, Just, and Reasonable.**

8 Under SB 76, PacifiCorp is required to file with the Commission tariffs for the  
9 collection of two nonbypassable surcharges from its customers for the purpose of paying  
10 the costs of removing Klamath River dams. ORS 757.736(2). The Commission shall  
11 require PacifiCorp to begin collecting these surcharges on the date of this filing. *Id.*  
12 Consistent with SB 76, Schedule 199 in Advice No. 10-088 will go into effect on March  
13 18, 2010.

14 Under ORS 757.736(4), the Commission shall conduct a hearing under ORS  
15 757.210 to determine whether the surcharges under the terms of the KHSA result in rates  
16 that are fair, just, and reasonable. The "fair, just and reasonable" standard, commonly  
17 referred to as the "just and reasonable" standard, defines the broad legislative standard  
18 under which the Oregon Commission sets rates. *Multnomah County v. Davis*, 35 Or App  
19 521, 526 (1978). The standard, which is "well-established and universally recognized," is  
20 derived from numerous statutory provisions, including ORS 756.040 and ORS 757.210(1).  
21 *In re PacifiCorp*, Order No. 05-1202 at 2, 4. The Commission has previously found that its  
22 duty under the just and reasonable standard is to "balance the interest of the customer and  
23 the utility under ORS 756.040." *In re Portland General Electric Co.*, Order No. 08-487 at  
24 63. Under ORS 756.040, the Commission evaluates whether the overall rates are just and

1 reasonable, not the reasonableness of the methodologies or theories used to calculate the  
2 rates. *Id.* at 7.

3 The Commission should find in this case that Schedule 199 results in rates that are  
4 fair, just, and reasonable. As described in Ms. Kelly's testimony, the surcharges contained  
5 in Schedule 199 meet the requirements of SB 76. PPL/200, Kelly/7-9. The surcharges also  
6 result in a relatively modest overall rate change of 1.6 percent. PPL/200, Kelly/7. The  
7 Commission found that the Company's rates were fair, just and reasonable less than two  
8 months ago, on January 26, 2010. *Re PacifiCorp Request for a General Rate Revision*,  
9 Docket UE 210, Order No. 10-022 (Jan. 26, 2010). Therefore, this modest increase, which  
10 results directly from a statutory directive, results in overall rates that are fair, just and  
11 reasonable.

12 Moreover, the surcharges are required to implement the KHSA, an agreement  
13 PacifiCorp negotiated for the benefit of customers. In addition, the economics of the  
14 KHSA, including the dam removal surcharge, compare favorably with the cost of  
15 relicensing, especially when considering the risks associated with relicensing. Although  
16 SB 76 does not require the Company to show such benefits in order for the Commission to  
17 find that rates resulting from the surcharges are fair, just and reasonable, these facts provide  
18 added support for this finding. Further discussion of the reasonableness of the surcharges  
19 can be found throughout the testimony of Ms. Kelly.

20 Schedule 199 proposed in Advice No. 10-008 is subject to refund pending the  
21 Commission's final decision on whether the surcharges result in rates that are fair, just, and  
22 reasonable, as required by ORS 757.736(2). The Company requests that a Commission  
23 order finding that the rates are fair, just, and reasonable include a provision removing the



1 refund condition included in Schedule 199 after the period for filing a petition for judicial  
2 review has expired or, if a petition is filed, after rates resulting from the surcharge are  
3 finally determined to be fair, just and reasonable. Exhibit PPL/201 contains a draft of  
4 Schedule 199 without the refund provision, which the Company will file upon a final  
5 determination that rates resulting from the surcharges are fair, just, and reasonable.

6 **C. The Company's Proposed Depreciation Schedule for the Remaining**  
7 **Investment in the Project and Other Eligible Costs is Consistent with ORS**  
8 **757.734.**

9 Under ORS 757.734, within six months of execution of the Final Agreement, the  
10 Commission shall determine a depreciation schedule for each of the four dams based on the  
11 assumption that the dams will be removed in 2020. ORS 757.734(1). The Commission  
12 shall use the depreciation schedules to establish rates and tariffs for the recovery of  
13 Oregon's share of the Company's undepreciated amounts prudently invested in a dam. *Id.*  
14 Amounts that are recoverable include, but are not limited to, both return of and return on  
15 investment, capital improvements required by the government for continued operation of  
16 the dam until dam removal, relicensing costs before July 14, 2009, relicensing or removal  
17 settlement costs, and decommissioning costs. ORS 757.734(2).

18 The Company proposes to depreciate the net book value of the Company's  
19 remaining investment in the Project and other costs eligible for recovery under ORS  
20 757.734(2) on a straight-line basis through December 31, 2019. Ms. Kelly's testimony  
21 explains the Company's proposed change to the depreciation schedule in further detail.

22 Although the Company is requesting determination of a depreciation schedule in  
23 this proceeding because such a determination is required by SB 76, PacifiCorp it is not  
24 requesting that the depreciation schedule be reflected in rates in this case. The Company

1 has requested recovery of the accelerated depreciation expense that would result from the  
2 Commission's adoption of the Company's proposed depreciation schedule, and recovery of  
3 costs associated with the relicensing and settlement process, in its pending rate case,  
4 Docket UE 217. Docket UE 217, PPL/1100, Dalley/25; PPL/600, Brockbank/16.

5 **D. SB 76 Preempts Commission Approval Under ORS 757.480.**

6 Under ORS 757.480, a utility must obtain the Commission's approval prior to  
7 disposing of any part of the property of the utility necessary or useful in the performance of  
8 its duties in excess of \$100,000. In this case, however, SB 76 governs the transfer of the  
9 Project from PacifiCorp to the DRE. The Oregon legislature found that, subject to DOI's  
10 final analysis and confirmation and review by Oregon and California, the AIP and KHSA  
11 will set forth a framework for action based on the preliminary view that removal of the  
12 Project is in the public interest. *See* Preamble to SB 76. The KHSA provides for the  
13 transfer of the Project to the DRE for removal. Therefore, the legislature has already made  
14 a finding that, subject to conditions unrelated to actions by this Commission, transfer and  
15 removal of the Project is in the public interest and should be implemented. As a result, the  
16 Commission could not find that transfer is contrary to the public interest and disapprove the  
17 transfer under ORS 757.480 without acting inconsistently with SB 76. *See* ORS 174.020  
18 (stating that when a specific and a general statute are inconsistent, the specific statute  
19 controls). SB 76, rather than ORS 757.480, governs the transfer of the Project from  
20 PacifiCorp to the DRE.

21 The Company requests that the Commission issue a finding of law disclaiming  
22 the Commission's jurisdiction over approval of the transfer of the Project that would  
23 otherwise be required under ORS 757.480. In the alternative, the Company requests that

1 the Commission approve the transfer of the Project under ORS 757.480, contingent upon:  
2 (1) satisfaction of the conditions precedent for the transfer outlined in the KHSA; and (2)  
3 filing by PacifiCorp of the information required by OAR 860-027-0025.

#### 4 IV. CONCLUSION

5 To implement the requirements of SB 76, PacifiCorp respectfully requests that the  
6 Commission take the following actions:

7 1. Acknowledge that PacifiCorp has satisfied the requirements of ORS  
8 757.736(1) regarding the filing of the KHSA and related analyses and studies;

9 2. Within six months of this filing, or by September 18, 2010, determine that  
10 the surcharges result in rates that are fair, just, and reasonable and include in an order  
11 finding that the surcharges result in fair, just, and reasonable rates a provision removing the  
12 refund condition in Schedule 199 once the Commission's order has become final;

13 3. Within six months of execution of the KHSA, or by August 18, 2010,  
14 establish the depreciation schedule proposed by PacifiCorp; and

15 4. Issue a disclaimer of jurisdiction over the transfer of the Project to the DRE,  
16 due to preemption by SB 76, or approve the transfer of the Project under ORS 757.480,  
17 contingent upon: (1) satisfaction of the conditions precedent for the transfer outlined in the  
18 KHSA; and (2) filing by PacifiCorp of the information required by OAR 860-027-0025.

Respectfully submitted,

DATED: March 18, 2010.



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Jordan A. White  
Senior Counsel  
Pacific Power  
1407 W. North Temple, Suite 320  
Salt Lake City, Utah 84116  
Phone: 801.220.2279  
Facsimile: (801) 220-4615  
Email: [jordan.white@pacificcorp.com](mailto:jordan.white@pacificcorp.com)

Katherine McDowell  
Amie Jamison  
McDowell, Rackner & Gibson, P.C.  
520 SW 6<sup>th</sup>, Ste 830  
Portland, OR 97204  
Telephone: (503) 595-3924  
Facsimile: (503) 595-3928  
Email: [katherine@mcd-law.com](mailto:katherine@mcd-law.com)



Docket No. UE-  
Exhibit PPL/100  
Witness: Dean S. Brockbank

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON**

**PACIFICORP**

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**Direct Testimony of Dean S. Brockbank**

**March 2010**

1 **Introduction**

2 **Q. Please state your name, business address and present position with**  
3 **PacifiCorp (“Company”).**

4 A. My name is Dean S. Brockbank. My business address is 1407 West North  
5 Temple, Salt Lake City, Utah 84116. My present position is Vice President and  
6 General Counsel of PacifiCorp Energy.

7 **Qualifications**

8 **Q. Briefly describe your educational background and business experience.**

9 A. I have a Bachelor of Science in Accounting from Brigham Young University and  
10 hold a law degree from George Mason University. I have been employed by  
11 PacifiCorp for over six years and support the commercial and trading and  
12 generation departments as General Counsel. Prior to joining PacifiCorp Energy, I  
13 worked for the Rocky Mountain Power division of PacifiCorp as senior counsel.

14 **Q. Have you been personally involved in the negotiations related to the Klamath**  
15 **Hydroelectric Settlement Agreement?**

16 A. Yes. I have been part of PacifiCorp’s negotiating team for nearly three years.

17 **Purpose and Overview of Testimony**

18 **Q. What is the purpose of your testimony?**

19 A. My testimony explains the process involved in pursuing a new federal operating  
20 license for hydroelectric projects in general and the specific process that has been  
21 followed for relicensing the Klamath Hydroelectric Project (“Project”) and  
22 settlement of issues related to the relicensing proceeding. My testimony explains  
23 the relicensing and settlement process costs for the Project that have been incurred

1 in the interest of PacifiCorp's customers. Finally, I sponsor the Klamath  
2 Hydroelectric Settlement Agreement ("KHSA") as an exhibit to my testimony and  
3 provide a section-by-section summary.

4 **Overview of the Project**

5 **Q. Please describe the Project.**

6 A. The Project is a 169 megawatt hydroelectric facility on the Klamath River in  
7 southern Oregon and northern California. It consists of eight developments  
8 including seven powerhouses, four mainstem hydroelectric dams on the Klamath  
9 River (Iron Gate, Copco No. 1, Copco No. 2, and J.C. Boyle), as well as two  
10 small diversion dams on Spring Creek and Fall Creek, a tributary to the Klamath  
11 River. The Project as currently licensed includes the East Side and West Side  
12 generating facilities which use water diverted by the Link River Dam, a facility  
13 owned by the Bureau of Reclamation that regulates the elevation and releases of  
14 water from Upper Klamath Lake and which is not included in the Project. The  
15 Project also includes Keno Dam, which has no hydroelectric generation facilities,  
16 but which serves to regulate water levels in Keno Reservoir as required by the  
17 Project license. The Company operates all developments under one Federal  
18 Energy Regulatory Commission ("FERC") license (FERC Project No. 2082). The  
19 Project is partially located on federal lands administered by the Bureau of Land  
20 Management and the Bureau of Reclamation. The first hydroelectric  
21 development, Fall Creek, was completed in 1903 and Iron Gate, the last  
22 hydroelectric development, was completed in 1962. The Keno Dam was  
23 completed in 1968. A map of the Project is provided as Exhibit PPL/101.



1 **Q. Generally, what benefits does the Project provide PacifiCorp and its**  
2 **customers?**

3 A. Since its completion, the Project has provided reliable low-cost power. As  
4 currently operated in compliance with the limitations of the existing license, the  
5 Project is a source of energy, capacity, and reserves. Unlike most other sources of  
6 generation, hydro projects also provide an additional environmental benefit  
7 because they are “emissions-free.” In addition, the generating units of the Project  
8 located in California qualify as renewable energy resources for the California  
9 Renewables Portfolio Standard.

#### 10 **Overview of Federal Relicensing**

11 **Q. Please provide an overview of the federal relicensing process.**

12 A. Under the Federal Power Act (“FPA”), FERC has the exclusive authority to  
13 license nonfederal hydropower projects on navigable waterways. Original  
14 licenses are issued for a term of 50 years, after which a licensee may seek  
15 relicensing. FERC issues subsequent licenses for a term of not less than 30 years  
16 or more than 50 years with FERC deciding the length of the license. FERC  
17 regulations require that a licensee file a Notice of Intent to apply for a new license  
18 five and a half years prior to license expiration. A licensee must file an  
19 application for a new license two years prior to expiration of an existing license.  
20 On average, licensing takes eight to ten years, and some applications have taken  
21 as long as 30 years. During the relicensing process, FERC typically allows  
22 projects to continue operating on annual license extensions under the same terms  
23 and conditions once the old license has expired. Such is the case with the Project

1 at this time, as the Project license expired in 2006. The licensing process requires  
2 FERC to consider the economic, engineering, environmental, and socioeconomic  
3 aspects of the Project. In issuing licenses, FERC must give "equal consideration"  
4 to environmental values and adequately protect and mitigate the effects of the  
5 Project based on environmental and other concerns. In doing so, FERC attaches  
6 conditions to the license.

7 **Q. What role do state and federal resource agencies play in the process?**

8 A. State and federal fish and wildlife agencies review applications and submit  
9 comments to FERC regarding the impact of the Project on the environment.  
10 Based on those impacts, state and federal agencies recommend conditions to  
11 FERC to place on the license to mitigate the impacts. The FPA gives certain  
12 federal agencies the authority to require FERC to include the agency's conditions  
13 on the license. For example, the Secretaries of Commerce and the Interior have  
14 the authority to require applicants to install fishways (ladders and screens) at  
15 projects, and to require applicants to reduce variability of in-stream flows.

16 **Q. What options does an applicant have if the mandatory conditions make the**  
17 **Project uneconomic?**

18 A. The applicant has limited options. The applicant may accept the uneconomic  
19 license, decommission and remove the facility, or pursue litigation and challenge  
20 the mandatory conditions. In states other than California, the applicant has the  
21 option of selling the facility as well. Because of the potential risks of removal of  
22 facilities and the uncertainty of litigation, those options are seldom favored.  
23 Consequently, applicants often try to manage uncertainty by settling issues among

1 the various stakeholders before licensing is completed or by negotiating  
2 acceptable decommissioning and removal outcomes.

3 **Q. Other than the FPA, what other laws must FERC take into consideration**  
4 **when granting licenses?**

5 A. Because licensing is a “federal action,” FERC must evaluate the application under  
6 a host of federal laws: the Clean Water Act (“CWA”), the Coastal Zone  
7 Management Act, the National Environmental Policy Act (“NEPA”), the  
8 Endangered Species Act (“ESA”), the Fish and Wildlife Coordination Act, the  
9 National Historic Preservation Act, among others.

10 These additional laws can add time and expense to the application process.  
11 For example, before FERC can issue a license, an applicant must obtain  
12 certification from the state in which the project is located that the project can meet  
13 state water quality standards and criteria under Section 401 of the CWA.  
14 Similarly, under the ESA, FERC must consult with the federal agencies to  
15 determine whether issuing a new license might jeopardize the existence of any  
16 endangered or threatened species or result in adverse modification of critical  
17 habitat.

18 The Company has sought CWA Section 401 certifications for the Project  
19 from both Oregon and California. In addition, ESA considerations are present at  
20 the Project due to the presence of threatened coho salmon in the Klamath River  
21 below Iron Gate dam, and endangered Lost River and shortnose suckers that  
22 predominantly reside in Upper Klamath Lake and its tributaries but utilize habitat  
23 within the Project boundary.

1 **Q. Does FERC offer more than one relicensing process?**

2 A. Yes. At the time the license application for the Project was developed and filed –  
3 the final license application was submitted to FERC in February 2004 – applicants  
4 could use either traditional or alternative licensing processes. During the process  
5 of developing the license application for the Project, FERC developed an  
6 additional licensing process called an integrated licensing process, which became  
7 the default process for relicensing in 2005. Applicants may also enter into a  
8 negotiated settlement at any time. The Company initiated licensing under the  
9 traditional approach for the Project, and has pursued settlement to resolve the  
10 issues related to the Project relicensing.

11 **Q. Please describe the relicensing process to date for the Project.**

12 A. PacifiCorp filed a Notice of Intent to relicense and issued its First Stage  
13 Consultation Document on December 15, 2000. In an attempt to arrive at  
14 consensus-based approaches to the licensing process with the various stakeholders  
15 involved, PacifiCorp pursued a “traditional-plus” licensing approach in which the  
16 traditional process was followed with a concerted effort to solicit stakeholder  
17 input and agreement on study plans before they were submitted to FERC for  
18 review. This “traditional-plus” approach resulted in a significant number of  
19 stakeholder meetings to review proposed study plans, gather input, and attempt to  
20 achieve consensus. This approach was pursued with the hope that this  
21 collaborative approach would ultimately minimize disagreements among  
22 PacifiCorp, agencies and stakeholders on the technical and scientific questions  
23 related to project impacts and proposed mitigation alternatives. In this way, it

1 was intended that the relicensing process could be completed more rapidly with  
2 agreement among the stakeholders in order to avoid a prolonged and expensive  
3 relicensing proceeding, which is common for hydroelectric relicensing.

4 **Q. Please explain stakeholder participation in the relicensing process for the**  
5 **Project.**

6 A. Public meetings for the relicensing process began in January 2001 and second  
7 stage consultation meetings with stakeholders on the studies necessary for the  
8 relicensing application began in August 2001. Studies and second stage  
9 consultation meetings with stakeholders continued through 2002 and 2003 and the  
10 final license application was submitted to FERC in February 2004. FERC issued  
11 its first scoping document for the environmental review process in April 2004 and  
12 scoping was completed in May 2005. FERC issued notice that the Project was  
13 ready for environmental analysis on December 28, 2005. The FERC license  
14 expired February 28, 2006 and annual licenses have been issued by FERC since  
15 that time.

16 Federal agencies – the National Marine Fisheries Service, U.S. Fish and  
17 Wildlife Service, Bureau of Reclamation, and Bureau of Land Management –  
18 issued draft terms and conditions for a new license in March 2006. The draft  
19 terms called for full volitional fish passage at all Project developments as well as  
20 other license conditions to benefit environmental resources that would reduce  
21 power generation and increase the costs of a new license. That same month, the  
22 Company submitted applications to California and Oregon for CWA Section 401  
23 water quality certifications of the Project. As a result of the Energy Policy Act of

1 2005, the Company had the opportunity to challenge the underlying facts behind  
2 the draft agency terms and conditions and propose alternative licensing  
3 conditions. The Company filed alternative license conditions with FERC that the  
4 Company believed provided similar environmental benefits as the draft agency  
5 terms and conditions but at less cost and loss in power production from the  
6 Project. The Company's filing also challenged material facts relied upon by the  
7 agencies. A trial-type hearing was conducted on these issues of material fact  
8 underlying the agency terms and conditions in August 2006 and a decision was  
9 issued by an administrative law judge in September 2006. Also in September  
10 2006, FERC issued a draft Environmental Impact Statement for Hydropower  
11 License.

12           Incorporating the findings of the trial-type hearing, the agencies issued  
13 modified terms and conditions for a new license in January 2007. FERC then  
14 initiated ESA consultation for a new license in March 2007 and the National  
15 Marine Fisheries Service and U.S. Fish and Wildlife Service issued final  
16 biological opinions in December 2007. After initiating the process under the  
17 California Environmental Quality Act pursuant to obtaining CWA Section 401  
18 certification, the Company signed a memorandum of understanding with the  
19 California State Water Resources Control Board in September 2007. FERC  
20 completed its environmental analysis of the Project and released its final  
21 Environmental Impact Statement for Hydropower License in November 2007.

1 **Q. Please continue describing the relicensing process after the Company filed its**  
2 **applications for CWA Section 401 certification of the Project.**

3 A. Since filing its applications for CWA Section 401 certification of the Project with  
4 California and Oregon, PacifiCorp has been implementing water quality studies  
5 and monitoring pursuant to reservoir management plans developed to evaluate  
6 technologies and management actions that may be feasible to improve water  
7 quality conditions in the Project reservoirs and in the Klamath River downstream  
8 of Project facilities. The result of these studies and planning efforts will help the  
9 states of California and Oregon assess whether the Project can meet applicable  
10 water quality standards. In June 2009, the California North Coast Regional Water  
11 Quality Control Board issued a draft total maximum daily load (“TMDL”) report  
12 for the Klamath River. PacifiCorp has been actively involved in reviewing the  
13 TMDL since the requirements of the TMDL will ultimately inform the conditions  
14 that may be imposed on the Project through the CWA Section 401 certification  
15 process.

16 **Q. What major changes to the Project did PacifiCorp propose in its license**  
17 **application?**

18 A. PacifiCorp proposed decommissioning the East Side and West Side  
19 developments, which account for less than three percent of historic Project  
20 generation. In addition, PacifiCorp proposed separating the Keno development  
21 from the Project since that development no longer serves Project purposes,  
22 although its operation is required by the current Project license. Finally,  
23 PacifiCorp proposed reducing the amount of land included within the Project

1 boundary so that PacifiCorp's responsibility for environmental and cultural  
2 resources management would be more in line with the area actually affected by  
3 the Project. These changes were proposed to preserve the economic benefits of  
4 the Project and ensure that the Project – and thus PacifiCorp's customers – was  
5 not assigned responsibility for mitigation measures unrelated to operation of the  
6 hydroelectric facilities. Additional mitigation measures for cultural, recreation,  
7 fisheries and water resources were also included in the application.

8 **Q. Please describe how settlement is used in FERC relicensing process.**

9 A. Due to the complex nature of relicensing proceedings and the many issues and  
10 stakeholders involved in the process, many relicensing proceedings are resolved  
11 by settlement. As mentioned before, a settlement between the parties to a  
12 relicensing proceeding can be entered at any time while the relicensing process is  
13 ongoing. Settlements are encouraged by FERC and recent changes to the  
14 relicensing process alternatives have been made to encourage applicants and  
15 stakeholders to reach consensus on the issues related to project relicensing so the  
16 parties can reach settlement. Indeed, PacifiCorp has pursued settlement for the  
17 majority of its recently completed hydro relicensing proceedings including the  
18 North Umpqua, Bear River, and Lewis River projects. In addition, settlements  
19 have been entered among PacifiCorp, agencies and stakeholders to decommission  
20 the Condit, American Fork, and Powerdale hydro projects after those projects  
21 began the traditional FERC relicensing process.

22 **Q. Please describe the settlement process to date for the Project.**

23 A. For the Project, PacifiCorp initiated settlement discussions in October 2004 with



1 stakeholders following submittal of the license application. The first mediated  
2 settlement meeting was conducted in January 2005. Settlement meetings  
3 proceeded through 2005 and mid-2006 when the settlement group turned its  
4 attention to resolving basin-wide issues among the stakeholders. This group of  
5 stakeholders, after months of negotiations, released the draft Klamath Basin  
6 Restoration Agreement (“KBRA”) in January 2008. Because the provisions  
7 surrounding these broader issues were beyond the scope of the relicensing  
8 proceedings, PacifiCorp did not participate in these negotiations. The KBRA is  
9 intended to resolve issues of water allocation in the Klamath Basin and provide  
10 for habitat restoration and called for removal of PacifiCorp’s main stem  
11 hydroelectric dams. Following release of the KBRA, active settlement  
12 negotiations were resumed among PacifiCorp, the federal government, and the  
13 states of California and Oregon.

14 Other key stakeholders joined the settlement negotiations, resulting in an  
15 Agreement in Principle (“AIP”), which was released on November 13, 2008. The  
16 AIP laid out a framework for resolution of the issues related to relicensing of the  
17 Project including the potential decommissioning and removal of PacifiCorp’s four  
18 main stem dams on the Klamath River – J.C. Boyle, Copco No. 1, Copco No. 2,  
19 and Iron Gate. As a result of discussions with the National Marine Fisheries  
20 Service and the U.S. Fish and Wildlife Service, PacifiCorp also developed an  
21 Interim Conservation Plan to provide benefits to ESA-listed aquatic species  
22 during the period of interim operations prior to potential dam removal or the re-  
23 establishment of fish passage through the Project pursuant to project relicensing.

1           Following the release of the AIP, PacifiCorp pursued further negotiations  
2           with the parties to the AIP – the federal government, California and Oregon – as  
3           well as an expanded group of stakeholders, agencies, and other interested parties  
4           to complete a final settlement agreement for the Project. A draft of the KHSA  
5           was released on September 30, 2009 and public review drafts of the KBRA and  
6           KHSA were released on January 7 and January 8, 2010, respectively. On  
7           February 18, 2010, the KHSA was executed by over 30 parties, including  
8           PacifiCorp, the U.S. Department of the Interior, the states of Oregon and  
9           California, the Karuk, Klamath and Yurok tribes, and parties representing  
10          counties, irrigation districts, fishermen, environmentalists and other organizations.  
11          I have provided a detailed chronology of key points in the Klamath relicensing  
12          and settlement process as Exhibit PPL/102.

13   **Q.    Is PacifiCorp a signatory to the KBRA?**

14   A.    No. In mid-2006, PacifiCorp elected to excuse itself from settlement discussions  
15          when settlement parties decided to negotiate basin-wide issues related to water  
16          allocations, wildlife refuges, and other issues not explicitly related to the  
17          relicensing of the Project. As a result, PacifiCorp is not a party to the KBRA.  
18          PacifiCorp has focused its settlement efforts on resolving the issues related to  
19          relicensing of the Project. The two agreements, however, are linked.

20   **Q.    Absent the settlement under the KHSA, what steps remain to be completed**  
21          **in the relicensing process?**

22   A.    In order for FERC to issue a new project license, CWA Section 401 water quality  
23          certification must first be completed by the states of California and Oregon. The

1 California State Water Control Board has authority to issue CWA Section 401  
2 certifications for hydropower projects in California. The conditions of the CWA  
3 Section 401 certification would then be incorporated into the new FERC license  
4 for the Project. PacifiCorp has CWA Section 401 water quality certification  
5 applications pending in both states. However, pursuant to the KHSA, relicensing  
6 of the Project will be held in abeyance while the Secretary of the Interior makes a  
7 determination as to whether the four main stem Klamath River dams owned by  
8 PacifiCorp should be decommissioned and removed or relicensed.

9 **Costs and Benefits of Relicensing**

10 **Q. Please describe how pursuing relicensing and settlement has provided**  
11 **customer benefits.**

12 A. PacifiCorp has pursued relicensing to preserve economic benefits to its customers  
13 from the Project. Had the Company not elected to pursue relicensing of the  
14 Project, it would have been required to submit an application to FERC for  
15 surrender of the Project license and decommissioning/removal of the facilities.  
16 Throughout the relicensing and settlement process, PacifiCorp has taken the  
17 position that decommissioning and removal of the Project without sufficient  
18 protections against the associated costs, risks and liability is not in the interests of  
19 the Company or its customers. To that end, it has pursued settlement in a manner  
20 that will provide those protections. In addition, the settlement process has  
21 provided benefits by allowing customers to continue to benefit from the Project  
22 while the public policy decisions are made on whether removal of the main stem  
23 Klamath River facilities is in the public interest.

1 **Q. What costs have the Company incurred in the licensing and settlement**  
2 **processes?**

3 A. At the end of calendar year 2009 the Project had accumulated \$66.907 million on  
4 a system-wide basis in relicensing and settlement process costs. Additional costs  
5 will continue to be incurred throughout 2010.

6 **Q. Has the complexity of the Project impacted the overall level of process costs?**

7 A. Yes. As detailed earlier in my testimony, the relicensing process is complex and  
8 requires the incurrence of significant expenditures for staff labor, outside  
9 technical support, and legal services to prepare an application and defend that  
10 application through the regulatory process. The Project has been the most  
11 complex and contentious relicensing proceeding the Company has undertaken for  
12 its many hydroelectric projects. Even so, the Project relicensing costs compare  
13 favorably with another recent relicensing effort by the Company on the North  
14 Umpqua River. At the conclusion of that relicensing process in 2005, the total  
15 cost was approximately \$55.1 million. In that case, the relicensing and settlement  
16 process spanned 10 years, from 1991 to 2001. The settlement parties were fewer  
17 in number and included: U.S. Forest Service, National Marine Fisheries Service,  
18 U.S. Fish and Wildlife Service, Bureau of Land Management, Oregon Department  
19 of Environmental Quality, Oregon Department of Fish and Wildlife, and Oregon  
20 Water Resources Department.

21 **Overview of Klamath Hydroelectric Settlement Agreement**

22 **Q. Is there a summary of the key elements of the KHSA?**

23 A. Yes. It is attached as Exhibit PPL/103.

1 **Q. How is the KHSA structured?**

2 A. The KHSA contains nine sections, 13 appendices and five exhibits. Each section  
3 focuses on a specific key element of the overall agreement that I will describe  
4 below. A full copy of the executed KHSA is attached as Exhibit PPL/104.

5 **Q. What is the purpose of Section 1?**

6 A. Section 1, Introduction, lists the parties, the purpose of the KHSA, compliance  
7 with legal responsibilities, reservations, and other protections.

8 **Q. What is the purpose of Section 2?**

9 A. Section 2, Implementation of Settlement, describes the duty to support the KHSA,  
10 including the legislation needed to implement parts of Settlement. It describes the  
11 regulatory approvals needed and the obligations of the parties to implement and  
12 defend the KHSA.

13 **Q. What is the purpose of Section 3?**

14 A. Section 3, Studies, Environmental Review and Secretarial Determination,  
15 describes the process to develop additional studies and complete the  
16 environmental reviews necessary for the Secretary of the Interior to make a  
17 determination whether dam removal should proceed. It also includes the standards  
18 for the determination and the conditions that have to be in place prior to the  
19 determination.

20 **Q. What is the purpose of Section 4?**

21 A. Section 4, Costs, describes the source and management of funding for dam  
22 removal. The requirements of this section are discussed in detail in the testimony  
23 of Company witness Ms. Andrea L. Kelly.

1 **Q. What is the purpose of Section 5?**

2 A. Section 5, Local Community Power, includes provisions between PacifiCorp and  
3 other parties regarding joint development of generation resources, distribution of  
4 electricity that may be made available as part of the KBRA, and other related  
5 provisions.

6 **Q. What is the purpose of Section 6?**

7 A. Section 6, Interim Operations, describes the operations of the dams prior to dam  
8 removal. It also describes the relationship to the FERC relicensing process.  
9 These requirements are described in detail in Appendices C and D of the KHSA.

10 **Q. What is the purpose of Section 7?**

11 A. Section 7, Dam Removal Entity, Transfer, Decommissioning, and Removal,  
12 describes the capabilities and responsibilities of the Dam Removal Entity,  
13 provisions for a definite plan, schedule for dam removal, the process for  
14 decommissioning, transfer, and removal of the dams, and other related provisions.

15 **Q. What is the purpose of Section 8?**

16 A. Section 8, General Provisions, describes the operational details of the KHSA,  
17 including the process for amendments, dispute resolution, severability,  
18 termination, and governing law.

19 **Introduction of Witnesses**

20 **Q. Please list the Company witnesses and provide a brief description of their**  
21 **testimony.**

22 A. **Andrea L. Kelly**, Vice President, regulation, explains how this filing implements  
23 Oregon Senate Bill 76 (“SB 76”), ORS 757.732 et seq., including the provisions

1 of the law related to the dam removal surcharges and the determination of any  
2 accelerated depreciation schedule.

3 **Cory E. Scott**, Director, transmission policy, presents the Company's assessment  
4 of estimated costs of relicensing and the costs of the KHSA, and discusses the  
5 significant uncertainties related to the relicensing process.

6 **Q. Does this conclude your direct testimony?**

7 **A. Yes.**





Docket No. UE-  
Exhibit PPL/101  
Witness: Dean S. Brockbank

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON**

**PACIFICORP**

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**Exhibit Accompanying Direct Testimony of Dean S. Brockbank**

**Map of the Klamath Project**

**March 2010**



Docket No. UE-  
Exhibit PPL/102  
Witness: Dean S. Brockbank

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON**

**PACIFICORP**

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**Exhibit Accompanying Direct Testimony of Dean S. Brockbank**

**Klamath Chronology**

**March 2010**

## Klamath Chronology

<b>Date</b>	<b>Event</b>
December 15, 2000	Notice of Intent to file an application filed with the Federal Energy Regulatory Commission and the First Stage Consultation Document released to public
January 23, 2001	Public meetings
August 7, 2001	Consultation meetings with stakeholders begin
August 8, 2001	Start of workgroup meetings
January 2002	PacifiCorp begins conducting additional studies
January-December 2003	PacifiCorp continues natural resource studies
January-December 2003	PacifiCorp continues stakeholder meetings (over 200 in all)
February 23, 2004	PacifiCorp submits final license application
April 16, 2004	FERC issues scoping document No. 1
August 16, 2004	FERC issues notice of application
February 17, 2005	FERC submits additional information requests to PacifiCorp
May 17, 2005	FERC issues scoping document No. 2
December 28, 2005	FERC issues Notice of Ready for Environmental Analysis
February 28, 2006	License expires - FERC issues annual license to operate
March 24, 2006	Federal agencies issue draft terms and conditions
March 26, 2006	PacifiCorp submits 401 applications to Oregon and California
March 27, 2006	PacifiCorp files alternative conditions
August 25, 2006	Trial-type hearing closes
September 25, 2006	FERC issues draft environmental impact statement
September 27, 2006	Decision issued in trial-type hearing
November 14, 2006	Public meetings on the draft environmental impact statement begin
January 24, 2007	Federal agencies issue modified terms and conditions

February 28, 2007	PacifiCorp resubmits 401 applications
March 21, 2007	FERC initiates Endangered Species Act consultation
September 17, 2007	PacifiCorp signs MOU for California Environmental Quality Act analysis
October 22, 2007	U.S. Fish and Wildlife service issues draft biological opinion
November 2, 2007	National Marine Fisheries Service issues draft biological opinion
November 16, 2007	FERC issues final environmental impact statement
December 3, 2007	U.S. Fish and Wildlife service issues final biological opinion
January 15, 2008	Klamath Basin Restoration Agreement (proposed) released
February 22, 2008	PacifiCorp withdraws and resubmits California and Oregon 401 applications
November 10, 2008	Interim Conservation Plan released
November 13, 2008	Agreement in Principle signed
June 2009	California Klamath River TMDL issued
August 27, 2009	PacifiCorp submits comments on the California Klamath River TMDL
September 10, 2009	PacifiCorp withdraws and resubmits California 401 application
September 30, 2009	Draft Klamath Hydroelectric Settlement Agreement released
December 23, 2009	Revised California TMDL issued
January 7, 2010	Klamath Basin Restoration Agreement Public Review Draft released
January 8, 2010	Klamath Hydroelectric Settlement Agreement Public Review Draft released
January 20, 2010	PacifiCorp withdraws and resubmits Oregon 401 application
February 18, 2010	Klamath Hydroelectric Settlement Agreement and Klamath Basin Restoration Agreement executed



Docket No. UE-  
Exhibit PPL/103  
Witness: Dean S. Brockbank

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON**

**PACIFICORP**

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**Exhibit Accompanying Direct Testimony of Dean S. Brockbank  
Summary of Klamath Hydroelectric Settlement Agreement**

**March 2010**

# Klamath Hydroelectric Settlement Agreement

## Studies, Environmental Review, and Secretarial Determination

**Studies and Environmental Review:** The Secretary of the Interior, in cooperation with the Secretary of Commerce and other Federal agencies, will:

- Use existing studies and other appropriate data, including those in the FERC record for this project;
- Conduct further appropriate studies, including but not limited to an analysis of sediment content and quantity;
- Undertake related environmental compliance actions, including environmental review under NEPA; and
- Take other appropriate actions as necessary to determine whether to proceed with facilities removal.

Facilities removal is defined as the physical removal of all or part of each of the four PacifiCorp dams 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.

These studies will be conducted in coordination with the parties to the Hydroelectric Settlement and the public. The California Department of Fish and Game will conduct review required under the California Environmental Quality Act, and the State of Oregon will address applicable Oregon state laws, prior to deciding whether to concur with any affirmative determination by the Secretary of the Interior as described below.

**Detailed Plan for Facilities Removal:** The Secretary will prepare a detailed plan that describes:

- The methods and timetable for facilities removal;
- Plans for management, removal, and/or disposal of sediments, debris, and other materials;
- A plan for site remediation and restoration;
- A plan for measures to avoid or minimize adverse downstream impacts;
- A plan for compliance with all applicable laws, including anticipated permits and permit conditions;
- A detailed statement of the estimated costs of facilities removal; and
- A statement of measures to reduce risks of cost overruns, delays, or other impediments to facilities removal.

**Secretarial Determination:** The Secretary of the Interior will use this information, in cooperation with the Secretary of Commerce and other Federal agencies, to determine whether, in his judgment, the conditions of the Hydroelectric Settlement have been satisfied, and whether 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. The Secretary will use best efforts to complete this determination by March 31, 2012.

**Conditions:** The Hydroelectric Settlement describes the conditions that need to be satisfied before the Secretarial Determination:

- Passage of federal legislation materially consistent with the proposed legislation to implement the Hydroelectric Settlement and the Restoration Agreement;
- The states of California and Oregon have authorized funding for facilities removal;
- Development of a plan to address any costs over the limits in the Hydroelectric Settlement; and
- Designation of a Dam Removal Entity, and, if the DRE is a non-federal entity, a finding by the Secretary that the entity meets the qualifications specified in the Hydroelectric Settlement, the states of California and Oregon concur, and the designated DRE has committed to perform facilities removal within the cost cap.

The Hydroelectric Settlement also identifies other actions that need to be taken prior to Secretarial Determination.

**Affirmative Determination:** In the event of an affirmative determination, the Secretary will also decide whether the Department of the Interior or a non-federal entity will serve as the DRE. California and Oregon will provide notice to the Secretary and other parties within 60 days whether each state concurs with the affirmative determination. In its concurrence decision, each state will consider whether: 1) significant impacts identified in its environmental review can be avoided or mitigated as provided under state law; and 2) facilities removal will be completed within the state cost cap. If the Secretary selects a non-federal DRE, the states would also decide whether to concur with that selection.

**Negative Determination:** If the Secretary determines not to proceed with facilities removal, the Hydroelectric Settlement terminates unless the parties agree to a cure for this potential termination event. Prior to adopting or public release of such a determination, the Secretary will notify the parties of his tentative determination and its basis. The parties will consider whether to amend the Settlement in a manner that will permit the Secretary to make an affirmative determination.

## **Costs**

**Cost cap:** The Hydroelectric Settlement sets a cost cap of \$450 million for facilities removal. In addition, pending regulatory approval, the Hydroelectric Settlement allows for the recovery of costs of the existing investment in the facilities, the ongoing operating costs and the costs of replacement power.

**Funding sources:** \$200 million of the costs would come from customer contributions on a pro rata basis (up to \$184 million from PacifiCorp's Oregon customers and up to \$16 million from customers in California); Oregon has passed the law necessary to begin the collection of the Oregon share. These contributions are designed so they would not increase revenue requirement by more than two percent. In addition, \$250 million would come from

the sale of bonds in California. The United States will not be responsible for facilities removal costs.

**Management of the funds:** The states of California and Oregon would establish trust accounts and provide instructions for the management and distribution of the funds. If the customer contributions are determined to result in rates that are not fair, just, and reasonable, the surcharges would be refunded to customers in accordance with the Oregon Surcharge Act and the trustee instructions. If the California or Oregon public utilities commissions determine that there are excess funds in the accounts, the surplus funds would be returned to customers. If one or more of the dams are not removed, any remaining funds would be returned, first, to cover costs of relicensing, and then to customers.

## **Implementation**

**Interim Measures:** The Hydroelectric Settlement includes detailed actions for the operation of the dams and mitigation activities prior to removal of the dams.

**Dam Removal Entity:** The DRE must have the following capabilities:

- Accept and expend non-federal funds;
- Seek and obtain necessary permits and other authorizations to implement facilities removal;
- Enter into appropriate contracts;
- Accept transfer of title to the Facilities for the express purpose of facilities removal;
- Perform, directly or by oversight, facilities removal;
- 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;
- 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
- Perform such other tasks as are reasonable and necessary for facilities removal, within the authority granted by the authorizing legislation or other applicable law.

**Definite Plan:** The DRE would develop a definite plan for facilities removal and include it as a part of any applications for permits or other authorizations. The definite plan will be consistent with the Settlement, the authorizing legislation, the detailed plan, and the Secretarial determination. The Settlement includes a detailed list of the elements that would be in the detailed plan.

**Schedule:** In the event of an affirmative determination by the Secretary, the target date to begin decommissioning the facilities is January 1, 2020. 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 other provisions of the settlement. The target date for facilities removal is December 31, 2020.

The Hydroelectric Settlement also provides a procedure to accelerate facilities removal by up to twelve months if certain conditions are met. If the parties determine that the schedule for facilities removal must extend beyond December 31, 2020, then the parties will 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.

**Yreka water system:** The parties understand that facilities removal may affect the City of Yreka. In recognition of this potential, the Hydroelectric Settlement includes provisions to mitigate impacts to the city's water supply system.

**Keno:** If the Secretary makes an affirmative determination, PacifiCorp and the Bureau of Reclamation would enter into an agreement to transfer Keno Dam to Reclamation. In preparation for such a transfer, the Secretary, in consultation with the affected parties would study environmental compliance, water quality, and fish passage with the goal of addressing these issues and maintaining the benefits the dam currently provides.

**Transfer:** PacifiCorp would transfer each facility when the DRE provides notice that 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. After the transfer, the DRE would remove the facility.

**Legislation:** Implementation of the agreements would require legislation. The parties are developing a proposal for federal legislation to recommend to the Administration and Congress. The proposed legislation includes the authorization for federal agencies to implement the two agreements and specific authorities that require Congressional action. Under the proposed federal legislation, operation of the four dams would continue under FERC annual licenses; in the event of an affirmative determination, the legislation would authorize the decommissioning and removal process in the Hydroelectric Settlement. In the event of a negative determination or if the Hydroelectric Settlement terminates, PacifiCorp would return to the FERC relicensing process. Another provision of the proposed legislation would provide liability protection for PacifiCorp from the effects of removing a dam after it had been transferred to the Dam Removal Entity.



Docket No. UE-  
Exhibit PPL/104  
Witness: Dean S. Brockbank

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON**

**PACIFICORP**

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**Exhibit Accompanying Direct Testimony of Dean S. Brockbank  
Klamath Hydroelectric Settlement Agreement**

**March 2010**

**KLAMATH HYDROELECTRIC  
SETTLEMENT AGREEMENT**

**February 18, 2010**

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- B. Interim Measures Implementation Committee (Interim Measure 1)
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## **Exhibits**

- 1. Water Right Agreement between PacifiCorp and the State of Oregon
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- 3. Maps

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

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

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 Determination

#### A. 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:

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

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.

### 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:

- 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 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: (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.

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

  
\_\_\_\_\_

Date: 2/18/2010

by: Ken Salazar, Secretary of the Interior

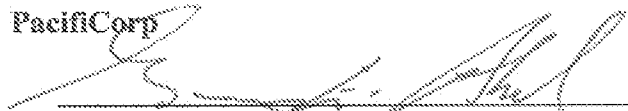
United States Department of Commerce's National Marine Fisheries Service

  
\_\_\_\_\_

Date: 2/18/2010

by: Dr. Jane Lubchenco, Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator

PacifiCorp

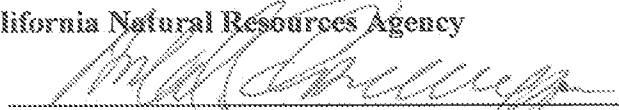
  
\_\_\_\_\_

Date: 2/18/2010

by: Gregory E. Abel, Chairman and CEO

States

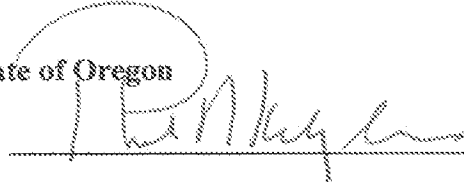
California Natural Resources Agency

  
\_\_\_\_\_

Date: 2.18.10

by: Arnold Schwarzenegger, Governor

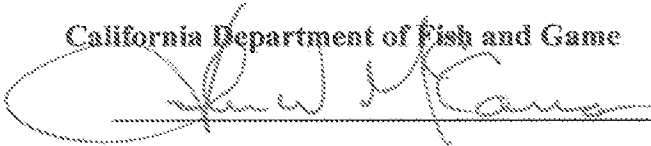
State of Oregon

  
\_\_\_\_\_

Date: 2/18/10

by: Theodore R. Kulongoski, Governor

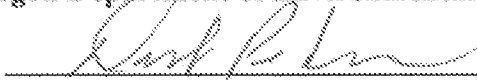
California Department of Fish and Game

  
\_\_\_\_\_

by: John McCamman, Acting Director

Date: 2-18-10

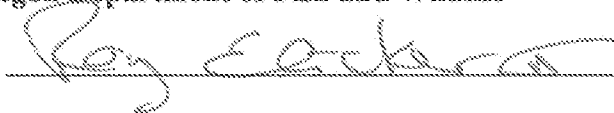
Oregon Department of Environmental Quality

  
\_\_\_\_\_

by: Dick Pedersen, Director

Date: 2/18/10

Oregon Department of Fish and Wildlife

  
\_\_\_\_\_

by: Roy Elicker, Director

Date: 2/18/10

Oregon Water Resources Department

  
\_\_\_\_\_

by: Phillip C. Ward, Director

Date: 2/18/10



Tribes

**Karak 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 W. Elliott

Date: 3/18/2010

by: John Elliott, Commissioner

Klamath Hydroelectric Settlement Agreement  
Signature Page

**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

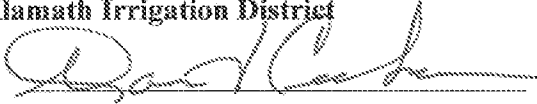
**Don Johnston & Son**

\_\_\_\_\_ Date: \_\_\_\_\_  
by: Donald Scott Johnston, Owner

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

\_\_\_\_\_ Date: \_\_\_\_\_  
by: Darrel E. Pierce

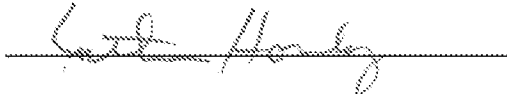
**Klamath Irrigation District**



Date: 2/15/2010

by: David Cacka, President

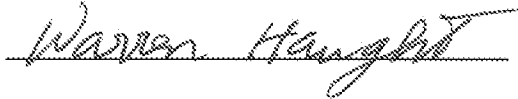
**Klamath Drainage District**



Date: 2/18/2010

by: Luther Horsley, President

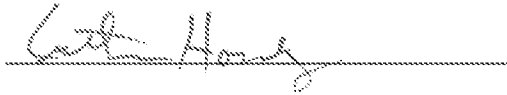
**Klamath Basin Improvement District**



Date: 2-18-2010

by: Warren Haught, Chairman

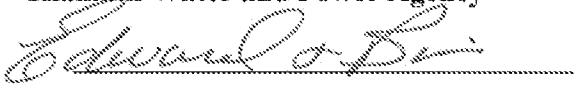
**Klamath Water Users Association**



Date: 2/18/2010

by: Luther Horsley, President

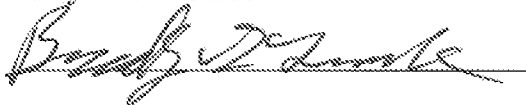
**Klamath Water and Power Agency**



Date: 2/10/2010

by: Edward T. Bair, Chairman of the Board

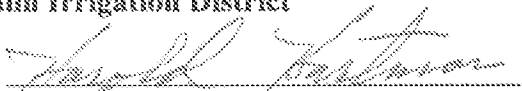
**Bradley S. Luscombe**



Date: 2-18-10

by: Bradley S. Luscombe

**Malin Irrigation District**



Date: 2/10/2010

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

**Reames Golf and Country Club**

\_\_\_\_\_

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

by: L.H. Woodward, President

**Shasta View Irrigation District**

\_\_\_\_\_

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

by: Claude Hagerty, President

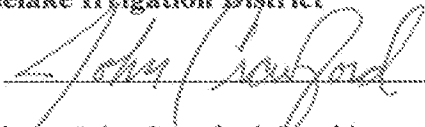
**Sunnyside Irrigation District**

\_\_\_\_\_

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

by: Charles Kerr, President

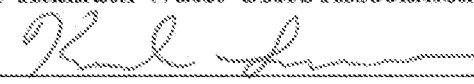
**Tulelake Irrigation District**

  
\_\_\_\_\_

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

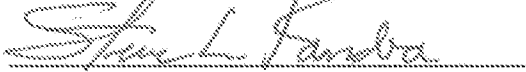
Randolph Walthall and Jane Walthall as trustees under declaration of trust dated November 28, 1995

\_\_\_\_\_

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

by: Jane Walthall

Westside Improvement District #4



Date: 2-18-2010

by: Steven L. Kandra, President

Winema Hunting Lodge, Inc.

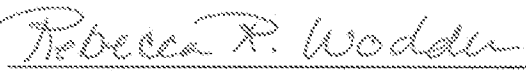
\_\_\_\_\_

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

by: R. David Bolls, III

Other Organizations

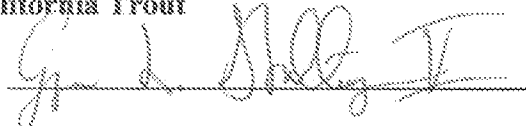
American Rivers



Date: 2-18-2010

by: Rebecca Wodder, President

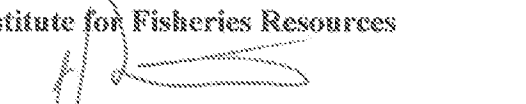
California Trout



Date: 2-18-2010

by: George Shillinger, Executive Director

Institute for Fisheries Resources



Date: 2/18/10

by: Glen Spain, Northwest Regional Director

Northern California Council, Federation of Fly Fishers

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

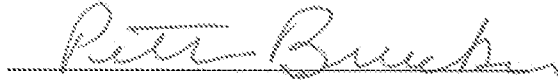
by: Mark Rockwell, Vice-President, Conservation

Pacific Coast Federation of Fishermen's Associations

 \_\_\_\_\_ Date: 2/18/10

by: Glen Spain, Northwest Regional Director

Salmon River Restoration Council

 \_\_\_\_\_ Date: 2/18/10

by: Petey Brucker, President

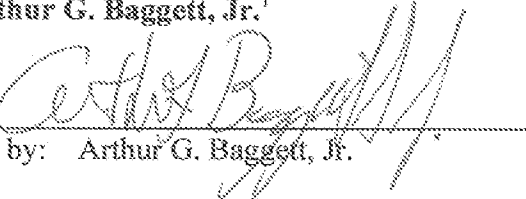
Trout Unlimited

 \_\_\_\_\_ Date: 2/18/10

by: Chris Wood, Chief Executive Officer

Individual Non-Party Signatory

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

 \_\_\_\_\_ 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.

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

C. Mark Rockwell, Jr. Date: 2-18-10

by: Mark Rockwell, Vice-President, Conservation

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

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

by: Glen Spain, Northwest Regional Director

**Salmon River Restoration Council**

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

by: Petey Brucker, President

**Trout Unlimited**

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

by: Chris Wood, Chief Executive Officer

**Individual Non-Party Signatory**

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

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

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.



# **APPENDICES**

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**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 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 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.

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## 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: (i) to achieve consensus where possible; and (ii) 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 to be carried out prior to the date of the Secretarial Determination, and to develop a priority list of projects to be carried out following an Affirmative Secretarial Determination 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 14. The IMIC will develop a protocol within nine months of the Effective Date for quantifying and managing any additional flows in the Klamath River made available through implementation of the KBRA and for coordinating with operation of the J.C. Boyle Facility the timing and manner of release of such KBRA flows to meet fish habitat needs.
- 2.1.6 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.
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 Game.
  - B. Tribal Members: One representative each from: Yurok Tribe, Klamath Tribes, and Karuk Tribe.
  - 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: (i) reasons why its interests are not adequately represented by present IMIC membership; and (ii) 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 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.

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: (i) is inconsistent with this Settlement or any other contract to which it is a party; (ii) violates the terms of the FERC license or other regulatory requirement; (iii) interferes with operations; or (iv) 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.

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.

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**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 Game (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 Game, 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 CDFG, will develop and agree to fund an adequate budget. When completed, CDFG 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 salmonids downstream of Iron Gate Dam, subject to both PacifiCorp's and Reclamation's legal

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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.

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.

**APPENDIX D**  
**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. Projects undertaken before the Secretarial Determination shall be located outside the FERC project boundary.

**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 3 miles upstream of the J.C. Boyle Powerhouse in the J.C. Boyle bypass reach. Upon Concurrence, and 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

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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.

for half-hour interval readings of flow and gage height, accessible via the USGS website. 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 Secretarial Determination, 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

By the date of the Secretarial Determination, 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 Secretarial Determination and the information generated at the water quality conference specified in Interim Measure 10. Should the Secretary of Interior render an Affirmative Determination, 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 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-Secretarial Determination studies and post-Secretarial Determination 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 2 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 2 inches per hour and coordinate with NMFS and FWS to determine if any other flow measures are necessary to avoid

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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.

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 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.

#### **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. Within 9 months of the Effective Date, PacifiCorp and the Committee shall develop a protocol for quantifying and managing any additional flows in the Klamath River made available through implementation of the KBRA and for coordinating with operation of the J.C. Boyle Facility the timing and manner of release of such KBRA flows to meet fish habitat needs.

#### **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.

#### **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 Game 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 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 6 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 6 months following an Affirmative Determination, 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 8 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 8 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 Game 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, PacifiCorp, the California Department of Fish and Game and the National Marine Fisheries Service 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.

### **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 Game 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 Game 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 transfer 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 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.

**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 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.



- 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.

### **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.

- 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

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.

**APPENDIX F**  
**Oregon Surcharge Act**

**Enrolled**  
**Senate Bill 76**

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski)

CHAPTER .....000000.....

AN ACT

Relating to Klamath River dams; and declaring an emergency.

Whereas the Klamath Agreement in Principle was signed November 13, 2008, by the states of Oregon and California, by the United States Department of the Interior and by PacifiCorp, and it is anticipated that a final agreement will be entered into by these and other parties; and

Whereas the Klamath Agreement in Principle states that it is the preliminary view of this state and the United States Department of the Interior that the potential benefits of the removal of dams on the Klamath River for fisheries, water and other resources outweigh the potential costs of that removal; and

Whereas it is anticipated that, subject to final analysis and confirmation by the Secretary of the Interior and review by the states of Oregon and California, the Klamath Agreement in Principle and the final agreement will together set forth a framework for action based on the preliminary view that removal of dams on the Klamath River is in the public interest; and

Whereas to facilitate the removal of the Klamath River dams, the Public Utility Commission must set rates that allow PacifiCorp to recover Oregon's fair share of PacifiCorp's undepreciated investment in the dams, to recover the funds necessary to pay additional costs that PacifiCorp may incur from changes in operation of the dams prior to removal and to pay for replacement resources following removal; and

Whereas to facilitate removal of the dams, the Public Utility Commission must establish a surcharge to provide funds necessary to cover costs associated with removal of the dams; and

Whereas the public interest requires that the Public Utility Commission hold a hearing to determine whether the imposition of surcharges under the terms of the final agreement results in rates that are fair, just and reasonable; now, therefore,

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** Sections 2 to 8 of this 2009 Act are added to and made a part of ORS chapter 757.

**SECTION 2. Definitions.** As used in sections 2 to 8 of this 2009 Act:

(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.

**SECTION 3. 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 the effective date of this 2009 Act;
- (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.

**SECTION 4. Surcharges for funding costs of removing Klamath River dams.** (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 (1) 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 agree-

ment 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 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. 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 section 5 (2) of this 2009 Act, all amounts collected under the surcharges imposed under this section shall be paid into the appropriate trust account established under section 5 of this 2009 Act.

(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 section 5 of this 2009 Act 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 section 5 of this 2009 Act 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.

**SECTION 5. Surcharge trust accounts.** (1) The Public Utility Commission shall establish a separate trust account for amounts generated by each of the two surcharges imposed under section 4 of this 2009 Act. The commission shall establish the trust accounts as interest-bearing accounts with an agency of the United States identified in the final agreement, or in a depository that is qualified under ORS 295.001 to 295.108 to receive public funds. 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 section 7 (2) of this 2009 Act, 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 section 4 (11) of this 2009 Act.

(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 section 4 (11) of this 2009 Act, 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.

**SECTION 6. Recovery of other costs incurred by PacifiCorp.** 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 sections 3 and 4 of this 2009 Act.

**SECTION 7. Agreement to apportion costs and to establish and administer 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 section 5 of this 2009 Act and to ensure that trust account moneys are disbursed for dam removal costs that are necessary and appropriate.

**SECTION 8. Disclaimers.** (1) Sections 2 to 8 of this 2009 Act do not authorize the expenditure of any public moneys for removal of Klamath River dams.

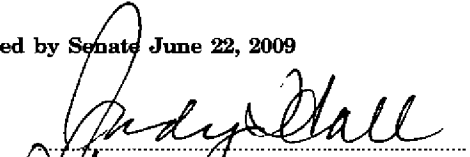
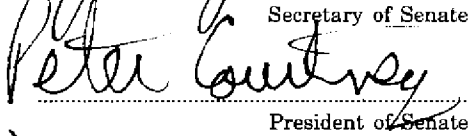
(2) Sections 2 to 8 of this 2009 Act do not create a cause of action against the State of Oregon or against any of the officers, employees or agents of the state and may not be used as the basis for an assertion of liability on the part of the State of Oregon or of any officers, employees or agents of the state.

**SECTION 9.** The section captions used in this 2009 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2009 Act.

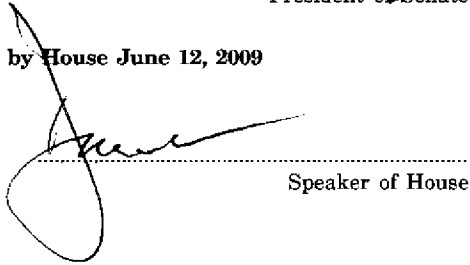
**SECTION 10.** This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by Senate February 17, 2009

Repassed by Senate June 22, 2009

  
Secretary of Senate  
  
President of Senate

Passed by House June 12, 2009

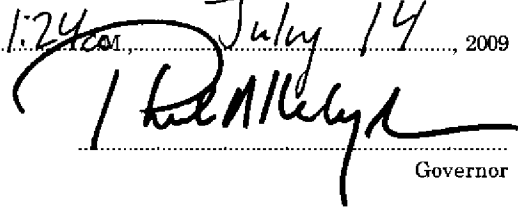
  
Speaker of House

Received by Governor:

9:31 a.m. June 26, 2009

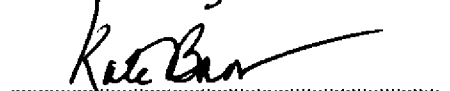
Approved:

11:24 a.m. July 14, 2009

  
Governor

Filed in Office of Secretary of State:

2:32 p.m. July 14, 2009

  
Secretary of State

**APPENDIX G-1**  
**Water Bond Language (California)**

79757. Of the funds provided in Section 79750, not more than two hundred fifty million dollars (\$250,000,000) shall be available for dam removal and related measures in the Klamath River watershed if the secretary finds that all of the following conditions have been met:

(a) The State of California, the State of Oregon, the United States, and PacifiCorp have executed a dam removal agreement.

(b) The State of California, the State of Oregon, and the United States have made the determinations required under the agreement to effect dam removal.

(c) Ratepayer funds required by the agreement have been authorized and will be timely provided.

(d) All other conditions required in the agreement have been met.

79758. Of the funds provided in Section 79750, not less than twenty million dollars (\$20,000,000) shall be allocated to Siskiyou County for the purpose of economic development as defined in Section 13997.2 of the Government Code.

**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.

**APPENDIX H**  
**Calculation of Initial Customer Surcharge Target**

**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 Outflow 10-12	0.00%	0.00%
Cash Outflow 13-16	0.42%	5.00%
Cash Outflow 17-19	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		

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 \$	\$ 17,200	\$ 3,267
J-16 \$	101,385 \$	1,433 \$	422 \$	297 \$	102,693 \$		
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 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.

## 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.

#### **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.

THE WHITE HOUSE

Office of the Press Secretary

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For Immediate Release

March 9, 2009

March 9, 2009

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Scientific Integrity

Science and the scientific process must inform and guide decisions of my Administration on a wide range of issues, including improvement of public health, protection of the environment, increased efficiency in the use of energy and other resources, mitigation of the threat of climate change, and protection of national security.

The public must be able to trust the science and scientific process informing public policy decisions. Political officials should not suppress or alter scientific or technological findings and conclusions. If scientific and technological information is developed and used by the Federal Government, it should ordinarily be made available to the public. To the extent permitted by law, there should be transparency in the preparation, identification, and use of scientific and technological information in policymaking. The selection of scientists and technology professionals for positions in the executive branch should be based on their scientific and technological knowledge, credentials, experience, and integrity.

By this memorandum, I assign to the Director of the Office of Science and Technology Policy (Director) the responsibility for ensuring the highest level of integrity in all aspects of the executive branch's involvement with scientific and technological processes. The Director shall confer, as appropriate, with the heads of executive departments and agencies, including the Office of Management and Budget and offices and agencies

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within the Executive Office of the President (collectively, the "agencies"), and recommend a plan to achieve that goal throughout the executive branch.

Specifically, I direct the following:

1. Within 120 days from the date of this memorandum, the Director shall develop recommendations for Presidential action designed to guarantee scientific integrity throughout the executive branch, based on the following principles:

(a) The selection and retention of candidates for science and technology positions in the executive branch should be based on the candidate's knowledge, credentials, experience, and integrity;

(b) Each agency should have appropriate rules and procedures to ensure the integrity of the scientific process within the agency;

(c) When scientific or technological information is considered in policy decisions, the information should be subject to well-established scientific processes, including peer review where appropriate, and each agency should appropriately and accurately reflect that information in complying with and applying relevant statutory standards;

(d) Except for information that is properly restricted from disclosure under procedures established in accordance with statute, regulation, Executive Order, or Presidential Memorandum, each agency should make available to the public the scientific or technological findings or conclusions considered or relied on in policy decisions;

(e) Each agency should have in place procedures to identify and address instances in which the scientific process or the integrity of scientific and technological information may be compromised; and

(f) Each agency should adopt such additional procedures, including any appropriate whistleblower protections, as are necessary to ensure the integrity of scientific and technological information and processes on which the agency relies in its decisionmaking or otherwise uses or prepares.

more

2. Each agency shall make available any and all information deemed by the Director to be necessary to inform the Director in making recommendations to the President as requested by this memorandum. Each agency shall coordinate with the Director in the development of any interim procedures deemed necessary to ensure the integrity of scientific decisionmaking pending the Director's recommendations called for by this memorandum.

3. (a) Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory and regulatory authorities and their enforcement mechanisms.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

4. The Director is hereby authorized and directed to publish this memorandum in the *Federal Register*.

BARACK OBAMA

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**APPENDIX K**  
**List of Authorized Representatives**

**For PacifiCorp:**

Dean Brockbank  
Vice President, General Counsel  
PacifiCorp Energy  
1407 W. North Temple, Suite 320  
Salt Lake City, Utah 84116  
Tel: 801-220-4568  
[Dean.brockbank@pacificorp.com](mailto:Dean.brockbank@pacificorp.com)

**For United States Department of the Interior:**

Ken Salazar  
Secretary of the Interior  
Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

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

Rodney McInnis  
Regional Administrator  
National Marine Fisheries Service  
Southwest Region  
501 West Ocean Boulevard, Suite 4200  
Long Beach, CA 90802  
Tel: 562-980-4005  
[Rod.Mcinnis@noaa.gov](mailto:Rod.Mcinnis@noaa.gov)

**For Oregon Department of Environmental Quality:**

Steve Kirk  
Oregon Department of Environmental Quality  
475 NE Bellevue Dr.  
Bend, OR 97701  
Tel: 541-633-2023  
[steve.kirk@state.or.us](mailto:steve.kirk@state.or.us)

**For Oregon Department of Fish and Wildlife:**

Ken Homolka  
Oregon Department of Fish and Wildlife  
3406 Cherry Ave. NE  
Salem, Or. 97303  
Tel: 503-947-6090  
[Ken.Homolka@state.or.us](mailto:Ken.Homolka@state.or.us)

**For Oregon Water Resources Department:**

Mary S. Graine  
Oregon Water Resources Department  
725 Summer St NE, Suite A  
Salem, OR 97301  
Tel: 503-986-0833  
[Mary.S.Graine@wrp.state.or.us](mailto:Mary.S.Graine@wrp.state.or.us)

**For California Department of Fish and Game:**

John McCamman  
Acting Director  
CA Department of Fish & Game  
1416 Ninth Street  
Sacramento, CA 95814  
[Director@dfg.ca.gov](mailto:Director@dfg.ca.gov)

**For California Natural Resources Agency:**

Kirk E. Miller  
Deputy Secretary and General Counsel  
Resources Agency  
1416 Ninth Street, Ste. 1311  
Sacramento, CA 95814  
Tel: 916-653-0569  
[kirk.miller@resources.ca.gov](mailto:kirk.miller@resources.ca.gov)

**For Karuk Tribe:**

Arch Super  
Chairman  
Karuk Tribe  
PO Box 1016  
Happy Camp, CA 96039  
Tel: 530-493-1600  
[asuper@karuk.us](mailto:asuper@karuk.us)

**For Klamath Tribes:**

Joseph Kirk  
Chairman  
The Klamath Tribes  
Box 436  
Chiloquin, OR 97624  
Tel: 541-783-2219

**For Yurok Tribe:**

Thomas P. O'Rourke  
Senior Chairman  
P.O. Box 1027  
Klamath, CA 95548  
Tel: 707-482-1374

**For Siskiyou County, California:**

Chairman of the Board of Supervisors  
County of Siskiyou  
P.O. Box 659  
205 Lane Street  
Yreka, CA 96097  
Tel: 530-842-8100

**For Humboldt County, California:**

Jill K. Duffy  
Fifth District Supervisor  
Humboldt County Board of Supervisors  
825 5th Street, Room 111  
Eureka, CA 95501  
[Jill.Duffy@co.humboldt.ca.us](mailto:Jill.Duffy@co.humboldt.ca.us)

**For Klamath County, Oregon:**

John Elliott  
Klamath County Commissioner  
305 Main Street  
Klamath Falls, OR 97601  
541-883-5100  
[jwelliott@co.klamath.or.us](mailto:jwelliott@co.klamath.or.us)

**Del Norte County, California:**

Gerry Hemmingsen  
Chairman of the Board of Supervisors  
981 H Street, Suite 200  
Crescent City, CA 95531  
Tel: 707-464-4131  
[ghemmingsen@co.del-norte.ca.us](mailto:ghemmingsen@co.del-norte.ca.us)

**For Trout Unlimited:**

Charlton H. Bonham  
California Director  
Trout Unlimited  
1808B 5th Street  
Berkeley, CA 94710  
Tel: 510-528-4164  
[cbonham@tu.org](mailto:cbonham@tu.org)

**For California Trout:**

Curtis Knight  
Mt. Shasta Program Manager  
California Trout  
701 S. Mt. Shasta Blvd.  
Mt. Shasta, CA 96067  
Tel: 530-926-3755  
[cknight@caltrout.org](mailto:cknight@caltrout.org)

**For American Rivers:**

Steve Rothert  
Director, California Regional Office  
American Rivers  
432 Broad St.  
Nevada City, CA 95959  
Tel: 530-478-5672  
Fax: 530-478-5849  
[srothert@amrivers.org](mailto:srothert@amrivers.org)

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

Glen H. Spain  
Northwest Regional Director  
Pacific Coast Federation of Fishermen's Associations  
P.O. Box 11170  
Eugene, OR 97740-3370  
Tel: 541-689-2000  
Email: [fishlifr@aol.com](mailto:fishlifr@aol.com)

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

Mark Rockwell  
Vice President, Conservation  
19737 Wildwood West Drive  
Penn Valley, California 95946  
(530) 432-9198  
[summerhillfarmvp@aol.com](mailto:summerhillfarmvp@aol.com)

**Salmon River Restoration Council:**

Petey Brucker  
President  
Salmon River Restoration Council  
Salmon River Watershed Center, PO Box 1089,  
Sawyers Bar, CA 96027  
530-462-4665  
[peteybrucker@gmail.com](mailto:peteybrucker@gmail.com)

**For Institute for Fisheries Resources:**

Glen H. Spain  
Northwest Regional Director  
Institute for Fisheries Resources  
P.O. Box 11170  
Eugene, OR 97740-3370  
Tel: 541-689-2000  
Email: [fishlifr@aol.com](mailto:fishlifr@aol.com)

**For Upper Klamath Water Users Association:**

Karl Scronce, President  
Upper Klamath Water Users Association  
219 Pine Street, Klamath Falls, OR 97601  
541-281-2053  
[Karl.scronce@gmail.com](mailto:Karl.scronce@gmail.com)

**For Tulelake Irrigation District:**

Earl Danosky, Manager  
P.O. Box 699  
Tulelake, CA 96134  
Tel: 530-667-2249  
[tid@cot.net](mailto:tid@cot.net)

**For Klamath Irrigation District:**

David A. Solem, Manager  
6640 K.I.D. Lane  
Klamath Falls, OR 97603  
Tel: 541-882-6661  
[kid@cvcwireless.net](mailto:kid@cvcwireless.net)

**For Klamath Drainage District:**

Joe Frost, Manager  
280 Main Street  
Klamath Falls, OR 97601  
Tel: 541-882-4436  
[lhorsley1@charter.net](mailto:lhorsley1@charter.net)

**For Klamath Basin Improvement District:**

Cindy Cherry, Secretary  
6640 K.I.D. Lane  
Klamath Falls, OR 97603  
Tel: 541-882-6661  
[kid@cvcwireless.net](mailto:kid@cvcwireless.net)

**For Ady District Improvement Company:**

Bob Flowers  
P.O. Box 224  
Midland, OR 97634  
Tel: 541-883-2069  
[Sodman77@hotmail.com](mailto:Sodman77@hotmail.com)

**For Enterprise Irrigation District:**

Shane McDonald, Manager  
3939 South 6<sup>th</sup> Street, #325  
Klamath Falls, OR 97603  
Tel: 541-884-4986  
[eidistrict@clearwire.net](mailto:eidistrict@clearwire.net)

**For Malin Irrigation District:**

Luke Robinson  
P.O. Box 355  
Malin, OR 97632  
Tel: 541-723-2049  
[shastaviewirrigation@hotmail.com](mailto:shastaviewirrigation@hotmail.com)

**For Midland District Improvement Company:**

Joe Frost, Manager  
P.O. Box 64  
Midland, OR 97634  
Tel: 541-332-3294  
[dccar@earthlink.net](mailto:dccar@earthlink.net)

**For Pine Grove Irrigation District:**

Shane McDonald, Manager  
3939 South Sixth Street, #325  
Klamath Falls, OR 97603  
Tel: 541-891-2979  
[mcdonalds.eidistrict@clearwire.net](mailto:mcdonalds.eidistrict@clearwire.net)

**For Pioneer District Improvement Company:**

Lynette Ward  
11821 Hwy 66  
Klamath Falls, OR 97601-9082  
Tel: 541-882-2993  
[pdic-1916@yahoo.com](mailto:pdic-1916@yahoo.com)

**For Poe Valley Improvement District:**

Cindy Cherry, Secretary  
6640 K.I.D. Lane  
Klamath Falls, OR 97603  
(541) 882-6661  
[kidcindy@cvcwireless.net](mailto:kidcindy@cvcwireless.net)

**For Shasta View Irrigation District:**

Luke Robinson, Manager  
Shasta View Irrigation District  
P.O. Box 46  
Malin, OR 97632  
Tel: 541-723-4951  
[chagerty@centurytel.net](mailto:chagerty@centurytel.net)

**For Sunnyside Irrigation District:**

Dean Hill, Secretary  
P.O. Box 544  
Merrill, OR 97633  
Tel: 541-798-5511

**For Don Johnston & Son:**

Donald Scott Johnston  
13619 Hwy 66  
Klamath Falls, OR 97601  
Tel: 541-884-8937

**For Bradley S. Luscombe:**

Brad Luscombe  
16622 Lower Klamath Lake Road  
Tulelake, CA 96134  
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  
(530) 622-3142  
[icpc@d-web.com](mailto:icpc@d-web.com)



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

Darrel E. Pierce  
P.O. Box 534  
Placerville, CA 95667  
(530) 622-3142  
[icpc@d-web.com](mailto:icpc@d-web.com)

**For Reames Golf and Country Club:**

Laine Wortman, General Manager  
4201 Highway 97 South  
Klamath Falls, OR 97603  
Tel: 541-884-7205  
[Laine.golf@yahoo.com](mailto:Laine.golf@yahoo.com)

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

R. David Bolls, III  
43445 Business Park Drive, Suite 103  
Temecula, CA 92590  
Tel: 951-699-6991 ext. 450  
[dbolls@outdoorchannel.com](mailto:dbolls@outdoorchannel.com)

**For Van Brimmer Ditch Company:**

Gary Orem, Manager  
905 Main St., Ste 200  
Klamath Falls, OR 97601  
Tel: 541-882-6331  
[vanbrimmer@e-isco.com](mailto:vanbrimmer@e-isco.com)

**For Collins Products, LLC:**

Steve Metz  
P.O. Box 16  
Klamath Falls, OR 97601  
Tel: 541-885-4850  
[jschad@collinsco.com](mailto:jschad@collinsco.com)

**For Plevna District Improvement Company:**

Steve Metz  
P.O. Box 16  
Klamath Falls, OR 97601  
Tel: 541-885-4850  
[jschad@collinsco.com](mailto:jschad@collinsco.com)

**For Klamath Water Users Association:**

Greg Addington, Executive Director  
2455 Patterson Street, Suite 3  
Klamath Falls, OR 97603  
Tel: 541-883-6100  
[greg@kwua.org](mailto:greg@kwua.org)

**For Klamath Water and Power Agency:**

Hollie Cannon, Executive Director  
2455 Patterson Street, Suite 3  
Klamath Falls, OR 97603  
Tel: 541-850-2503  
[hcannon541@charter.net](mailto:hcannon541@charter.net)

**Westside Improvement District #4:**

Steve Kandra, President  
c/o Tulelake Irrigation District  
P.O. Box 699  
Tulelake, CA 96134  
Tel: 541-798-5640  
[snkandra@fireserve.net](mailto:snkandra@fireserve.net)

# **EXHIBITS**

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**EXHIBIT 1**

**Water Right Agreement between PacifiCorp and the State of Oregon**

**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

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

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.



- 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

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.

#### IV. Agency Reauthorization Costs

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>
25% payment due upon signing:	<u>\$ 54,093.00</u>

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.

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

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,

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

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>

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

**1.0 Salaries**

Period	3	Years
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**Total**

**1.1 NRS 4**

FTE Estimate:	0.125
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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)	\$ -	\$ -
		=====
Total	\$ 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)	\$ -	\$ -
		=====
Total	\$ 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)	\$ -	\$ -
		=====
Total	\$ 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

Lodging	Meals	Nights per trip	Mileage per Trip
87	44	1	350
116	49	1	225
114	59	2	500

Total Costs
\$300.75
\$274.13
\$658.00

**Destination**  
 Southern Oregon  
 Portland  
 Northern California (2 nights per)

=====  
 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

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>

<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
<b>Consulting Costs Subtotal</b>	Private Consulting to review Study Results	\$15,000
		<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**

<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

Action	Actor	Target Date	Section Reference
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



<b>Action</b>	<b>Actor</b>	<b>Target Date</b>	<b>Section Reference</b>
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

<b>Action</b>	<b>Actor</b>	<b>Target Date</b>	<b>Section Reference</b>
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

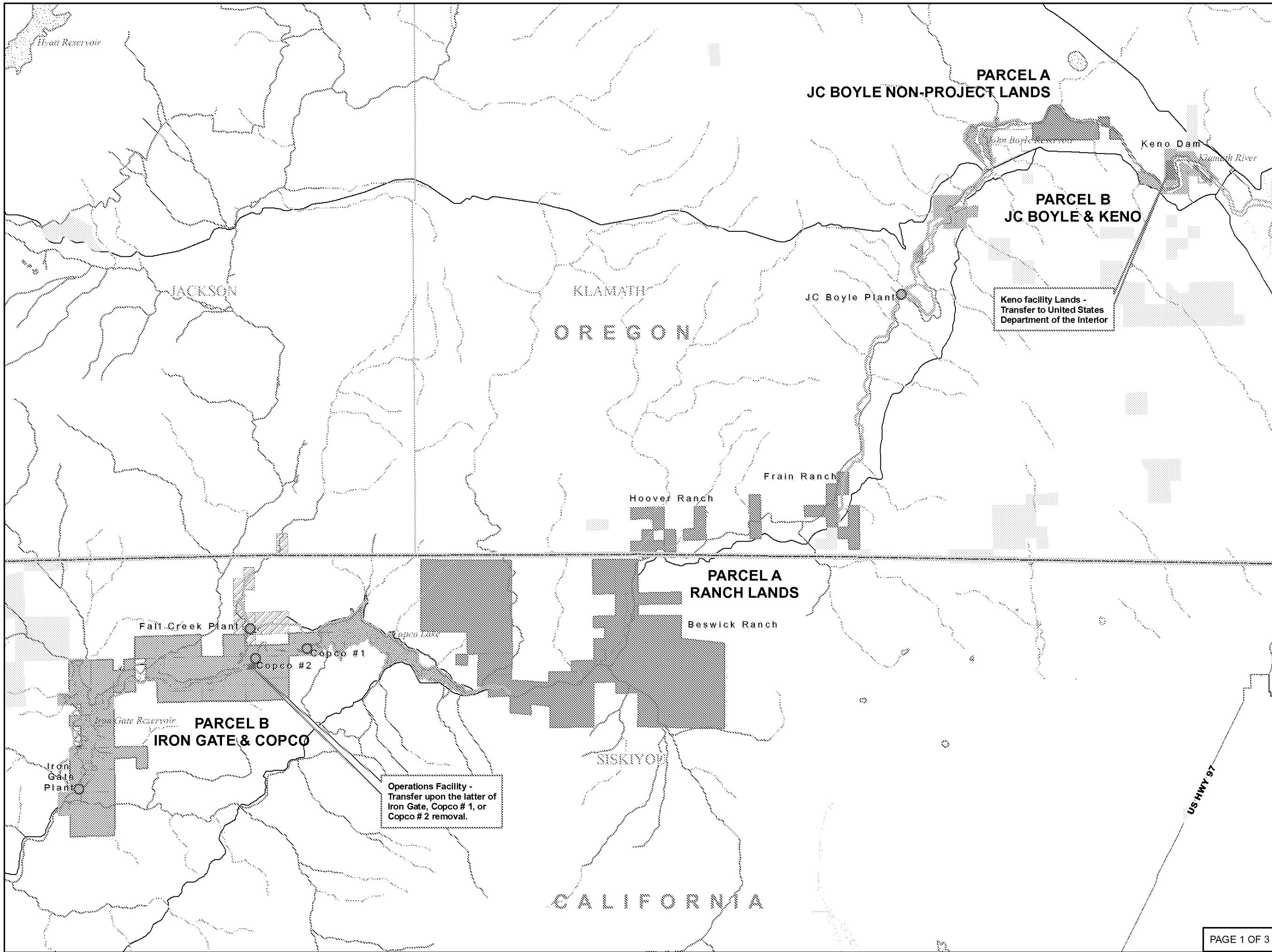
Action	Actor	Target Date	Section Reference
DRE provides Notice to Parties and FERC that Facilities Removal is ready to commence	DRE		7.4.1
PacifiCorp conveys Parcel B Lands	PacifiCorp	After DRE Notice that Facilities Removal is ready to commence	7.6.4.D
FERC issues Order approving transfer of the Iron 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

Action	Actor	Target Date	Section Reference
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

**EXHIBIT 3**  
**Maps**

# PacifiCorp Klamath River Hydroelectric Project Lands Disposition

Project Overview



**Klamath River Hydroelectric Project**

**Project Parcels**

- Parcel A Lands
- Parcel B Lands
- Excluded - Fall Creek Plant
- Operations Facility
- Keno facility Lands

**State Lands**

**Administrative Boundaries**

- State
- County
- FERC Boundary

**Generation Facilities**

**Generation Type**

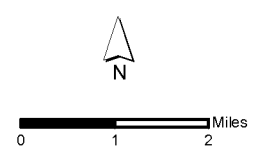
- Hydro

**Major Roads**

- PRIMARY, INTERSTATE HWY
- PRIMARY, U.S. & STATE HWY
- SECONDARY, CONNECTING, STATE & COUNTY HWY

**Aquatic Features**

- INTERMITTENT CANAL, DITCH, AQUADUCT
- INTERMITTENT WATER FEATURE, STREAM, RIVER, WASH
- PERENNIAL CANAL, DITCH, AQUADUCT
- PERENNIAL WATER FEATURE, STREAM, RIVER, WASH
- Regional Lakes



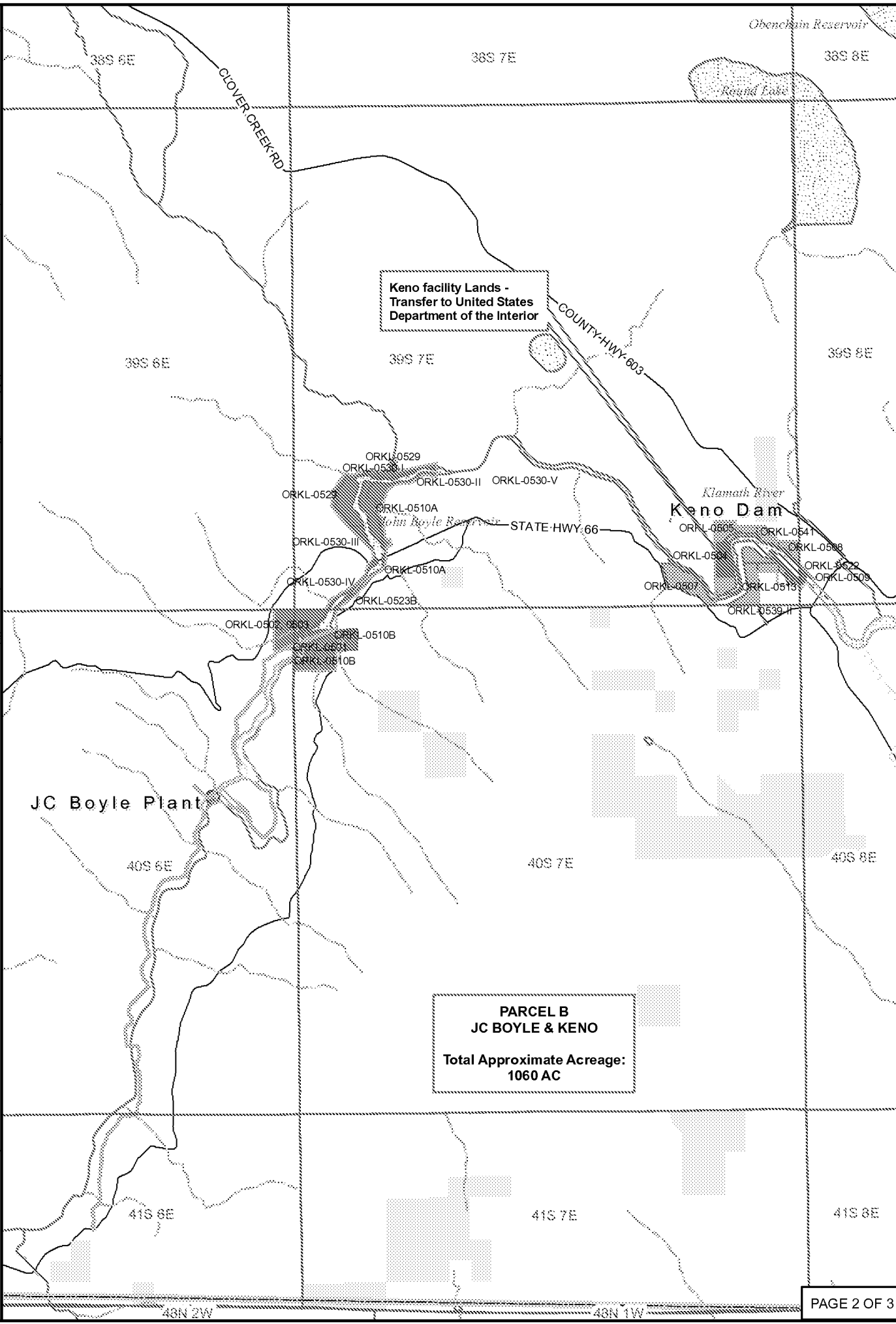
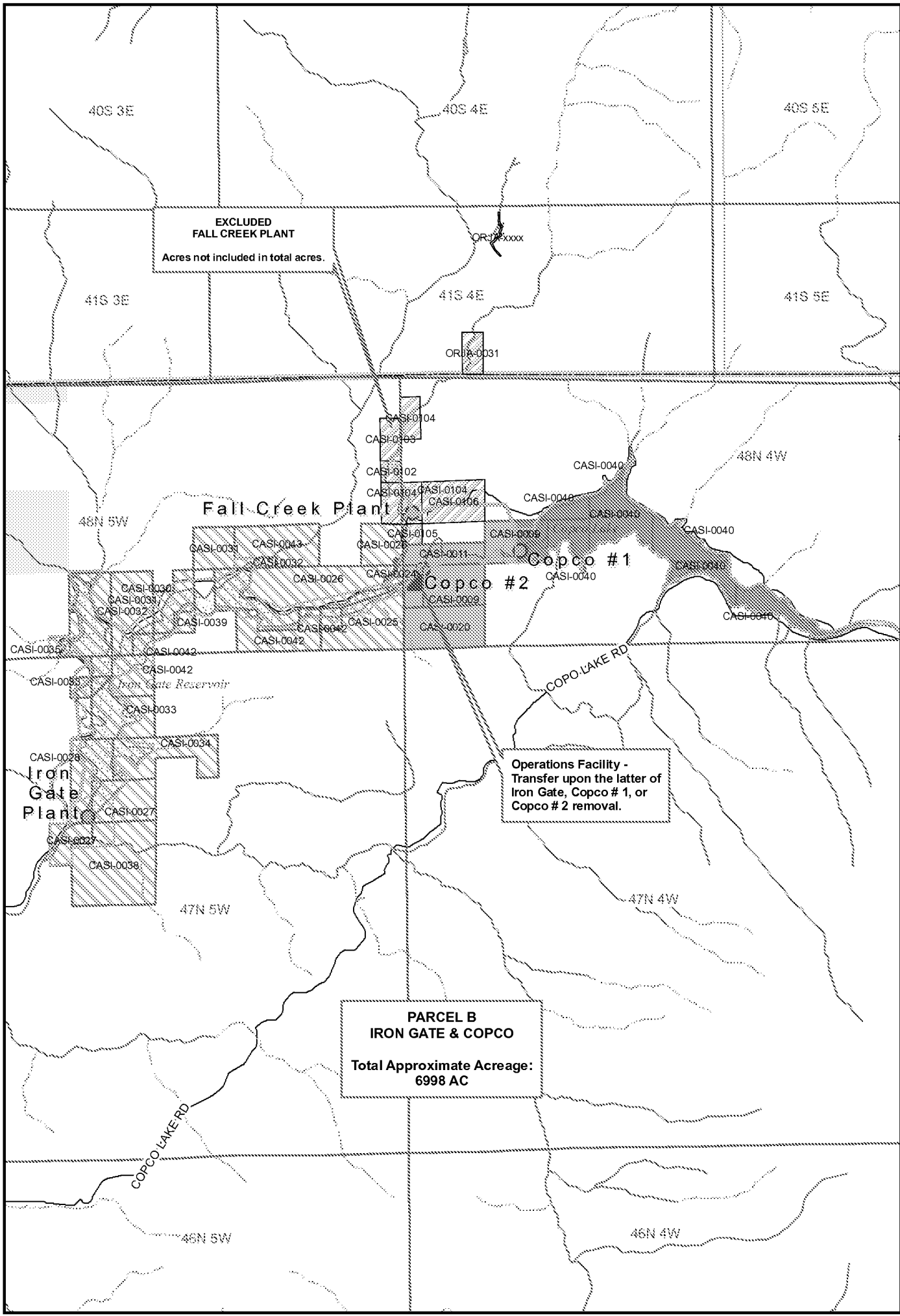
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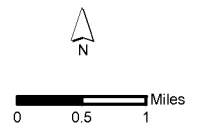
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# PacifiCorp Klamath River Hydroelectric Project Lands Disposition

Parcel B



- 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**
  - PLSS**
    - Township/Range
  - Administrative Boundaries**
    - State
    - FERC Boundary
    - County
  - Aquatic Features**
    - INTERMITTENT CANAL, DITCH, AQUADUCT
    - INTERMITTENT STREAM, RIVER, WASH
    - PERENNIAL CANAL, DITCH, AQUADUCT
    - PERENNIAL STREAM, RIVER, WASH
    - Regional Lakes
  - Generation Facilities**
  - Generation Type**
    - Hydro
  - Major Roads**
    - PRIMARY, INTERSTATE HWY
    - PRIMARY, U.S. & STATE HWY
    - SECONDARY, CONNECTING, STATE & COUNTY HWY



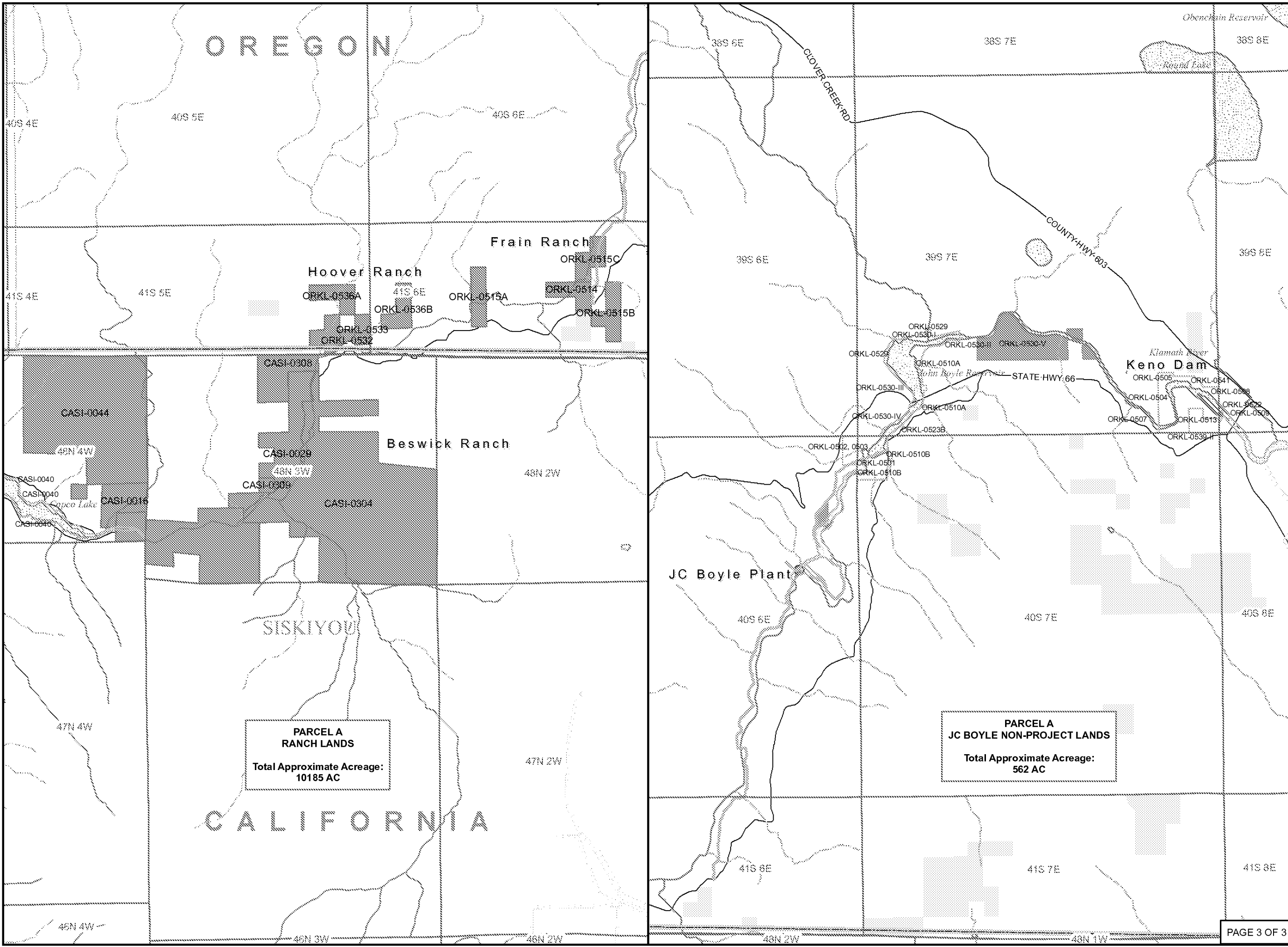
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# PacifiCorp Klamath River Hydroelectric Project Lands Disposition

Parcel A



**Legend**

**KlamathExhibit\_Properties**

- Group
- Parcel A Lands
- State Lands

**PLSS**

- Township/Range

**Administrative Boundaries**

- State
- FERC Boundary
- County

**Aquatic Features**

- INTERMITTENT CANAL, DITCH, AQUADUCT
- INTERMITTENT STREAM, RIVER, WASH
- PERENNIAL CANAL, DITCH, AQUADUCT
- PERENNIAL STREAM, RIVER, WASH
- Regional Lakes

**Generation Facilities**

**Generation Type**

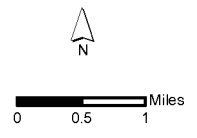
- Hydro

**Major Roads**

- PRIMARY, INTERSTATE HWY
- PRIMARY, U.S. & STATE HWY
- SECONDARY, CONNECTING, STATE & COUNTY HWY

**PARCEL A  
RANCH LANDS**  
Total Approximate Acreage:  
10185 AC

**PARCEL A  
JC BOYLE NON-PROJECT LANDS**  
Total Approximate Acreage:  
562 AC



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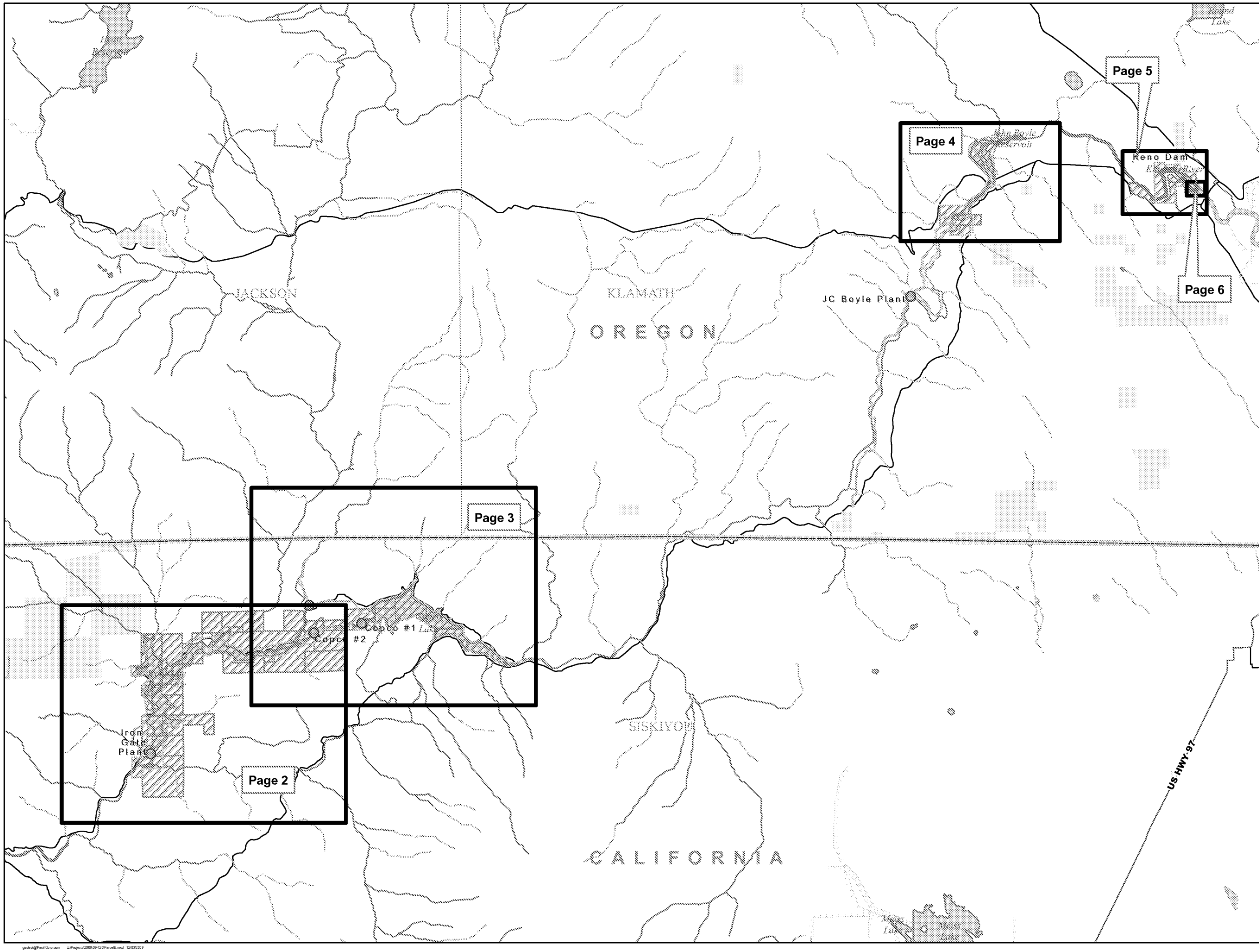
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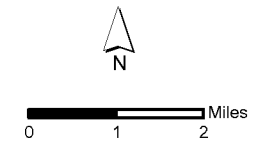
# PacifiCorp Klamath River Hydroelectric Project Lands Disposition

Parcel B  
Project Overview

PacifiCorp Parcels



- 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 HWY
- Aquatic Features**
- INTERMITTENT CANAL, DITCH, AQUADUCT
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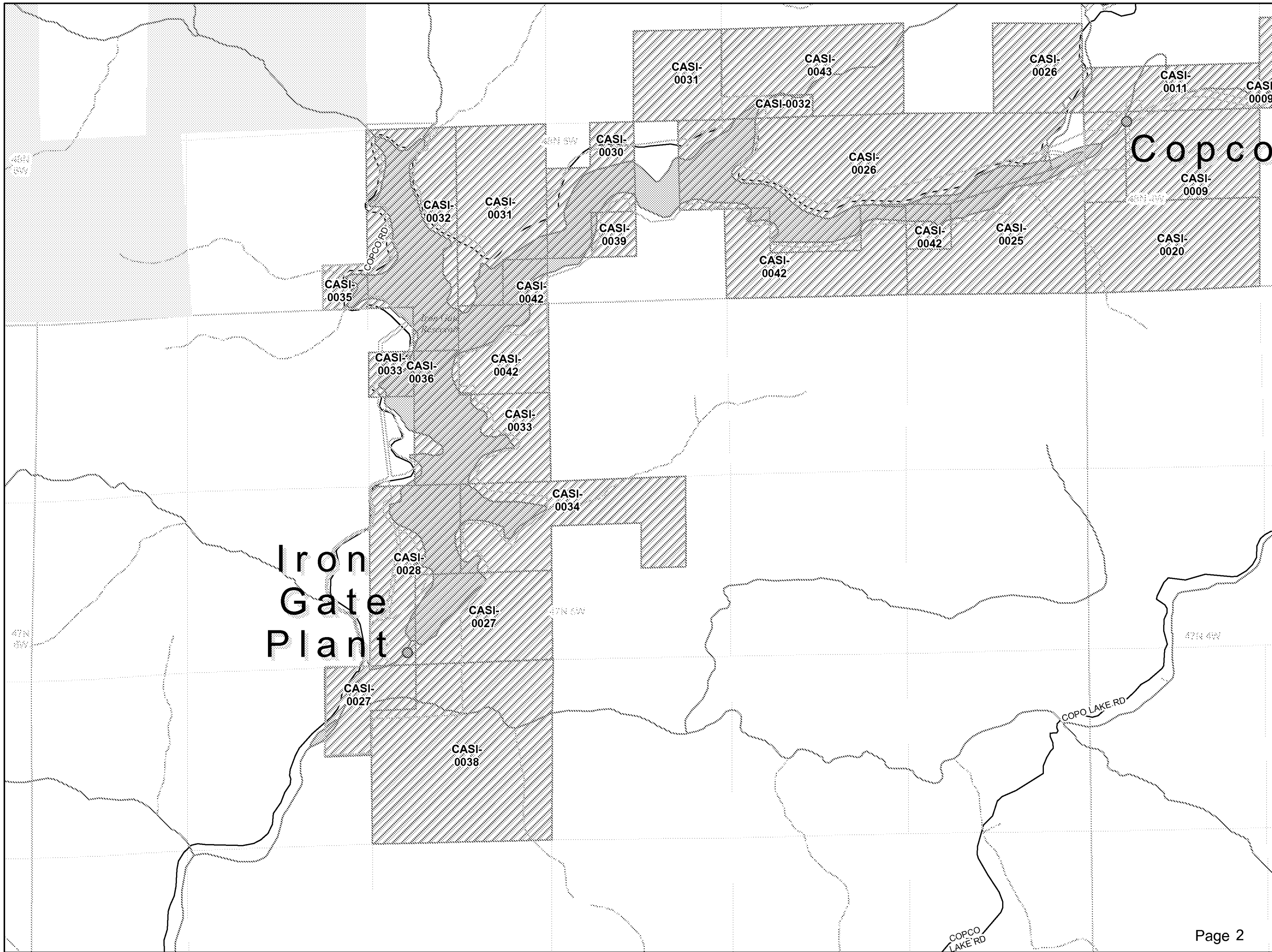
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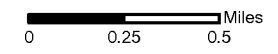
# PacifiCorp Klamath River Hydroelectric Project Lands Disposition

Parcel B  
Project Overview

PacifiCorp Parcels



- Parcel B Lands
- State Lands
- Administrative Boundaries**
  - State
  - County
  - FERC Boundary
- Generation Facilities**
- Generation Type**
  - Hydro
- Major Roads**
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  - PRIMARY, U.S. & STATE HWY
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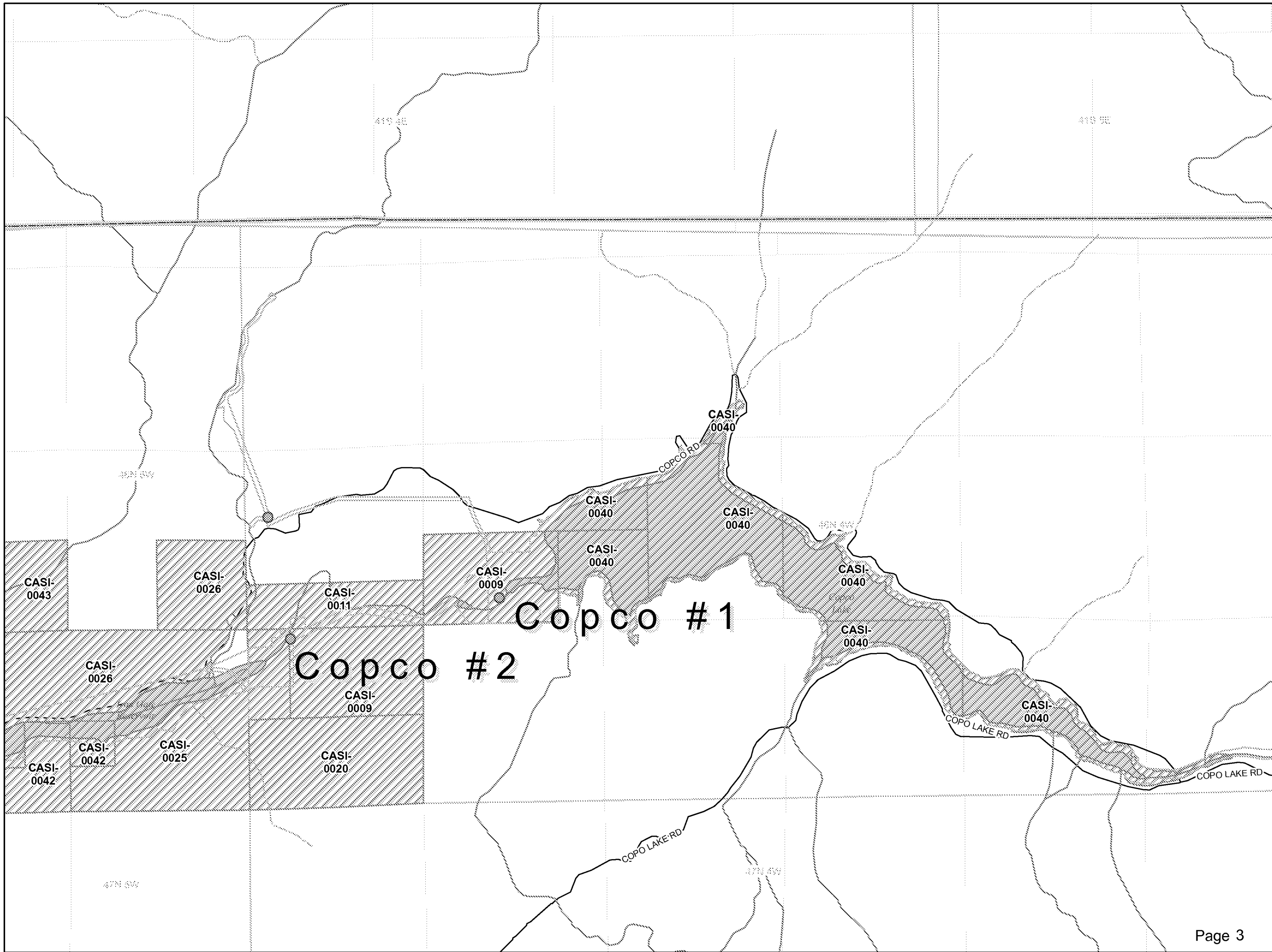
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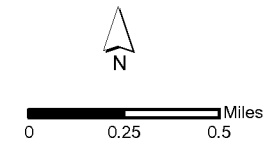
# PacifiCorp Klamath River Hydroelectric Project Lands Disposition

Parcel B  
Project Overview

PacifiCorp Parcels



- Parcel B Lands
- State Lands
- Administrative Boundaries
  - State
  - County
  - FERC Boundary
- Generation Facilities
  - Generation Type
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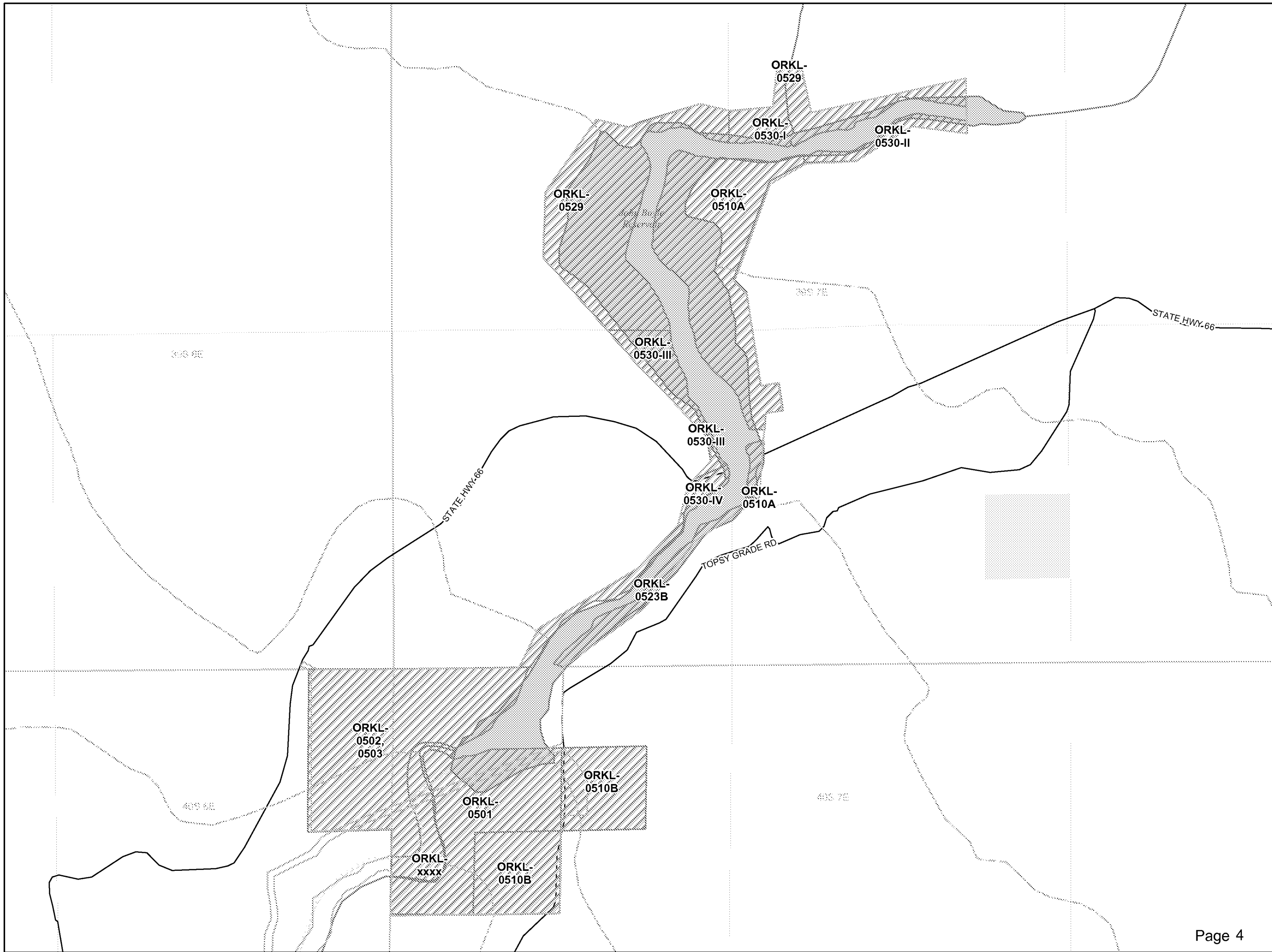
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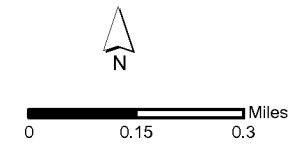
# PacifiCorp Klamath River Hydroelectric Project Lands Disposition

Parcel B  
Project Overview

PacifiCorp Parcels



- Parcel B Lands
- State Lands
- Administrative Boundaries**
- State
- County
- FERC Boundary
- Generation Facilities**
- Generation Type**
- Hydro
- Major Roads**
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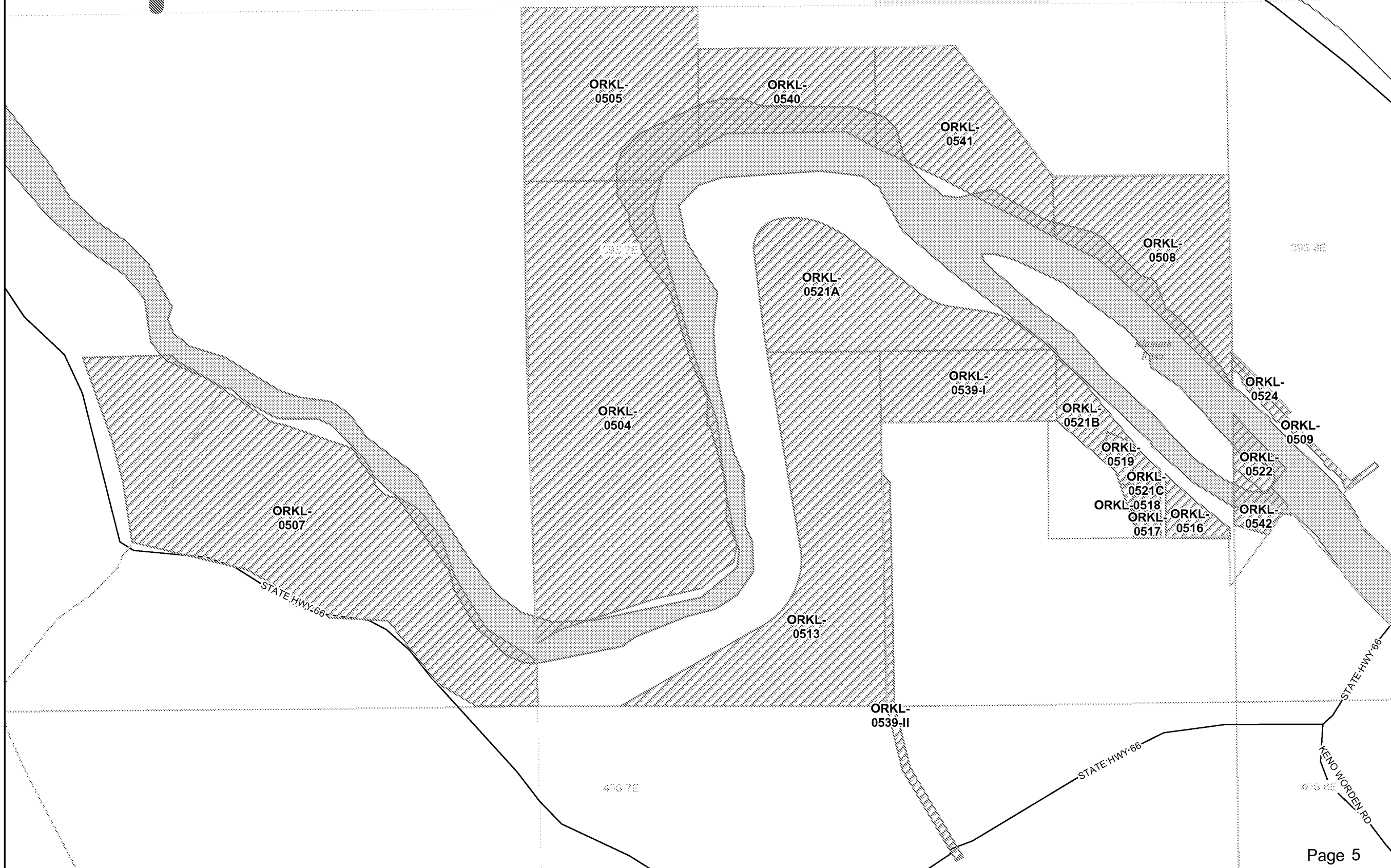
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# Keno Dam

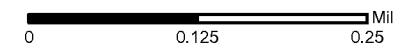
## PacifiCorp Klamath River Hydroelectric Project Lands Disposition

Parcel B  
Project Overview

PacifiCorp Parcels



- Parcel B Lands
- State Lands
- Administrative Boundaries**
  - State
  - County
  - FERC Boundary
- Generation Facilities**
- Generation Type**
  - Hydro
- Major Roads**
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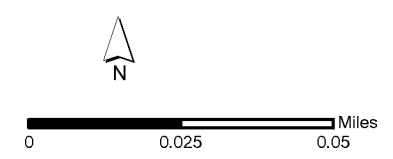
# PacifiCorp Klamath River Hydroelectric Project Lands Disposition

Parcel B  
Project Overview

PacifiCorp Parcels



- Parcel B Lands
- State Lands**
- Administrative Boundaries**
  - State
  - County
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- Generation Facilities**
- Generation Type**
  - Hydro
- Major Roads**
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  - Regional Lakes



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# 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 464 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.**

(road easement granted to Klamath County, 1-26-68)



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.

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 ( $NE\frac{1}{4}NS\frac{1}{4}$ ), 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  $\frac{11}{16}$ ; 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

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 <sup>Section 32,</sup> 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 308.7 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°36' West 235.5 feet; thence South 263 feet; thence East 308.7 feet to the place of beginning, all of said property being situate in Section 36, Township 39 South, Range 7 East Willamette Meridian.

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 S. 74° 23' N. 216.5 feet; THENCE South 201.5 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.

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-516
- 7:- To A. W. Resents, 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.

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 NW1/4 NW1/4, 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 NW1/4 NW1/4; thence Westerly along said South line to the true point of beginning of this description.

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, Township 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  $0^{\circ}08'$  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 this description; thence South  $86^{\circ}17'$  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 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  $75^{\circ}46'$  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  $72^{\circ}24'$  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  $75^{\circ}06'$  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  $36^{\circ}06'$  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  $2^{\circ}46'$  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  $41^{\circ}00'$  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  $88^{\circ}34'$  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  $39^{\circ}59'$  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  $39^{\circ}59'$  East for a distance of 195 feet, more or less, to a point on the East line of the NW1/4 NE1/4 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 NW1/4 NE1/4; 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.

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 line 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.



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.

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.

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  $89^{\circ} 55' 42''$  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 1,741.22 feet to a point marked by an iron pin; thence North  $44^{\circ} 16' 57''$  East, a distance of 969.66 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.

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.

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.

CALIFORNIA PARCELS

CASI-0009

*The North West quarter of South East quarter (NW¼ of SE¼)  
South half of South East quarter (S½ of SE¼) and South West  
quarter (SW¼) of Section Twenty-nine (29), East half of  
North West quarter (E½ of NW¼) and North East quarter (NE¼)  
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 ¼ of the SE ¼ lying south and east of the present reservoir.

CASI-0011

Lot Four (4) and the south east quarter of the South West quarter (SE¼ of SW¼) and the South half of the South east quarter (S½ of SE¼) of Section Thirty (30), Township forty-eight (48) North Range Four (4) West, Mount Diablo Meridian;

CASI-0020

South Half (S½)

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 southwest quarter (NW¼ of SW¼) of Section thirty-six (36), Township, forty-eight (48) North, Range five (5) West, Mount Diablo Base and Meridian.



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



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.

CASI-0025

*(also described as Lots One and Two of the Northwest quarter)*

The West Half of the Northwest quarter ( $W\frac{1}{2}NW\frac{1}{2}$ ) 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 Southeast half 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

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 ( $NW\frac{1}{4}$  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.

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.

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 thereunto 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, ( $E\frac{1}{4}$ ), 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.

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.

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,





Docket No. UE-  
Exhibit PPL/200  
Witness: Andrea L. Kelly

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON**

**PACIFICORP**

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**Direct Testimony of Andrea L. Kelly**

**March 2010**

1 **Introduction**

2 **Q. Please state your name, business address and position with PacifiCorp**  
3 **(“Company”).**

4 A. My name is Andrea L. Kelly. My business address is 825 NE Multnomah Street,  
5 Suite 2000, Portland, Oregon 97232. I am employed by PacifiCorp as Vice  
6 President of Regulation.

7 **Qualifications**

8 **Q. Briefly describe your educational background and business experience.**

9 A. I hold a Bachelor’s degree in Economics from the University of Vermont and an  
10 MBA in Environmental and Natural Resource Management from the University  
11 of Washington. After graduate school, I joined the Staff of the Washington  
12 Utilities and Transportation Commission. In 1995, I became employed by  
13 PacifiCorp as a Senior Pricing Analyst in the Regulation Department and  
14 advanced through positions of increasing responsibility. From 1999 through  
15 2005, I led major strategic projects at PacifiCorp including the Multi-State  
16 Process and the regulatory approvals for the Mid-American-PacifiCorp  
17 transaction. In March 2006, I was appointed Vice President of Regulation.

18 **Q. Have you been personally involved in the negotiations related to the Klamath**  
19 **Hydroelectric Settlement Agreement?**

20 A. Yes. I have been part of PacifiCorp’s core negotiating team for the past two  
21 years.

22 **Q. Have you appeared as a witness in previous regulatory proceedings?**

23 A. Yes, I have appeared as a witness on behalf of PacifiCorp in the states of

1 California, Idaho, Oregon, Utah, Washington, and Wyoming. In addition, I  
2 sponsored testimony in various proceedings as a member of the Washington  
3 Commission Staff.

4 **Purpose and Overview of Testimony**

5 **Q. What is the purpose of your testimony?**

6 A. My testimony provides an overview of the provisions of Oregon Senate Bill 76  
7 (“SB 76”), ORS 757.732 et seq., and the Klamath Hydroelectric Settlement  
8 Agreement (“KHSA”) implemented through this filing. As described in detail in  
9 the testimony of Company witness Mr. Dean S. Brockbank, the KHSA provides a  
10 framework for removal of four PacifiCorp dams located on the Klamath River  
11 (“Project”) no earlier than 2020, contingent on Congressional approval and a  
12 scientific assessment by the Interior Department confirming that the removal is in  
13 the public interest. Specifically, my testimony provides:

- 14 • An overview of the purpose of this filing and the actions requested of the  
15 Public Utility Commission of Oregon (“Commission”) in this application,
- 16 • A summary of the relevant provisions of SB 76, ORS 757.732 et seq,
- 17 • A demonstration that the Klamath dam removal surcharges result in fair, just  
18 and reasonable rates because the surcharges are calculated consistently with  
19 ORS 757.736 and the KHSA, and result in a relatively modest overall rate  
20 increase of 1.6 percent,
- 21 • A demonstration that the Klamath dam removal surcharges result in fair, just  
22 and reasonable rates because the surcharges are required to implement the  
23 KHSA, an agreement PacifiCorp negotiated for the benefit of customers,

- 1 • A demonstration that the Klamath dam removal surcharges result in fair, just  
2 and reasonable rates because the surcharges are required to implement the  
3 KHSA, the economics of which compare favorably to the potential costs of  
4 relicensing, and
- 5 • An explanation of the new, accelerated depreciation schedule for the Klamath  
6 dams, mandated by ORS 757.734 and the KHSA.

7 **Purpose and Overview of Application**

8 **Q. What is the purpose of this application?**

9 A. This filing, along with PacifiCorp's concurrently filed Advice No. 10-008,  
10 implements three key aspects of SB 76. First, the application complies with the  
11 requirement of ORS 757.736(1) that within 30 days of the execution of the  
12 KHSA, PacifiCorp file a copy of the KHSA with the Commission, along with  
13 with certain studies and analyses relating to dam removal and relicensing.  
14 Second, the application and Advice No. 10-008 implement the requirement of  
15 ORS 757.736(2) that, with the KHSA filing, the Company include tariffs with  
16 immediate effective dates for the collection of two dam removal surcharges.  
17 Consistent with the requirements of ORS 757.736(4), the application asks the  
18 Commission to determine within six months that the surcharges result in rates that  
19 are fair, just and reasonable. Third, the application implements ORS 757.734,  
20 which requires the Commission to set a new depreciation schedule for the  
21 Klamath dams, based on the assumption that the dams will be removed in 2020.

1 **Q. How does the application address the eventual transfer of the Klamath dams**  
2 **and related lands to the entity that will remove the dams?**

3 A. The application asks that the Commission recognize that SB 76 has preempted the  
4 operation of the Commission property transfer statute, ORS 757.480. In the  
5 alternative, the application requests that the Commission approve the transfer  
6 under the statute contingent upon satisfaction of the conditions precedent for the  
7 transfer in the KHSA.

8 **Summary of Relevant Sections of SB 76**

9 **Q. When was SB 76 enacted?**

10 A. The Oregon Legislature enacted SB 76 on July 14, 2009.

11 **Q. Please summarize the key provisions of SB 76 relating to the requirement for**  
12 **filing the KHSA and supporting documents.**

13 A. ORS 757.736(1) requires PacifiCorp to file a copy of the Final Agreement with  
14 the Commission within 30 days after execution. The KHSA is attached to the  
15 testimony of Mr. Brockbank as Exhibit PPL/104. The KHSA was signed on  
16 February 18, 2010, so PacifiCorp's application is timely under the statute.

17 ORS 757.736(1) also requires the Company to file concurrently with the  
18 KHSA copies of "all analyses or studies that relate to the rate-related costs,  
19 benefits and risks for customers of removing or relicensing Klamath River dams  
20 that were reviewed by PacifiCorp during the decision-making process that led to  
21 PacifiCorp's entering into the final agreement." ORS 757.736(1). An inventory  
22 of non-confidential analyses and studies included in this filing is provided by  
23 Company witness Mr. Cory E. Scott as Exhibit PPL/303. I testify as to the

1 Company's primary economic analysis, a summary of which is provided in  
2 Confidential Exhibit PPL/202. In addition, Mr. Scott's testimony presents the  
3 estimated costs to customers under a baseline relicensing scenario and under the  
4 KHSA.

5 **Q. Please summarize the provisions of SB 76 related to the dam removal**  
6 **surcharges.**

7 A. Under ORS 757.736(2), PacifiCorp must include with the KHSA filing "tariffs for  
8 the collection of two nonbypassable surcharges from its customers for the purpose  
9 of paying the costs of removing Klamath River dams." One surcharge shall be for  
10 the costs of removing the J.C. Boyle Dam and one surcharge shall be for the costs  
11 of removing the other three dams. *Id.* The Commission shall require PacifiCorp  
12 to begin collecting the surcharges on the date of the filing of the KHSA. The  
13 surcharges are subject to refund if the Commission or Oregon Supreme Court  
14 finds that the surcharges result in rates that are not just, fair, and reasonable.  
15 ORS 757.736(2),(4). Within six months of the Company's filing of the Final  
16 Agreement, analyses, and tariffs, the Commission must conduct a hearing under  
17 ORS 757.210 and enter an order setting forth its decision on whether the  
18 imposition of the surcharges results in just, fair, and reasonable rates. ORS  
19 757.736(4).

20 **Q. Does SB 76 dictate certain aspects of the calculation and amount of the dam**  
21 **removal surcharges?**

22 A. Yes. The surcharges may not exceed Oregon's share of the customer contribution  
23 of \$200 million. ORS 757.736(3). The total amount collected in a calendar year

1 for both surcharges may not exceed more than two percent of the Company's  
2 revenue requirement determined in the Company's last rate proceeding under  
3 ORS 757.210 decided before January 1, 2010 and must be of a specified amount  
4 per kilowatt hour billed to retail customers. The surcharges should be calculated  
5 so that the total annual collections of the surcharges remain approximately the  
6 same during the collection period. *Id*; ORS 757.736(7). The Commission shall  
7 establish a trust account for amounts generated by the surcharges. ORS  
8 757.738(1).

9 **Q. How does SB 76 address the acceleration of the depreciation schedule for the**  
10 **Project?**

11 A. ORS 757.734 requires the Commission to determine a new depreciation schedule  
12 for the Project, based on the assumption that the dams will be removed in 2020.  
13 The Commission is required to determine this new depreciation schedule within  
14 six months of the signing of the KHSA. This is a slightly quicker timeline than  
15 the timeline for review of the surcharges because the six-month window runs  
16 from the execution of the KHSA, not the filing of the KHSA. However, the new  
17 depreciation rate would be effective on January 1, 2011, as reflected in the  
18 Company's pending general rate case, Docket UE 217 ("UE 217").

19 **Fair, Just and Reasonable: Calculation and Amount of Dam Removal Surcharges**

20 **Q. Has the Company filed a tariff with an immediate effective date for the**  
21 **collection of two dam removal surcharges concurrently with this application?**

22 A. Yes. In Advice 10-008, the Company filed Schedule 199, with an effective date  
23 of March 18, 2010.

1 **Q. Please describe Schedule 199.**

2 A. Schedule 199 includes two dam removal surcharges, one for the J.C. Boyle dam  
3 and the other for the Copco 1, Copco 2 and Iron Gate dams. Together the  
4 surcharges result in an overall average increase to Oregon rates of approximately  
5 1.6 percent.

6 **Q. Does Schedule 199 contain a refund provision?**

7 A. Yes. The tariff states that it shall remain in effect “pending review by the  
8 Commission as to whether the imposition of surcharges under the KHSA results  
9 in rates that are fair, just and reasonable or during any period of judicial review of  
10 such a finding. If the rates resulting from these surcharges are finally determined  
11 not to be fair, just and reasonable the surcharges shall be refunded pursuant to  
12 ORS 757.736, Subsection (5).”

13 **Q. Does your testimony sponsor a revision to Schedule 199 that removes this**  
14 **refund condition?**

15 A. Yes. Exhibit PPL/201 revises Schedule 199 to remove the refund condition. As a  
16 part of this application, the Company is requesting that the Commission allow  
17 Schedule 199 to go into effect without the refund condition upon a final  
18 determination under ORS 757.736(4) that the dam removal surcharges result in  
19 rates that are fair, just and reasonable.

20 **Q. Please explain the calculation of the surcharges contained in Schedule 199.**

21 A. Section 7.3.2.A of the KHSA set the initial targeted surcharge collection at \$172  
22 million, well under the \$200 million cap set by ORS 757.736(3) and the KHSA.  
23 This target was based on an analysis undertaken during negotiations that collected



1 the surcharges over a ten-year period and assumed a 3.5 percent interest rate on  
2 the trust balance. The analysis is attached to the KHSA as Appendix H.  
3 Ultimately, the Commission will decide how to invest the proceeds in the trust  
4 account for the benefit of customers. Schedule 199 calculates the surcharges  
5 based on a collection schedule that will fund, by December 31, 2019, Oregon's 92  
6 percent share of the target contribution.

7 **Q. Are the surcharges proposed by PacifiCorp consistent with the requirements**  
8 **of ORS 757.736 and the KHSA?**

9 A. Yes.

10 **Q. Please explain.**

11 A. Exhibit PPL/201 sets forth the detailed calculations related to Oregon's share of  
12 the dam removal surcharges. First, Oregon's 92 percent share of the \$172 million  
13 target is calculated to be \$158.24 million. Second, this amount is spread equally  
14 over the collection period beginning on March 18, 2010, resulting in an annual  
15 collection rate of approximately \$16.16 million per year. This approach complies  
16 with ORS 757.736(7) directing the Commission to set the surcharges so that the  
17 total annual collections of the surcharges remain approximately the same during  
18 the collection period. As reflected in the tariff, the Commission and the Company  
19 will need to monitor the collections under the surcharge tariff given variations in  
20 load forecasts and may need to adjust the cents per kWh rate in the future. Third,  
21 under ORS 757.736(3), the annual collection rate is compared against  
22 PacifiCorp's revenue requirement in Oregon as of January 1, 2010 to ensure that  
23 the annual collection rate does not exceed 2 percent.

1 **Q. How does PacifiCorp propose to assign responsibility among the customer**  
2 **classes in an equitable manner?**

3 A. PacifiCorp proposes to allocate the surcharges among customer classes based on  
4 each class' share of generation revenues, while ensuring that the impact on each  
5 customer class does not exceed 2 percent and is not less than 1.5 percent. This  
6 proposal recognizes that the dam removal surcharges are a generation-related  
7 cost, while mitigating disparity among the classes.

8 **Q. What is the impact of the surcharges on an average residential customer?**

9 A. The surcharges will increase an average customer's monthly bill by  
10 approximately \$1.24 per month, or \$14.88 per year.

11 **Q. Has the Company requested a similar surcharge to collect California**  
12 **customers' share of the dam removal fund?**

13 A. Yes. The Company filed concurrently in both Oregon and California.

14 **Q. Please explain how the proceeds of Schedule 199 will be handled.**

15 A. PacifiCorp's role is to collect the surcharges on customers' bills and then remit  
16 the proceeds to the Oregon trust accounts on a monthly basis.

17 **Q. Who has responsibility for establishing and managing the trusts?**

18 A. The Commission is required to establish these trust accounts under ORS  
19 757.738(1). The trusts will be managed by the Commission, with specific trustee  
20 instructions that are to be developed in consultation with the federal government  
21 and the state of California. The management of the trust is described in Section  
22 4.2.2 and 4.2.4 of the KHSA.

1 **Q. Will PacifiCorp have any control over the disposition of the trust funds?**

2 A. No, although PacifiCorp will cooperate with the Commission and the state of  
3 Oregon to implement contingency plans, as needed.

4 **Q. Do SB 76 and the KHSA provide contingencies for the trust funds if future  
5 circumstances change?**

6 A. Yes. ORS 757.736 (9)-(10), 757.738(4) and Section 4.4 of the KHSA outline  
7 specific contingency plans in the event that (1) excess funds remain in the trust  
8 accounts after dam removal, or (2) one or more dams are not removed. In all  
9 events, the Commission retains the authority to ensure that the funds are used for  
10 the benefit of customers, including possible refund.

11 **Fair, Just and Reasonable: KHSA Negotiated for Benefit of Customers**

12 **Q. Please provide an overview of PacifiCorp's approach to the negotiations that  
13 led to the execution of the KHSA.**

14 A. As discussed in detail in the testimony of Mr. Brockbank, the process leading up  
15 to the execution of the KHSA began in 2000. It has been a complex and  
16 challenging process that is interwoven into longstanding and contentious issues in  
17 the Klamath Basin. Throughout these negotiations, the federal government and  
18 the states of Oregon and California have expressed a strong policy preference that  
19 the dams on the Klamath River be removed. In response, PacifiCorp outlined  
20 four core principles that guided its negotiation strategy related to a path that could  
21 lead to dam removal:

- 22 1. Protect customers from uncertain costs of dam removal  
23 2. Transfer dams to a third party for removal  
24 3. Protect customers from liabilities of dam removal

1           4. Ensure that customers continue to benefit from the low-cost power of the  
2           dams until the dams are removed

3           Approximately two years ago, there was a turning point in the negotiations  
4           that ultimately resulted in an Agreement in Principle in November 2008 and then  
5           the KHSA in February 2010.

6   **Q.    Does the KHSA deliver the Company's four core principles?**

7   A.    Yes. The terms of the KHSA deliver each of these elements for the benefit of  
8           PacifiCorp's customers. As such, the KHSA provides a more certain and less  
9           risky path forward for customers, as well as protections associated with the  
10          Secretarial Determination as to whether dam removal should proceed.

11 **Q.    How does the KHSA protect customers from uncertain costs of dam  
12          removal?**

13 A.    The KHSA contains a \$200 million cap on the customer contribution to the costs  
14          of dam removal, codified at ORS757.736 (3). Section 4.1.1.C of the KHSA  
15          states:

16                 The Parties agree that the total amount of funds to be collected pursuant to  
17                 the Oregon Klamath Surcharges and the California Klamath Surcharge  
18                 shall not exceed \$200,000,000 (in nominal dollars); these funds shall be  
19                 referred to as the "Customer Contribution." (KHSA, p. 24)

20 **Q.    How does the KHSA ensure that the dams will be transferred to a separate  
21          entity for removal?**

22 A.    The KHSA requires as a condition precedent that the Secretary of Interior  
23          designate a dam removal entity which would be responsible for undertaking dam  
24          removal. The KHSA provides:

25                 "**Dam Removal Entity**" or "**DRE**" means an entity designated by the  
26                 Secretary that has the legal, technical, and financial capacities set forth in

1 Section 7.1. The Secretary may designate Interior to be the DRE.  
2 (KHSA, p. 4)

3 **Q. How does the KHSA protect customers from the liabilities of dam removal?**

4 A. Another condition precedent for dam removal is the passage of federal legislation  
5 that provides liability protection for PacifiCorp and its customers. Section 2.1.1.E  
6 states:

7 In consideration for PacifiCorp executing the Settlement, the legislation  
8 that Parties will support, in accordance with Section 2.1.1.A and 2.1.1.B,  
9 shall:

10 i. Provide PacifiCorp with full protection from any liability arising  
11 from, relating to, or triggered by actions associated with Facilities  
12 Removal with provisions that are materially consistent with the  
13 following:

14 a. Notwithstanding any other federal, state, local law or  
15 common law, PacifiCorp shall not be liable for any harm to  
16 persons, property, or the environment, or damages resulting  
17 from either Facilities Removal or Facility operation arising  
18 from, relating to, or triggered by actions associated with  
19 Facilities Removal, including but not limited to any  
20 damage caused by the release of any material or substance,  
21 including but not limited to hazardous substances.

22 b. Notwithstanding Section 10(c) of the Federal Power Act,  
23 this protection from liability preempts the laws of any state  
24 to the extent such laws are inconsistent with the  
25 Authorizing Legislation, except that the Authorizing  
26 Legislation shall not be construed to limit any otherwise  
27 available immunity, privilege, or defense under any other  
28 provision of law.

29 c. This liability protection shall become operative as it relates  
30 to any particular Facility upon transfer of title to that  
31 Facility from PacifiCorp to the DRE. (KHSA, p. 11-12)

32 **Q. How does the KHSA ensure that customers continue to benefit from the low-**  
33 **cost power of the dams until the dams are removed?**

34 A. The KHSA targets a removal date no earlier than 2020, providing at least 10 years

1 of continued operation of the facilities. Specifically, Section 7.3.3 states:

2 The Parties agree that PacifiCorp may continuously operate the Facilities  
3 subject to the ICP and Non-ICP Interim Measures identified in  
4 Appendices C and D to this Settlement and generate electricity at the  
5 Facilities through December 31, 2019. (KHSA, p. 48)

6 In addition, Section 7.4.2 provides:

7 PacifiCorp shall transfer ownership of each Facility, including the  
8 underlying land for each Facility in accordance with Section 7.6.4 (except  
9 for the Keno Development, which shall be disposed in accordance with  
10 Section 7.5), once the DRE notifies PacifiCorp that all necessary permits  
11 and approvals have been obtained for removal of that Facility, all contracts  
12 necessary for Facility Removal have been finalized, and Facility Removal  
13 is ready to commence. (KHSA, p. 51)

14 **Q. Were there any other key considerations for PacifiCorp as it negotiated the**  
15 **terms of the KHSA?**

16 **A.** Yes. PacifiCorp negotiated the terms of the KHSA in a manner that resulted in a  
17 fair and balanced outcome to customers and other stakeholders. Under  
18 relicensing, the status quo for the Project just isn't an option. As such, the costs  
19 to customers under the KHSA were compared against a baseline relicensing  
20 scenario throughout the negotiations. This analysis ensured that customers would  
21 be expected to be no worse off under the KHSA as compared to a conservative  
22 estimate of relicensing costs. This analysis, combined with the significant risk-  
23 reducing elements of the KHSA, ensures that the KHSA is in the public interest.

1 **Fair, Just and Reasonable: KHSA is in the Economic Interest of Customers**

2 **Q. Does the Company's economic analysis demonstrate that the dam removal**  
3 **surcharges result in rates that are fair, just and reasonable because, among**  
4 **other reasons, Oregon customers are better off under the KHSA than they**  
5 **otherwise would be?**

6 A. Yes.

7 **Q. Please describe PacifiCorp's general approach to the economic analysis**  
8 **supporting its decision to enter into the KHSA.**

9 A. As mentioned above, PacifiCorp compared the cost to customers of the KHSA  
10 with the costs to customers under a conservative relicensing scenario. As  
11 discussed in the testimony of Mr. Scott, the costs to customers of relicensing are  
12 highly uncertain. As such, the Company developed a baseline relicensing case  
13 against which the economics of the KHSA were compared. The baseline  
14 relicensing case relies heavily on the costs and data developed as part of the  
15 Federal Energy Regulatory Commission ("FERC") Final Environmental Impact  
16 Statement ("FEIS"). Again, Mr. Scott describes in detail how these baseline cost  
17 estimates were developed and why the cost estimates should be viewed as  
18 conservative given the significant uncertainty that remains related to relicensing.

19 **Q. How was the analysis structured?**

20 A. The analysis evaluated the Present Value Revenue Requirement ("PVRR") of the  
21 stream of costs under the KHSA and compared it against the PVRR of the stream  
22 of costs under the baseline relicensing scenario. The analysis covered a 44-year

1 period beginning in 2010 – this equates to a 40-year license beginning in 2013.

2 The results of this analysis are summarized in Confidential Exhibit PPL 202.

3 **Q. What did the analysis assume with respect to the costs of replacement**  
4 **power?**

5 A. In both scenarios, the Company assumed that lost generation would be replaced  
6 with renewable, non-carbon emitting resources. This was accomplished through  
7 the use of a forward price curve that contained a “carbon adder” as a reasonable  
8 proxy for the cost of renewable replacement power. I would note that there is also  
9 lost generation under the baseline relicensing scenario due to operating  
10 restrictions that were included in the FERC FEIS.

11 **Q. How did the Company use the analysis to inform its negotiation strategy?**

12 A. As mentioned above, the Company was willing to agree to a set of financial  
13 commitments under the KHSA that did not exceed the conservative cost estimates  
14 in the baseline relicensing scenario. However, it was also important to the  
15 durability of the KHSA that the other settlement parties viewed the overall result  
16 as fair and balanced. If the PVRR of the KHSA was significantly below the  
17 baseline relicensing case, this durability would have been threatened.

18 **Q. Does the KHSA result in a fair and balanced outcome to PacifiCorp’s**  
19 **Oregon customers?**

20 A. Yes. Based on the results of this conservative analysis, the KHSA results in a  
21 PVRR that is below the cost of relicensing on a system and Oregon allocated  
22 basis. More importantly, customers are protected from the risks and liabilities  
23 that exist absent an agreement among the parties. These risks include: (1) far



1 higher costs under final terms and conditions for relicensing; (2) the inability to  
2 secure state and federal approvals for relicensing; (3) continued litigation related  
3 to endangered species act requirements and water quality issues; and (4) early  
4 shut-down and removal of the project. In the end, the terms of the KHSA allow  
5 the Company to respond to the policy preferences of the federal government, and  
6 the states of Oregon and California favoring removal of the Project, while  
7 protecting its customers for the long term in respect to economic impact and risks.

#### 8 **Accelerated Depreciation Schedule**

9 **Q. How does PacifiCorp propose to depreciate the remaining investment in the**  
10 **Project?**

11 A. Consistent with ORS 757.734(1), the Company proposes to depreciate the net  
12 book value on a straight-line basis over the expected period of generation from  
13 the Project, which could end as early as December 31, 2019.

14 **Q. Will this apply to new additions as well as any retirements which occur**  
15 **between now and then?**

16 A. Yes. The net book value would be adjusted each month to reflect the impact on  
17 net book value of additions, retirements and any associated net salvage. This  
18 would then adjust the straight-line depreciation over the remaining periods.  
19 Significant capital additions are not anticipated under the KHSA.

20 **Q. How does the Company propose to recover the hydro relicensing and**  
21 **settlement process costs related to the Project?**

22 A. The Company proposes to amortize these costs on the same straight-line basis as  
23 outlined for the net book value of the facilities. These costs are addressed in the

1 testimony of Mr. Brockbank, PPL/600, in UE 217.

2 **Q. Are there any costs for decommissioning of Project facilities for which**  
3 **customers would bear the costs?**

4 A. Yes. As discussed by Mr. Scott, under both relicensing and the KHSA, the  
5 Company will decommission the East Side and West Side facilities.

6 **Q. How will the Company recover the costs of decommissioning the East Side**  
7 **and West Side facilities?**

8 A. In the last depreciation study, the Company established a small hydro  
9 decommissioning reserve. The costs to decommission East Side and West Side  
10 would be charged against that reserve, and the reserve balance would be evaluated  
11 and the accrual adjusted during the next depreciation study.

12 **Q. How will this change to the depreciation life be reflected in rates?**

13 A. As mentioned earlier, the Company has a general rate case pending in UE 217.  
14 Consistent with ORS 757.734(2), the Company's rate case includes an adjustment  
15 sponsored by Company witness R. Bryce Dalley, PPL/1100, that reflects the  
16 shorter depreciation lives, as well as the addition to rate base of the relicensing  
17 and settlement process costs. The effective date of the rate change in the general  
18 rate case is January 1, 2011.

19 **Q. Does this conclude your testimony?**

20 A. Yes.



Docket No. UE-  
Exhibit PPL/201  
Witness: Andrea L. Kelly

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON**

**PACIFICORP**

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**Exhibit Accompanying Direct Testimony of Andrea L. Kelly  
Proposed Schedule 199 – Klamath Dam Removal Surcharge  
and Supporting Calculations**

**March 2010**

**PACIFIC POWER & LIGHT COMPANY  
KLAMATH DAM REMOVAL SURCHARGES**

**OREGON  
SCHEDULE 199**

**Purpose**

To collect surcharges for funding costs of removing Klamath River dams pursuant to ORS 757.736 and to implement provisions of the Klamath Hydroelectric Settlement Agreement executed February 18, 2010.

**Applicable**

Pursuant to ORS 757.736, Subsection (2), the two surcharges contained in this Schedule are nonbypassable to customers and therefore shall be applicable to all bills for electric service calculated under all tariffs and contracts.

**Monthly Billing**

All bills calculated under all tariffs and contracts shall pay the applicable rates for each of the two surcharges below listed by Delivery Service Schedule. The J.C. Boyle Dam Surcharge shall be deposited in the Oregon Klamath Trust Account dedicated to the J.C. Boyle Dam located in Oregon. The Copco 1 and 2, Iron Gate Dams Surcharge shall be deposited in the Oregon Klamath Trust Account dedicated to the Copco 1 Dam, Copco 2 Dam and Iron Gate Dam located in California. Rates listed for each surcharge are in cents per kilowatt-hour and shall be applied to all kilowatt-hours of use.

<b>Delivery Service Schedule</b>	<b>J.C. Boyle Dam Surcharge</b>	<b>Copco 1 and 2, Iron Gate Dams Surcharge</b>
Schedule 4, per kWh	0.033¢	0.101¢
Schedule 15, per kWh	0.060¢	0.163¢
Schedule 23,723, per kWh	0.036¢	0.101¢
Schedule 28,728, per kWh	0.033¢	0.097¢
Schedule 30,730, per kWh	0.032¢	0.095¢
Schedule 33, per kWh	0.022¢	0.066¢
Schedule 41,741, per kWh	0.033¢	0.099¢
Schedule 47,747, per kWh	0.026¢	0.079¢
Schedule 48,748, per kWh	0.026¢	0.079¢
Schedule 50, per kWh	0.053¢	0.142¢
Schedule 51,751, per kWh	0.081¢	0.227¢
Schedule 52,752, per kWh	0.051¢	0.136¢
Schedule 53,753, per kWh	0.033¢	0.082¢
Schedule 54,754, per kWh	0.041¢	0.107¢

**Terms and Conditions**

The surcharges set forth in this Schedule are calculated based on a collection schedule that will fund, by December 31, 2019, Oregon's 92 percent share of the customer contribution of no more than \$200 million as set forth in ORS 757.736. The surcharge rates may be adjusted at a future date subject to a Commission determination. The Commission and the Company will monitor collections under this tariff to ensure that it does not collect in excess of Oregon's share of the \$200 million maximum customer contribution. (D)

Surcharge trust accounts for amounts generated by each of the two surcharges in this Schedule shall be established by the Commission pursuant to 757.738. (M)

(D)

(M)  
from  
p.2

Issued: March 18, 2010

P.U.C. OR No. 35

Effective: With service rendered on and after

Second Revision of Sheet No. 199

Issued By

Andrea L. Kelly, Vice President, Regulation

Pacific Power  
State of Oregon  
Klamath Dam Removal Surcharges  
Target Annual Surcharge Collection and Test of Surcharge Impact

Target Annual Surcharge Collection			
Line No.			
(1)	Surcharge Effective Date	3/19/2010	
(2)	Surcharge End Date	12/31/2019	
(3)	Total Years Effective	9.79	
(4)	Total Customer Contribution	\$172,000,000	Final Agreement, Section 7.3.2
(5)	Oregon Share of Customer Contribution	92%	Final Agreement, Section 4.1.1.D
(6)	Total Oregon Collection	\$158,240,000	(4)*(5)
(7)	Total Annual Surcharge Collection	\$16,160,492	(6)/(3)
(8)	Percent to be collected through the Oregon J.C. Boyle Dam Surcharge	25%	Final Agreement, Section 4.1.1.D
(9)	Oregon J.C. Boyle Dam Surcharge	\$4,040,123	(7)*(8)
(10)	Percent to be collected through the Oregon Copco 1 & 2 and Iron Gate Dams Surcharge	75%	Final Agreement, Section 4.1.1.D
(11)	Oregon Copco 1 & 2 and Iron Gate Dams Surcharge	\$12,120,369	(7)*(10)

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Test of Surcharge Impact			
(12)	Annual Base Retail Revenues effective January 1, 2010*	\$953,084,000	
(13)	Total Annual Surcharge Percentage of Base Retail Revenue Requirement**	1.7%	(7)/(12)

\*Based on rates effective January 1, 2010 including rates from UE 207 approved by the OPUC in order 09-432 decided October 30, 2009. UE 207 represents PacifiCorp's last case under ORS 757.210 decided by the commission before January 1, 2010.

\*\*Must be less than 2% pursuant to ORS 757.736(3)

PACIFIC POWER  
STATE OF OREGON  
PROPOSED KLAMATH DAM REMOVAL SURCHARGES  
FORECAST 12 MONTHS ENDED DECEMBER 31, 2011

Line No.	Description	Pre Sch No.	No. of Cust	MWh	Present Generation Revenues <sup>1</sup>
(1)	(2)	(3)	(4)	(5)	
<b>Residential</b>					
1	Residential	4	484,011	5,306,840	\$242,157,503
2	<b>Total Residential</b>		484,011	5,306,840	\$242,157,503
<b>Commercial &amp; Industrial</b>					
3	Gen. Svc. < 31 kW	23	74,207	1,013,838	\$45,805,745
4	Gen. Svc. 31 - 200 kW	28	10,419	2,011,827	\$92,352,831
5	Gen. Svc. 201 - 999 kW	30	882	1,386,076	\$62,485,531
6	Large General Service ≥ 1,000 kW	48	212	2,349,055	\$102,132,180
7	Partial Req. Svc. ≥ 1,000 kW	47	7	381,991	\$15,844,597
8	Agricultural Pumping Service	41	6,211	149,120	\$6,753,521
9	Agricultural Pumping - Other	33	2,056	127,459	\$0
10	<b>Total Commercial &amp; Industrial</b>		93,994	7,419,366	\$325,374,405
<b>Lighting</b>					
11	Outdoor Area Lighting Service	15	7,167	10,138	\$241,695
12	Street Lighting Service	50	258	10,594	\$218,662
13	Street Lighting Service HPS	51	710	16,563	\$539,781
14	Street Lighting Service	52	65	1,061	\$26,501
15	Street Lighting Service	53	266	9,250	\$98,606
16	Recreational Field Lighting	54	103	847	\$15,541
17	<b>Total Public Street Lighting</b>		8,569	48,453	\$1,140,786
18	<b>Total</b>		586,574	12,774,659	\$568,672,694

Oregon J.C. Boyle Dam Surcharge	
Rates	Revenues
¢/kWh	(4)*(6)
(6)	(7)
0.033	\$1,751,257
	\$1,751,257
0.036	\$364,982
0.033	\$663,903
0.032	\$443,544
0.026	\$610,754
0.026	\$99,318
0.033	\$49,210
0.022	\$28,041
	\$2,259,751
0.060	\$6,083
0.053	\$5,615
0.081	\$13,416
0.051	\$541
0.033	\$3,053
0.041	\$347
	\$29,055
	\$4,040,063

Oregon Copco I & 2, Iron Gate Dams Surcharge	
Rates	Revenues
¢/kWh	(4)*(8)
(8)	(9)
0.101	\$5,359,908
	\$5,359,908
0.101	\$1,023,976
0.097	\$1,951,472
0.095	\$1,316,772
0.079	\$1,855,753
0.079	\$301,773
0.099	\$147,629
0.066	\$84,123
	\$6,681,499
0.163	\$16,525
0.142	\$15,043
0.227	\$37,598
0.136	\$1,443
0.082	\$7,585
0.107	\$906
	\$79,101
	\$12,120,508

<sup>1</sup> Based on rates effective February 2, 2010.

**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, 2011**

Line No.	Description	Pre Sch No.	Pro 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>1,2</sup>	Net Rates	Base Rates		Net Rates		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	
								(6) + (7)			(9) + (10)	(9) - (6)	(12)/(6)	(11) - (8)	(14)/(8)	
<b>Residential</b>																
1	Residential	4	4	484,011	5,306,840	\$472,654	\$19,369	\$492,023	\$472,654	\$26,480	\$499,134	\$0	0.0%	\$7,111	1.5%	1
2	<b>Total Residential</b>			484,011	5,306,840	\$472,654	\$19,369	\$492,023	\$472,654	\$26,480	\$499,134	\$0	0.0%	\$7,111	1.5%	2
<b>Commercial &amp; Industrial</b>																
3	Gen. Svc. < 31 kW	23	23	74,207	1,013,838	\$94,181	(\$628)	\$93,553	\$94,181	\$761	\$94,942	\$0	0.0%	\$1,389	1.5%	3
4	Gen. Svc. 31 - 200 kW	28	28	10,419	2,011,827	\$133,835	\$10,844	\$144,679	\$133,835	\$13,459	\$147,294	\$0	0.0%	\$2,615	1.8%	4
5	Gen. Svc. 201 - 999 kW	30	30	882	1,386,076	\$85,559	\$4,215	\$89,774	\$85,559	\$5,975	\$91,534	\$0	0.0%	\$1,760	2.0%	5
6	Large General Service >= 1,000 kW	48	48	212	2,349,055	\$128,583	(\$2,726)	\$125,857	\$128,583	(\$259)	\$128,324	\$0	0.0%	\$2,467	2.0%	6
7	Partial Req. Svc. >= 1,000 kW	47	47	7	381,991	\$19,268	(\$446)	\$18,822	\$19,268	(\$45)	\$19,223	\$0	0.0%	\$401	2.0%	7
8	Agricultural Pumping Service	41	41	6,211	149,120	\$16,054	(\$3,276)	\$12,778	\$16,054	(\$3,079)	\$12,975	\$0	0.0%	\$197	1.5%	8
9	Agricultural Pumping - Other	33	33	2,056	127,459	\$5,327	\$272	\$5,599	\$5,327	\$384	\$5,711	\$0	0.0%	\$112	2.0%	9
10	<b>Total Commercial &amp; Industrial</b>			93,994	7,419,366	\$482,807	\$8,255	\$491,062	\$482,807	\$17,196	\$500,003	\$0	0.0%	\$8,941	1.8%	10
<b>Lighting</b>																
11	Outdoor Area Lighting Service	15	15	7,167	10,138	\$1,332	\$136	\$1,468	\$1,332	\$159	\$1,491	\$0	0.0%	\$23	1.5%	11
12	Street Lighting Service	50	50	258	10,594	\$1,198	\$144	\$1,342	\$1,198	\$165	\$1,363	\$0	0.0%	\$21	1.5%	12
13	Street Lighting Service HPS	51	51	710	16,563	\$3,021	\$338	\$3,359	\$3,021	\$389	\$3,410	\$0	0.0%	\$51	1.5%	13
14	Street Lighting Service	52	52	65	1,061	\$117	\$15	\$132	\$117	\$17	\$134	\$0	0.0%	\$2	1.5%	14
15	Street Lighting Service	53	53	266	9,250	\$605	\$83	\$688	\$605	\$94	\$699	\$0	0.0%	\$11	1.6%	15
16	Recreational Field Lighting	54	54	103	847	\$75	\$7	\$82	\$75	\$8	\$83	\$0	0.0%	\$1	1.5%	16
17	<b>Total Public Street Lighting</b>			8,569	48,453	\$6,348	\$723	\$7,071	\$6,348	\$831	\$7,179	\$0	0.0%	\$108	1.5%	17
18	<b>Total Sales to Ultimate Consumers</b>			586,574	12,774,659	\$961,809	\$28,347	\$990,156	\$961,809	\$44,508	\$1,006,317	\$0	0.0%	\$16,161	1.6%	18
19	<b>Employee Discount</b>				18,045	(\$397)	(\$17)	(\$414)	(\$397)	(\$17)	(\$414)	\$0		\$0		19
20	<b>Total Sales with Employee Discount</b>			586,574	12,774,659	\$961,412	\$28,330	\$989,742	\$961,412	\$44,491	\$1,005,903	\$0	0.0%	\$16,161	1.6%	20
21	AGA Revenue					\$2,800		\$2,800	\$2,800		\$2,800	\$0		\$0		21
22	<b>Total Sales with Employee Discount and AGA</b>			586,574	12,774,659	\$964,212	\$28,330	\$992,542	\$964,212	\$44,491	\$1,008,703	\$0	0.0%	\$16,161	1.6%	22

<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).

<sup>2</sup> Includes the effects of the Klamath Dam Removal Surcharges (Sch. 199).

<sup>3</sup> Percentages shown for Schedules 48 and 47 reflect the combined rate change for both schedules





**CONFIDENTIAL**

Docket No. UE-

Exhibit PPL/202

Witness: Andrea L. Kelly

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON**

**PACIFICORP**

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**CONFIDENTIAL**

**Exhibit Accompanying Direct Testimony of Andrea L. Kelly**

**Summary of Economic Analysis**

**March 2010**

**THIS EXHIBIT IS CONFIDENTIAL  
AND IS PROVIDED UNDER  
SEPARATE COVER**



Docket No. UE-  
Exhibit PPL/300  
Witness: Cory E. Scott

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON**

**PACIFICORP**

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**Direct Testimony of Cory E. Scott**

**March 2010**

1 **Introduction**

2 **Q. Please state your name, business address and present position with**  
3 **PacifiCorp (“Company”).**

4 A. My name is Cory E. Scott. My business address is 825 NE Multnomah Street,  
5 Suite 1600, Portland, Oregon, 97232. My present position is Director of  
6 Transmission Policy.

7 **Qualifications**

8 **Q. Briefly describe your educational background and business experience.**

9 A. I hold a bachelor’s degree in Chemistry from St. John’s University in Minnesota,  
10 and a master’s degree in Environmental Studies from Bard College in New York.  
11 I also completed studies through preliminary exams at the University of Idaho  
12 leading to a doctoral degree in Natural Resources. Prior to joining PacifiCorp in  
13 2005, I held positions focused on energy and environmental management,  
14 including more than ten years as a consultant managing environmental issues,  
15 primarily for companies in the oil and gas pipeline industry. I have been  
16 employed by PacifiCorp for over five years. Prior to my current role, I was  
17 employed by PacifiCorp Energy, from 2005 to 2009, as the Relicensing Manager  
18 for the Klamath Hydroelectric Project.

19 **Q. Have you been personally involved in the negotiations related to the Klamath**  
20 **Hydroelectric Settlement Agreement?**

21 A. Yes. I have been part of PacifiCorp’s negotiating team since 2005.

1 **Purpose and Overview of Testimony**

2 **Q. What is the purpose of your testimony?**

3 A. The purpose of my testimony is to provide an overview of how the costs of  
4 relicensing the Klamath Hydroelectric Project (“Project”) were developed through  
5 the relicensing process; the Company’s assessment of relicensing costs; the  
6 sources of the cost information included in the Company’s assessment; and an  
7 overview and inventory of the analyses and studies related to the costs and risks  
8 of potential relicensing and dam removal outcomes.

9 **Q. Please describe how you have organized your testimony.**

10 A. First, I briefly describe how information is developed through the complex  
11 relicensing process on the potential protection, mitigation, and enhancement  
12 (“PM&E”) measures likely to be required in a new license. Second, I briefly  
13 describe the Company’s assessment of the overall costs of relicensing the Project  
14 and the process used to develop those costs. Third, I provide an overview of the  
15 information contained in the relicensing record that has informed the Company’s  
16 view of the costs and risks for customers related to various relicensing outcomes,  
17 and I provide an inventory of the pertinent documents. Fourth, I describe the  
18 Company’s assessment of the costs of relicensing the Project and the costs of  
19 settlement under the Klamath Hydroelectric Settlement Agreement (“KHSA”).

20 **Development of Relicensing Measures and Costs**

21 **Q. How does the relicensing process inform what PM&E measures would be  
22 required to relicense the Project?**

23 A. The traditional Federal Energy Regulatory Commission (“FERC”) relicensing

1 process consists of three stages of consultation. Generally, these stages inform  
2 the development of PM&E measures as follows:

3 In the first stage, the applicant distributes an Initial Consultation  
4 document, which describes the project and its operation and environmental setting  
5 to federal and state agencies, tribes, non-governmental organizations (“NGOs”),  
6 community interest groups and other stakeholders. It also presents the studies that  
7 are recommended to identify project impacts. Through consultation with  
8 stakeholders, these study plans are refined. Stage one ends when a set of  
9 resource-by-resource study plans and stakeholder consultation documentation has  
10 been completed and provided to FERC. PacifiCorp initiated this process for the  
11 Project in December 2000.

12 In the second stage, the applicant conducts the proposed studies that  
13 provide data to clarify project impacts. Based on study results, various PM&E  
14 measures are identified by the applicant and project stakeholders to address  
15 project impacts. The costs of these measures are typically developed and  
16 presented in technical reports prepared for resource areas, including aquatic  
17 resources, terrestrial resources, cultural resources, water resources, and recreation.  
18 The applicant then prepares a draft license application that includes its proposal  
19 for recommended PM&E measures. The draft license application is distributed to  
20 FERC and to interested agencies, tribes and stakeholders for review and  
21 comment. At this stage, agencies routinely request additional studies, and FERC  
22 may also request additional information. The second stage ends when FERC  
23 accepts a final application for filing. PacifiCorp submitted its final license



1 application for Klamath relicensing in February 2004.

2 In the third stage, FERC analyzes the license application and may require  
3 the applicant to supplement the license application to address any deficiencies,  
4 which can result in additional studies or the development of cost estimates for  
5 alternative PM&E measures. FERC also solicits initial comments and  
6 preliminary terms and conditions from agencies, tribes, and stakeholders. FERC  
7 may require additional information from the applicant to address any comments  
8 submitted by the agencies, tribes, and stakeholders. When FERC determines the  
9 application is complete, it serves notice that the application is ready for  
10 environmental analysis and a review of the application pursuant to the National  
11 Environmental Policy Act (“NEPA”) proceeds. FERC issued its Ready for  
12 Environmental Analysis notice for the Klamath relicensing in December 2005.

13 After the Ready for Environmental Analysis notice is issued, a series of  
14 additional processes are triggered. Federal agencies prescribe final terms and  
15 conditions that must be included in a new license issued by FERC to protect  
16 environmental resources under their stewardship. Analysis of the application  
17 under the Endangered Species Act also proceeds and biological opinions of the  
18 impact of the proposed action are developed. Agency terms and conditions,  
19 through mandatory prescriptions and biological opinions can result in additional  
20 PM&E measures.

21 In reviewing the Project, FERC prepares a draft environmental impact  
22 statement, which is used to solicit public comment, and then prepares a final  
23 environmental impact statement (“FEIS”) incorporating the mandatory agency

1 prescriptions. When the license application is ready for environmental analysis,  
2 the applicant also applies for water quality certification from the states under  
3 CWA Section 401. Through this process, the states determine what measures or  
4 conditions must be met for the project to attain relevant water quality standards.  
5 FERC must then incorporate the terms contained in the CWA Section 401  
6 certification into a final project license. Among other water quality requirements,  
7 CWA Section 401 certifications can require that the project attain the load  
8 allocations assigned to the project under the total maximum daily load (“TMDL”)  
9 process. Ultimately, it is the totality of the regulatory process, including FERC’s  
10 analysis, federal mandatory conditioning authority, the water quality certification  
11 processes and review and compliance under the endangered species act that  
12 informs the measures required to relicense the project.

13 **Q. Who ultimately decides what the required PM&E measures are?**

14 A. No single party determines the final PM&E measures. FERC issues a FEIS that  
15 includes PM&E measures, but before a new license is issued it must incorporate  
16 the mandatory agency prescriptions and the conditions included in state CWA  
17 Section 401 water quality certifications. In addition, measures necessary for  
18 compliance under the endangered species act may also be required.

19 **Q. How are the costs for the likely PM&E measures determined?**

20 A. Most of the cost estimates for likely PM&E measures are developed by the  
21 applicant through the preparation of resource technical reports and through  
22 responses to additional information requests from FERC during the license review  
23 process. These cost estimates are often based on cost information from similar

1 projects and the preparation of specific cost estimates for mitigation measures,  
2 and are refined over time as additional measures are identified and defined. Other  
3 cost estimates may be developed by intervenors as they recommend alternative  
4 PM&E measures or different project alternatives. Some costs are developed by  
5 FERC staff as they develop their own recommended PM&E measures.

6 **Q. When and how are the required PM&E measures and costs finalized?**

7 A. The costs of relicensing are not finalized until all required PM&E measures have  
8 been implemented. Even though the new license prescribes the required PM&E  
9 measures, it cannot cap the costs of those measures. As PM&E measures are  
10 designed and implemented, the costs of the measures often change in response to  
11 site-specific conditions. Furthermore, agencies often maintain the authority to  
12 reopen a license and require new conditions if additional improvements are  
13 deemed necessary.

14 **Overview of Relicensing and Settlement Costs**

15 **Q. Please provide an overview of the Company's estimated costs to relicense the**  
16 **Project.**

17 A. The Company's estimated costs to relicense the Project include in excess of \$400  
18 million in capital and in excess of \$60 million in operations and maintenance  
19 ("O&M") costs over a 40-year license term. Of these capital costs, the majority is  
20 related to implementation of aquatic resource PM&E measures. These costs are  
21 related to providing volitional upstream and downstream fish passage at all  
22 Project developments, which is required by the mandatory agency terms and  
23 conditions. Additional funding would be required for terrestrial resource PM&E

1 measures, recreational resource PM&E measures, land use PM&E's, and cultural  
2 resource PM&E measures. The remaining capital costs are for water quality  
3 improvements to address temperature and dissolved oxygen effects of the Project  
4 reservoirs and to address water quality concerns related to algae. Consistent with  
5 PacifiCorp's license application, the East Side and West Side developments  
6 would be decommissioned and removed. A presentation of these estimated costs  
7 is included as Confidential Exhibit PPL/301.

8 The PM&E measures contained in the Company's baseline relicensing  
9 scenario generally include those measures specified in the "Staff alternative with  
10 Mandatory Conditions" alternative in the FERC FEIS. The costs of measures  
11 included in the "Staff Alternative with Mandatory Conditions" have been  
12 escalated to current dollars since the costs contained in the FEIS were in 2006  
13 dollars. Because the CWA Section 401 water quality certification process for the  
14 Project is not yet complete, the water quality measures necessary to obtain a new  
15 license remain highly uncertain. Thus, the Company's relicensing scenario  
16 includes measures that have been evaluated during the FERC process to address  
17 the water quality effects of the Project, as an estimate of what might be required.

18 In addition to the capital and O&M expenditures to implement the  
19 required PM&E measures, the relicensing scenario also reflects a 20 percent  
20 reduction in the energy that would be produced from the Project. This is due to  
21 the requirement to provide more water to bypassed reaches of the Klamath River,  
22 which makes less water available for generation. This most significantly impacts  
23 generation at the J.C. Boyle development, where compliance with agency terms

1 and conditions on flows would reduce generation more than 40 percent. J.C.

2 Boyle is by far the largest generation facility in the Project.

3 **Q. What information sources were used to derive these costs?**

4 A. The majority of the costs included in the Company's analysis are in the FERC  
5 record and contained or referenced in Appendix A of the FEIS. Some costs were  
6 developed from PacifiCorp internal estimates and generation impact models.  
7 Given the uncertainty related to the costs to implement measures required to  
8 obtain CWA Section 401 water quality certifications from California and Oregon,  
9 water quality costs include measures explored during the relicensing proceeding  
10 to address project-related water quality effects.

11 **Q. Please provide an overview of the Company's assumed costs of implementing**  
12 **the KHSA.**

13 A. The Company's assessment of the costs of settlement include approximately \$9  
14 million in capital costs and approximately \$70 million in costs that would be  
15 characterized as O&M costs. The majority of the capital costs reflect the costs of  
16 interim water quality improvements and hatchery improvements. Increased  
17 funding for hatchery programs and ongoing hatchery production following dam  
18 removal represents approximately half of the O&M costs. Other funding  
19 requirements include restoration and study funding, lands and cultural resources  
20 funding, aquatic habitat enhancement, water quality monitoring and improvement  
21 costs. Implementation and management costs are also reflected in the O&M  
22 costs. Implementation costs also include the decommissioning of the East Side  
23 and West Side development at a cost of approximately \$3 million, and the \$172

1 million dam removal customer surcharge. A presentation of these estimated costs  
2 is included as Confidential Exhibit PPL/302.

3 **Q. How were these costs derived?**

4 A. The majority of the costs included in the Company's assessment of settlement  
5 costs are derived from Appendices C and D of the KHSA. These appendices list  
6 the interim measures that the Company must implement prior to dam removal.  
7 Many of the interim measures consist of capped funding obligations for specific  
8 resource areas such as hatcheries, aquatic habitat enhancement, water quality  
9 monitoring, water quality studies and improvements, and land management  
10 activities. Other costs for specific interim measures are estimates of what might  
11 be necessary to fulfill the obligation spelled out in the interim measure based on  
12 the costs to develop certain infrastructure or implement specific projects. As with  
13 the relicensing case, some costs are developed from PacifiCorp internal estimates  
14 and generation impact models.

15 **Risks Related to Relicensing, Settlement and Removal Costs**

16 **Q. What cost risks does relicensing present for customers?**

17 A. The risk of increasing costs is one risk relicensing presents for customers. The  
18 PM&E measures included in the Company's assessment of relicensing costs are  
19 based on the best estimates available as developed during the relicensing  
20 proceeding several years ago. As such, there is always a risk that costs for  
21 PM&E measures will escalate as measures are fully designed and constructed.  
22 This represents a risk to customers since a new license would prescribe the  
23 construction of certain facilities to mitigate project effects and establish fish

1 passage regardless of the ultimate cost of those measures. Consultation with  
2 agencies, as required by a new license, can also increase the scope and cost of  
3 PM&Es as design standards and agency criteria change.

4 The cost of additional PM&E measures is another risk relicensing presents  
5 for customers. Agencies have reserved authority to require additional mandatory  
6 PM&E's to address changed environmental conditions or the potential  
7 ineffectiveness of required PM&Es to attain the desired benefits. Thus,  
8 additional PM&E measures could be required during the term of a new Project  
9 license that would result in costs to customers in excess of what is reflected in  
10 known relicensing costs at this time.

11 There are also other process-related risks that licensing presents for  
12 customers. As one example, if the state of Oregon or California denied a CWA  
13 Section 401 water quality certification, FERC would be unable to issue a new  
14 license, yet maintains that it has the authority to require the owner to  
15 decommission and remove the project facilities at the owner's expense.

16 **Q. Do you believe that the costs assumed in the baseline relicensing scenario**  
17 **are conservative?**

18 A. Yes. Absent a settlement among parties, it is clear that the Company would  
19 continue to face significant opposition to relicensing. My observation is that on  
20 balance the stakeholders would attempt to drive the costs of relicensing as high  
21 as possible in an effort to make relicensing uneconomic. As discussed above,  
22 there are also significant risks related to the Company's ability to secure state  
23 CWA Section 401 water quality permits.

1 **Q. How do these risks compare to the risks under the Company's settlement**  
2 **scenario?**

3 A. Continuation down a path of relicensing presents far greater risks to customers  
4 than settlement under the KHSA. Under the KHSA, cost obligations are well-  
5 defined and largely capped. For the interim measures that do not have a cost  
6 cap, the relative cost risk is much less than under relicensing given the extensive  
7 scope and costs associated with measures required under relicensing.  
8 Additionally, transferring the dams prior to removal, along with other key  
9 protection measures outlined in the KHSA, further minimize cost risk.

10 **Q. Has the Company undertaken a comprehensive analysis of the costs of**  
11 **Project removal?**

12 A. No. PacifiCorp has not attempted to complete a comprehensive analysis of the  
13 costs of Project removal given the many risks and uncertainties. Large  
14 uncertainties include the costs of sediment management, minimizing and  
15 mitigating environmental impacts related to removal, water quality and  
16 endangered species impacts, infrastructure impacts, and site re-vegetation and  
17 restoration costs. Many of these uncertainties can only be better defined through  
18 the removal design and permitting process. The KHSA is designed to shield  
19 customers from the risks and liabilities of dam removal while ensuring that a  
20 comprehensive science-based review is undertaken prior to the Secretarial  
21 Determination of whether removal of the dams is in the public interest.



1 **Q. What information has informed the Company's views of the costs and risks**  
2 **of relicensing and Project removal?**

3 A. The Company's views of the costs and risks of relicensing and Project removal  
4 has been informed by many sources, nearly all of which are contained within the  
5 FERC record for the relicensing proceeding, including:

- 6 • The Company's license application
- 7 • Final technical reports
- 8 • Final technical studies prepared by numerous parties
- 9 • The Company's responses to additional information requests
- 10 • Comments on the license application by stakeholders and regulatory agencies
- 11 • The agencies' terms and conditions
- 12 • Biological opinions
- 13 • CWA Section 401 water quality certification applications
- 14 • The water quality agencies' views of project impacts as evidenced by written  
15 statements, technical reports, and public testimony
- 16 • The TMDL regulatory process material, and
- 17 • Historical reports.

18 In addition, several third parties have undertaken studies related to the  
19 costs and risks associated with dam removal. Such studies include a  
20 comprehensive assessment of the potential risks and liabilities related to removal  
21 of the Klamath dams (Camp Dresser and McKee Inc., 2008) commissioned by the  
22 Department of the Interior and various studies on dam removal costs, sequencing  
23 and environmental impacts commissioned by the California Coastal Conservancy.

1 Exhibit PPL/303 provides a comprehensive inventory of the studies PacifiCorp  
2 has reviewed throughout the settlement process.

3 **Q. Does this conclude your testimony?**

4 **A. Yes.**



**CONFIDENTIAL**

Docket No. UE-

Exhibit PPL/301

Witness: Cory E. Scott

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON**

**PACIFICORP**

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**CONFIDENTIAL**  
**Exhibit Accompanying Direct Testimony of Cory E. Scott**  
**Costs of FERC FEIS Relicensing Scenario**

**March 2010**

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**CONFIDENTIAL**  
**Exhibit Accompanying Direct Testimony of Cory E. Scott**  
**Costs of Klamath Hydroelectric Settlement Agreement**

**March 2010**

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**Exhibit Accompanying Direct Testimony of Cory E. Scott  
Klamath Document Inventory**

**March 2010**

**Inventory of Analysis and Studies Relied Upon by Company**

<b>Date</b>	<b>Year</b>	<b>Document Title or Reference</b>	<b>Doc Ref</b>	<b>Prepared by</b>	<b>Category / Folder</b>
12/3/2007	2007	Biological Opinion	BO01	US DOI, USFWS	Biological Opinions
12/21/2007	2007	Biological Opinion	BO02	NOAA NMFS	Biological Opinions
2/1/1995	1995	Elwha River Restoration Project: Economic Analysis. Final Technical Report. Developed by the Elwha Project Human Effects Team, 1995. Report to Bureau of Reclamation, National Park Service, and Lower Elwha S'Klallam Tribe. Davis, Ca. February 1995. 62 p.	DR01	Elwha Project Human Effects Team Elwha Project Human Effects Team	Dam Removal
2/1/1996	1996	Measuring the economic benefits of removing dams and restoring the Elwha River: Results of a contingent valuation survey. Water Resources Research, VOL. 32, No. 2, pages 441-447.	DR02	Loomis, J. B.	Dam Removal
4/28/2003	2003	Preliminary Assessment of Energy Issues Associated with the Klamath Hydroelectric Project.	DR03	California Energy Commission	Dam Removal
7/1/2003	2003	Klamath River Dam Removal Investigation	DR04	G&G Associates	Dam Removal
5/1/2004	2004	A Preliminary Evaluation of the Potential Downstream Sediment deposition Following the Removal of Iron Gate, Copco, and J.C. Boyle Dams, Klamath River, CA	DR05	Stillwater Sciences	Dam Removal
2005	2005	Predicting the thermal effects of dam removal on the Klamath River. Environmental Management 34(6): 856-874.	DR06	Bartholow, J.M., S.G. Campbell and M. Flug	Dam Removal
5/1/2005	2005	Assessing Ecological Effects of a Proposed Dam Removal. Hydro Review 2005. P 36-44.	DR07	Bushaw-Newton, K.L., J.T Ashley, and DJ. Velinsky	Dam Removal
2005	2005	Review of "Klamath River Dam Removal Investigation," Prepared by G&G Associates, July 2003. Reviewed by Thomas E. Hepler, BOR	DR08	G&G Associates	Dam Removal
3/16/2005	2005	Review of A preliminary Evaluation of the Potential Downstream Sediment deposition Following the Removal of Iron Gate, Copco, and J.C. Boyle Dams, Klamath River, CA. Prepared for American Rivers, California Trout, Friends of the River, Trout Unlimited	DR09	Stillwater Sciences	Dam Removal
4/1/2005	2005	Review of "Klamath River Dam Removal Investigations" July 2003. Reviewed by Thomas E. Hepler, BOR	DR10	Tom Hepler, U.S. Bureau of Reclamation	Dam Removal
11/1/2006	2006	Economic Modeling of Relicensing and Decommissioning Options for the Klamath Basin Hydroelectric Project	DR11	California Energy Commission	Dam Removal
2006	2006	Dam Removal Express Assessment Models (DREAM). Part 2: Sample runs/sensitivity tests. Journal of Hydraulic Research 44: 308-323.	DR12	Cui, Y., C. Braudrick, W. E. Dietrich, B. Cluer, and G. Parker	Dam Removal
2006	2006	Dam Removal Express Assessment Models (DREAM). Part 1: Model development and validation. Journal of Hydraulic Research 44: 291-307.	DR13	Cui, Y., G. Parker, C. Braudrick, W. E. Dietrich, and B. Cluer	Dam Removal
1/15/2006	2006	Estimates of Anadromous fish runs above the site of Iron Gate Dam. Canby, OR, Clearwater BioStudies, Inc: 7 pp	DR14	Huntington, C. W.	Dam Removal
2006	2006	Use of non-market valuation studies in water resource management assessments.	DR15	Loomis, J. B.	Dam Removal
1/31/2006	2006	Preliminary Economic assessment of Dam Removal: the Klamath River. Prepared for Eco Trust. January 31, 2006.	DR16	Kruse, S.A and A. J. Scholz	Dam Removal
3/27/2006	2006	Aquatic habitat conditions related to the reintroduction of anadromous salmonids into the Upper Klamath Basin, with emphasis on areas above Upper Klamath Lake. Technical Memorandum dated March 27, 2006. 21p.	DR17	Huntington, C. W. and L. Dunsmoor	Dam Removal
3/27/2006	2006	Stock selection issues related to the reintroduction of anadromous salmonids into the Upper Klamath Basin, with emphasis on areas above Upper Klamath Lake. Technical Memorandum dated March 27, 2007. 32p.	DR18	Huntington, C. W. and L. Dunsmoor	Dam Removal
3/29/2006	2006	Reintroduction of Anadromous Fish to the Upper Klamath Basin: An Evaluation and Conceptual Plan. March 2006. 55p + Appendix.	DR19	Huntington, C. W., E.W. Claire, F. A. Espinosa, and R. House	Dam Removal
6/1/2006	2006	"Demolish it and they will come: Economic Benefits of Restoring a Recreational Fishery." Journal of American Water Resource Association June 2006. Vol 44, No. 6. p1488-1499.	DR20	Robbins, J., Lewis, L.	Dam Removal
7/29/2006	2006	Reconnaissance of potential anadromous fish habitat within the area bounded by J. C. Boyle Reservoir and Iron Gate Dam. Memo to Larry Dunsmoor, Klamath Tribe. Technical Memorandum dated July 29, 2006. 20p.	DR21	Huntington, C. W. and F. A. Espinosa	Dam Removal
11/1/2006	2006	Klamath River Dam and Sediment Investigation	DR22	Gathard Engineering Consulting	Dam Removal

**Inventory of Analysis and Studies Relied Upon by Company**

<b>Date</b>	<b>Year</b>	<b>Document Title or Reference</b>	<b>Doc Ref</b>	<b>Prepared by</b>	<b>Category / Folder</b>
2007	2007	Letter to the California Public Utilities Commission regarding the PacifiCorp's Klamath Hydroelectric Project. Transmittal of Economic and Energy Information from the California Energy Commission to Assist Public Utilities Commissions in Identifying the Least-Cost Project Alternative for Ratepayers. Sacramento, California: 9 p.	DR23	California Energy Commission	Dam Removal
4/19/2007	2007	Revised report: Response to PacifiCorp's Comments on the Klamath Project Alternatives Analysis Model, ADDENDUM to CONSULTANT REPORT, publication # CEC-700-2007-004-REV1, posted April 20, 2007. Includes cover letter from Executive Director B.B. Blevins to FERC Acting Secretary Philis Posey. (Acrobat PDF file, 28 pages, 255 kilobytes)	DR24	California Energy Commission	Dam Removal
6/1/2007	2007	Evaluation of Alternatives to Reservoir Lowering Start Date from those Proposed in November 2006 Federal Energy Regulatory Commission Report	DR25	Dennis Gathard, P.E.	Dam Removal
8/8/2007	2007	Tech Memo: Biological Rationale for a Proposed Reservoir Drawdown Period for Klamath River Dams. Memo to California Coastal Conservancy	DR26	Stillwater Sciences	Dam Removal
8/15/2007	2007	Economic Support for the Elwha River Watershed: Final Economic Characterization Report with Monitoring Recommendations. Prepared for The Coastal Services Center National Oceanic and Atmospheric Administration. August 15, 2007. 53p.	DR27	Battelle	Dam Removal
9/6/2007	2007	A first-order estimate of fine sediment trapping potential within Iron Gate Reservoir for upstream drawdown and dam removal. Memo from Y. Cui to Michael Bowen of the California Coastal Conservancy. Dated September 6, 2007. 6p.	DR28	Stillwater Sciences	Dam Removal
3/25/2008	2008	Team Review of A/E Study - Draft	DR29	BOR	Dam Removal
5/1/2008	2008	Dam Removal Express Assessment Models (DREAM-1 and -2): Applications and Examinations	DR30	Cui, Y. and B. Clure	Dam Removal
6/13/2008	2008	Tech Memo: Reservoir Drawdown Rates/Reservoir Drawdown Test: Iron Gate, Copco (I & II), and JC Boyle Dams. June 13, 2008. 6p.	DR31	PanGEO, Inc.; Paul Grant	Dam Removal
7/18/2008	2008	Evaluation and Determination of Potential Liability Associated with the Decommissioning and Removal of Four Hydroelectric Dams on the Klamath River by Any Agent	DR32	Camp.Dresser & McKee Inc.	Dam Removal
10/1/2008	2008	Klamath River Dam Removal Study: Sediment Transport DREAM-1 Simulation. Prepared for California State Coastal Conservancy	DR33	Stillwater Sciences	Dam Removal
1/1/2009	2009	Dam Removal and Klamath River Water Quality: A Synthesis of the Current Conceptual Understanding and an Assessment of Data Gaps. Technical report. Prepared for California State Coastal Conservancy, 1330 Broadway, 13th Floor, Oakland, CA 94612, 86 pages	DR34	Stillwater Sciences	Dam Removal
1/1/2009	2009	Effects of sediment release following dam removal on the aquatic biota of the Klamath River. Final Technical Report. Prepared for California State Coastal Conservancy, 1330 Broadway, 13th Floor, Oakland, CA 94612, 185 pages	DR35	Stillwater Sciences	Dam Removal
3/12/2007	2007	PacifiCorp's Response to California Energy Commission's Report, Economic Modeling of Relicensing and Decommissioning Options for the Klamath Basin Hydroelectric Project. Review for PacifiCorp conducted by Christensen Associates Energy Consulting	DR36	PacifiCorp	Dam Removal
Oct-52	1952	Coots, M. and J.H. Wales. 1952. King Salmon Activity in Jenny Creek and the Old Klamath River Channel Between the Forebay Dam and Copco #2 Plant. California Department of Fish and Game, Division of Fish and Game Interoffice Correspondence. October 29, 1952.	FEIS01	Coots, M. and J. Wales	FEIS
Jan-57	1957	Coots, M. 1957. Klamath River 1955 king salmon count, Klamathon Racks. Inland Fisheries Administrative Report 57-3. Sacramento, CA. 13 pp.	FEIS02	Coots, M.	FEIS
Jan-57	1957	Coots, M. 1957. The spawning efficiency of king salmon ( <i>Oncorhynchus tshawytscha</i> ) in Fall Creek, Siskiyou County. 1954-55 Investigations. Redding, CA. Inland Fisheries, California Department of Fish and Game.	FEIS03	Coots, M.	FEIS
Jan-66	1966	Fortune, J.D.; A.R. Gerlach; and C.J. Hanel. 1966. A Study to Determine the Feasibility of Establishing Salmon and Steelhead in the Upper Klamath Basin. Oregon State Game Commission and Pacific Power and Light.	FEIS04	Fortune, J.D.; A.R. Gerlach; and C.J. Hanel	FEIS
Jan-99	1999	Gutermuth, B., C. Watson, R. Weider, and J. Kelly. 1999. Link River Hydroelectric Project East Side and West Side Powerhouses Annual Entrainment Study Report: March 1997 - July 1998. New Earth/Cell Tech and PacifiCorp Environmental Studies.	FEIS05	Guttermuth, B. et al.	FEIS

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<b>Date</b>	<b>Year</b>	<b>Document Title or Reference</b>	<b>Doc Ref</b>	<b>Prepared by</b>	<b>Category / Folder</b>
Jan-00	2000	Gutermuth, B., C. Watson, and J. Kelly. 2000. Link River Hydroelectric Project (East Side and West Side Powerhouses) Final Entrainment Study Report March 1997-October 1999. Cell Tech: Research and Development, Klamath Falls, Oregon, and PacifiCorp, Portland, Oregon. 127pp.	FEIS06	Guttermuth, B. et al.	FEIS
Jun-02	2002	Olson, F. 2002. Technical Memorandum by F. Olson, CH2M HILL: Review of Adult Trout Passage at J. C. Boyle Dam, June 26, 2002.	FEIS07	Olson, F	FEIS
Jan-03	2003	California Dept. of Fish and Game. 2003. September 2002 Klamath River Fish Kill: Preliminary Analysis of Contributing Factors. Report. January 21, 2003.	FEIS08	California Department of Fish and Game	FEIS
Jan-03	2003	Lynch, D. D. and J.C. Risley, 2003. Klamath River Basin Hydrologic Conditions Prior to the September 2002 Die-Off of Salmon and Steelhead. Water-Resources Investigations Report 03-4099. US Geological Survey, 10 pp.	FEIS09	Lynch, D. D. and J.C. Risley	FEIS
4/5/2004	2004	Preliminary estimates of the recent and historic potential for anadromous fish production in the Klamath River above Iron Gate Dam. Chiloquin, Oregon, Klamath Tribes: 13 p.	FEIS10	Huntington, C.W.	FEIS
2004	2004	Endangered and Threatened Fishes in the Klamath River Basin: Causes of decline and strategies for recovery. The National Academies Press. Washington, DC. 397 pp.	FEIS11	National Academies of Science	FEIS
Jan-04	2004	Bartholow, J., and J. Henriksen. 2004. Klamath River Historical Fall Chinook Analysis using SALMOD. Preliminary Draft Project Report. US Geological Survey, Fort Collins Science Center. Fort Collins, CO. 95 pp.	FEIS12	Bartholow, J.M. and J.A. Henriksen	FEIS
Feb-04	2004	Belchik, M., D. Hillemeier, and R. Pierce. 2004. The Klamath River Fish Kill of 2002: Analysis of Contributing Factors. Yurok Tribal Fisheries Program. February 2004 Final Report	FEIS13	Belchik, M., D. Hillemeier, and R. Pierce	FEIS
2005	2005	Distribution of anadromous fishes in the upper Klamath River watershed prior to hydropower dams - a synthesis of the historical evidence. Fisheries 30(4):10-20.	FEIS14	Hamilton, J. B., G. L. Curtis, S.M. Snedaker, and D.K. White	FEIS
2005	2005	KlamRAS results of fish passage simulations on the Klamath River	FEIS15	Oosterhout, G.R.	FEIS
Jan-06	2006	Bartholow, J.M. and J.A. Henriksen. 2006. Assessment of Factors Limiting Klamath River Fall Chinook Salmon Production Potential Using Historical Flows and Temperatures. USGS Open File Report 2006-1249. 111 p.	FEIS16	Bartholow, J.M. and J.A. Henriksen	FEIS
9/25/2006	2006	FERC. 2006. Draft Environmental Impact Statement for Hydropower License. Klamath Hydroelectric Project. FERC Project No. 2082-027, Oregon and California. Federal Energy Regulatory Commission, Office of Energy Projects, Division of Hydropower Licensing. Washington, DC. FERC/DEIS-0201D. September 25, 2006.	FEIS17	Federal Energy Regulatory Commission	FEIS
Oct-06	2006	Hardy, T.B., R.C. Addley, and E. Saraeva. 2006. Evaluation of Instream Flow Needs in the Lower Klamath River. Phase II Final Report. Prepared for the U.S. Department of the Interior by the Institute for Natural Systems Engineering, Utah Water Research Laboratory, Utah State University, Logan, Utah. Oct 16, 2006.	FEIS18	Hardy, T.B., R.C. Addley, and E. Saraeva	FEIS
Dec-06	2006	Olson, F. 2006. Potential coho salmon production and survival from tributaries entering Iron Gate and Copco reservoirs. Attachment C to PacifiCorp's Alternative to the Joint FWS and NMFS Preliminary Fishway Prescriptions. 6 pp.	FEIS19	Olson, F	FEIS
12/1/2006	2006	PacifiCorp. 2006. PacifiCorp Comments on the Federal Energy Regulatory Commission's Draft Environmental Impact Statement for the Klamath Hydroelectric Project (FERC No. 2082) in Oregon and California. Submitted to Magalie Salas (FERC) by Cory Scott (PacifiCorp). December 1, 2006. Enclosures containing FERC DEIS Comments Overview; Appendix A – Technical Comments; Appendix B – Causes and Effects of Nutrient Conditions in the Upper Klamath River. Submittal 20061201-5008.	FEIS20	PacifiCorp	FEIS
12/29/2006	2006	PacifiCorp. 2006. Klamath Hydroelectric Project, FERC Project No. 2082; PacifiCorp's Response to Comments and Documents submitted by Stakeholders on the FERC DEIS Related to Fish Passage, Water Quality, Instream Flows, and Ramping Rates. Letter to Mr. Willie Taylor, Department of Interior from Michael Swiger, Attorney for PacifiCorp. Dated December 29, 2006.	FEIS21	PacifiCorp	FEIS

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12/29/2006	2006	PacifiCorp. 2006. Klamath Hydroelectric Project, FERC Project No. 2082; PacifiCorp's Response to Comments and Documents submitted by Stakeholders on the FERC DEIS Related to Fish Passage, Water Quality, Instream Flows, and Ramping Rates. Letter to Mr. Tom Bigford, National Marine Fisheries Service from Michael Swiger, Attorney for PacifiCorp. Dated December 29, 2006.	FEIS22	PacifiCorp	FEIS
1/24/2007	2007	PacifiCorp. 2007. Klamath Hydroelectric Project, FERC Project No. 2082; PacifiCorp's Response to Comments from Various Stakeholders on the September 2006 FERC DEIS Letter to Magalie Salas (FERC) from Cory Scott, PacifiCorp. Dated January 24, 2007.	FEIS23	PacifiCorp	FEIS
3/12/2007	2007	PacifiCorp. 2007. PacifiCorp's Answer Opposing The Hoopa Valley Tribe's Motion For Interim Protective Conditions Before The United States Of America Federal Energy Regulatory Commission. In re Klamath Hydroelectric Project (FERC Project No. P-2082), March 12, 2007.	FEIS24	PacifiCorp	FEIS
11/1/2007	2007	Final Environmental Impact Statement Volume I Part 1	FEIS25	Federal Energy Regulatory Commission	FEIS
11/1/2007	2007	Final Environmental Impact Statement Volume I Part 2	FEIS26	Federal Energy Regulatory Commission	FEIS
11/1/2007	2007	Final Environmental Impact Statement Volume I Part 3	FEIS27	Federal Energy Regulatory Commission	FEIS
11/1/2007	2007	Final Environmental Impact Statement Volume II	FEIS28	Federal Energy Regulatory Commission	FEIS
9/15/2004	2004	PacifiCorp's Response to Comments on FERC's Scoping Document No. 1. Includes comments on Dennis Gathard 2003 Dam Removal Investigation report.	FEIS29	PacifiCorp	FEIS
May-02	2002	PacifiCorp. 2002. Draft, Explanation of Facilities and Operational Issues Associated with PacifiCorp's Klamath Hydroelectric Project. FERC Project No. 2082. May 1, 2002.	LA01	PacifiCorp	License Application
11/1/2003	2003	A Context Statement Concerning the Effect of Iron Gate Dam on Traditional Resource Uses and Cultural Patterns of the Karuk People within the Klamath River Corridor	LA02	John F. Salter, Consulting Anthropologist for Karuk Tribe of California	License Application
11/1/2003	2003	Ethnographic Riverscape: Regulatory Analysis	LA03	Yurok Tribe Heritage Preservation Office, Thomas Gates	License Application
2/23/2004	2004	Final License Application Vols. 1-3	LA04	PacifiCorp	License Application
2/23/2004	2004	Final Technical Reports - Cultural CONFIDENTIAL	LA05	PacifiCorp	License Application
2/23/2004	2004	Final Technical Reports - Fish Resources	LA06	PacifiCorp	License Application
2/23/2004	2004	Final Technical Reports - Land Use, Visual and Aesthetic Resources	LA07	PacifiCorp	License Application
2/23/2004	2004	Final Technical Reports - Recreation Resources	LA08	PacifiCorp	License Application
2/23/2004	2004	Final Technical Reports - Socioeconomic Resources	LA09	PacifiCorp	License Application
2/23/2004	2004	Final Technical Reports - Terrestrial Resources	LA10	PacifiCorp	License Application
2/23/2004	2004	Final Technical Reports - Water Resources	LA11	PacifiCorp	License Application
7/31/2004	2004	Hydroacoustic Analysis of Fish Populations in Copco and Iron Gate Reservoirs, California	LA12	MaxDepth Aquatics, Inc.; J.M. Eilers and B.J. Eilers	License Application
9/1/2004	2004	Draft Recreation Resource Management Plan	LA13	EDAW, Inc.	License Application
9/1/2004	2004	Supplemental Report: Investigation of Ceratomyxa Shasta in the Klamath River Keno Reservoir to the Confluence of Beaver Creek	LA14	Oregon State University	License Application
9/1/2004	2004	Final Technical Reports - Screening Level Determination of Chemical Contaminants in Fish Tissue in Selected Project Reservoirs	LA15	PacifiCorp	License Application
9/29/2004	2004	Recreation Flow Study Video on DVD	LA16	PacifiCorp	License Application
10/1/2004	2004	Final Technical Reports - Description of Migratory Behavior of Juvenile Salmon Smolts Through California Reservoirs Using Radio-Telemetry Techniques in the Klamath Basin	LA17	BioAnalysts, Inc.	License Application
10/1/2004	2004	2004 Terrestrial Resources Technical Report - Botanical and Wildlife Resources	LA18	PacifiCorp	License Application
10/1/2004	2004	Final Technical Reports - Analysis of Potential Klamath Hydroelectric Project Effects on Water Quality Aesthetics	LA19	PacifiCorp	License Application
11/1/2004	2004	CEII - Study Area Roadway Inventory Analysis and Project Roadway Management Plan - CEII	LA20	PacifiCorp	License Application
12/16/2004	2004	Spring Creek Water Quality Investigations	LA21	PacifiCorp	License Application
1/21/2005	2005	Corrections to Figures 3 and 4 in the Spring Creek Water Quality Investigations Final Technical Report	LA22	PacifiCorp	License Application
2/17/2005	2005	Additional Information Request No. 1	LA23	Federal Energy Regulatory Commission	License Application
3/1/2005	2005	Fish Passage Planning and Evaluation	LA24	PacifiCorp	License Application

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3/1/2005	2005	Noxious Weed Inventory Update	LA25	PacifiCorp	License Application
4/1/2005	2005	Dissolved Oxygen Enhancement Measures Feasibility Evaluation Report - Draft	LA26	Mobley Engineering; Principia Research Corp.; Hydro Performance Processes Inc.; Reservoir Environmental Management, Inc.	License Application
4/1/2005	2005	Status Report. Klamath River Water Quality Modeling	LA27	PacifiCorp	License Application
4/1/2005	2005	Instream Flow Studies Addendum Report: Development of Habitat Suitability Criteria and Simulation of Habitat Area	LA28	PacifiCorp	License Application
4/1/2005	2005	Preliminary Technical Report: Evaluation of Effects of Flow Fluctuation on Aquatic Resources within the J.C. Boyle Peaking Reach	LA29	PacifiCorp	License Application
4/1/2005	2005	Response to AIR - GN1 Non Internet Public	LA30	PacifiCorp	License Application
4/1/2005	2005	Response to AIR - GN1.2, WQ3.4, DR1.2.3	LA31	PacifiCorp	License Application
4/18/2005	2005	Response to AIR - AR1.2, WQ5	LA32	PacifiCorp	License Application
5/1/2005	2005	Additional Geomorphology Information - Response to AIR - WQ5	LA33	PacifiCorp	License Application
5/3/2005	2005	Response to AIR - WQ4	LA34	PacifiCorp	License Application
5/16/2005	2005	Response to AIR - WQ1.2.5	LA35	PacifiCorp	License Application
5/26/2005	2005	Response to AIR - AR1.2.4	LA36	PacifiCorp	License Application
7/1/2005	2005	Iron Gate Hatchery Production and Funding	LA37	PacifiCorp	License Application
8/1/2005	2005	Klamath River Bioenergetics Report	LA38	Institute for Natural Systems Engineering, Utah State University; R. Craig Addley, Bill Bradford, Jennifer Ludlow	License Application
8/1/2005	2005	Fisheries Assessment Surveys	LA39	PacifiCorp	License Application
8/1/2005	2005	Response to AIR - AR1a	LA40	PacifiCorp	License Application
8/16/2005	2005	Response to AIR - AR3.4.5	LA41	PacifiCorp	License Application
9/1/2005	2005	Technical Report: Evaluation of the Preferred Design for Temperature and Dissolved Oxygen Control of Waters Discharged in the Klamath River from Iron Gate Dam	LA42	PacifiCorp	License Application
9/26/2005	2005	Response to AIR - AR1a Supplemental	LA43	PacifiCorp	License Application
10/14/2005	2005	Response to AIR - AR2 Anadromous Fish Restoration	LA44	PacifiCorp	License Application
10/17/2005	2005	Response to AIR - AR1b.3.5	LA45	PacifiCorp	License Application
10/17/2005	2005	Response to AIR - AR2 Appendix B Resubmittal	LA46	PacifiCorp	License Application
11/10/2005	2005	Additional Information Request No. 2	LA47	Federal Energy Regulatory Commission	License Application
12/12/2005	2005	Response to AIR - WQ3	LA48	PacifiCorp	License Application
12/14/2005	2005	Response to AIR - WQ5, AR2, GN2	LA49	PacifiCorp	License Application
12/16/2005	2005	Klamath River Water Quality Model Implementation, Calibration, and Validation	LA50	PacifiCorp	License Application
12/16/2005	2005	Klamath River Water Quality Model Implementation, Calibration, and Validation Appendices A - J	LA51	PacifiCorp	License Application
12/16/2005	2005	Response to AIR - Rhabsim.AMP	LA52	PacifiCorp	License Application
12/30/2005	2005	Response to AIR - GN2 Revised	LA53	PacifiCorp	License Application
3/24/2006	2006	Comments, Recommended Terms and conditions, and Preliminary Prescriptions	LA54	NOAA NMFS	License Application
3/24/2006	2006	Comments on the December 28, 2005 Notice of Application Ready for Environmental Analysis (REA)	LA55	Oregon Water Resources Department; Oregon Department of Energy; Oregon Department of Environmental Quality; Oregon Department of Fish & Wildlife; Oregon Parks and Recreation; State Historic Preservation Office	License Application
3/27/2006	2006	Preliminary Comments and Recommendations	LA56	California Department of Fish and Game	License Application
3/27/2006	2006	Comments, Preliminary Terms, Conditions, Prescriptions, and Recommendations	LA57	US DOI, USFWS	License Application
3/28/2006	2006	Comments and Recommendations with Attachments	LA58	Klamath Tribes	License Application
3/28/2006	2006	Comments and Recommendations	LA59	Siskiyou County	License Application
3/28/2006	2006	Recommendations on Terms and Conditions	LA60	Yurok Tribe	License Application

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3/29/2006	2006	Comments and Recommendations to Ready for Environmental Analysis	LA61	American Rivers; California Trout; Friends of the River; Klamath Forest Alliance; Northcoast Environmental Center; Northern California Council; Federation of Fly Fishers; Oregon Natural Resources Council; Salmon River Restoration Council; Trout Unlimited; Waterwatch of Oregon; World Wildlife Fund	License Application
3/29/2006	2006	Comments and Recommended 10(a) Terms and Conditions	LA62	Hoopa Valley Tribe	License Application
4/24/2006	2006	Essential Fish Habitat Recommendations and Comments	LA63	Pacific Fishery Management Council	License Application
4/25/2006	2006	Corrections to the Comments, Preliminary Terms, Conditions, Prescriptions, and Recommendations filed March 29, 2006 (LA64a and LA64b)	LA64	US DOI, USFWS	License Application
4/28/2006	2006	Corrections to the Comments, Recommended Terms and Conditions, and Preliminary Prescriptions filed March 29, 2006	LA65	NOAA NMFS	License Application
5/12/2006	2006	Comments on Recommendations, Terms and Conditions, and Prescriptions Filed in Response to the Notice of Ready for Environmental Analysis	LA66	PacifiCorp	License Application
1/24/2007	2007	Modified Terms, Conditions, and Prescriptions	LA67	US DOI, USFWS	License Application
1/29/2007	2007	Modified Prescriptions for Fishways and Alternatives Analysis for the Klamath Project	LA68	NOAA NMFS	License Application
1/30/2007	2007	Preliminary Wild and Scenic Rivers Act - Section 7(a) Determination and Report for the Upper Klamath Wild and Scenic Rivers Reach	LA69	Bureau of Land Management	License Application
6/7/2007	2007	Errata to Modified Fishway Prescriptions of the Fish and Wildlife Service Pursuant to Section 18 of the Federal Power Act and to the Analysis of Alternatives and Consideration of Effects under Section 33 of the Federal Power Act filed January 24, 2007.	LA70	US DOI, USFWS	License Application
7/11/2007	2007	Errata to NMFS Modified Prescriptions for Fishways and Alternatives Analysis for the Klamath Project filed January 29, 2007.	LA71	NOAA NMFS	License Application
6/1/1962	1962	Klamath River Compact Commission. "Investigation into Methods to Control Algae in the Klamath River Basin." June 1962.	WQ01	Klamath River Compact Commission	Water Quality
Sep-67	1967	Miller, William E. and Jerry C. Tash. Interim Report, Upper Klamath Lake Studies, Oregon. Water Pollution Control Research Series, WP-20. Corvallis, Oregon: Eutrophication Research Branch, Pacific Northwest Water Laboratory, Federal Water Pollution Control Administration, September 1967.	WQ02	Miller, W. and J. Tash	Water Quality
Aug-95	1995	Gearheart, Robert A., Jeffrey K. Anderson, Margaret George Forbes, Mark Osburn, Daniel Oros. "Watershed Strategies for Improving Water Quality in Upper Klamath Lake, Oregon." Vol. 2. Engineering Department, Humboldt State University, Arcata, California. August 1995.	WQ03	Gearheart, R. et al.	Water Quality
Jun-99	1999	Deas, M. and G. Orlob. 1999. Klamath River modeling project: Assessment of alternatives for flow and water quality control in the Klamath River below Iron Gate Dam. Center for Environmental and Water Resources Engineering. University of California at Davis, Report 99-04. 236 pp plus appendix.	WQ04	Deas, M. and G. Orlob	Water Quality
May-02	2002	Oregon Department of Environmental Quality (ODEQ). 2002. Upper Klamath Lake Drainage Total Maximum Daily Load (TMDL) and Water Quality Management Plan (WQMP). May 2002.	WQ05	Oregon Dept. of Env. Quality	Water Quality
Jan-03	2003	Foott, J.S., R. Harmon, and R. Stone. 2003. FY 2002 Investigation Report: Ceratomyxosis resistance in juvenile Chinook salmon and steelhead from the Klamath River. USFWS, Nevada Fish Health Center, Anderson, CA. 25 pp.	WQ06	Foott, J.S., R. Harmon, and R. Stone	Water Quality
Jan-03	2003	World Health Organization (WHO). 2003. Guidelines for Safe Recreational Water Environments, Vol. 1, Coastal and Fresh Water, World Health Organization, Geneva. ISBN 92 4 154580 1	WQ07	World Health Organization	Water Quality
1/25/2003	2003	Watercourse Engineering. 2003. Klamath River Water Quality 2000 Monitoring Program—Project Report. Prepared for the U.S. Bureau of Reclamation in cooperation with PacifiCorp by Watercourse Engineering, Inc. January 25.	WQ08	Watercourse Engineering	Water Quality
Jan-04	2004	World Health Organization (WHO). 2004. Microcystin LR, from Chemical Fact Sheets, Guidelines for Drinking Water, World Health Organization, Geneva.	WQ09	World Health Organization	Water Quality



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Dec-04	2004	Watercourse Engineering. 2004. Thermal Refugia Studies on the Klamath River below Iron Gate Dam (in Draft) Prepared for the U.S. Bureau of Reclamation by Watercourse Engineering, Inc. December.	WQ10	Watercourse Engineering	Water Quality
2/25/2005	2005	Recent water temperature trends in the lower Klamath River, California. North American Journal of Fisheries Management. 25:152-162.	WQ11	Bartholow, J.M.	Water Quality
4/29/2005	2005	Siskiyou County. 2005. Algae at Copco and Lake Shastina. Letter from David Herfindahl, M.D. (Siskiyou County) to Matt St John (RWQCB) dated April 29, 2005.	WQ12	Siskiyou County	Water Quality
Sep-05	2005	Wee, S.R. and J.M. Herrick. 2005. Water Quality Of Upper Klamath Lake. A History of Scientific Investigations. Report by JRP Historical Consulting, Davis, CA. September 2005.	WQ13	Wee, S.R. and J.M. Herrick	Water Quality
10/7/2005	2005	Siskiyou County. 2005. Disagreement over health advisory postings by SWRCB in Copco and Iron Gate reservoirs. Letter from David Herfindahl, M.D. (Siskiyou County) to Tam Doduc (SWRCB) dated October 7, 2005.	WQ14	Siskiyou County	Water Quality
Jan-06	2006	Fetcho, K. 2006. Klamath River Blue-Green Algae Bloom Report Water Year 2005. Prepared by: Ken Fetcho, Yurok Tribe Environmental Program. January 2006	WQ15	Fetcho, K.	Water Quality
Mar-06	2006	Kann, J. and S. Corum. 2006. Summary of 2005 Toxic Microcystis aeruginosa Trends in Copco and Iron Gate Reservoirs on the Klamath River, CA. Prepared by Aquatic Ecosystem Sciences and the Karuk Tribe Department of Natural Resources for the Karuk Tribe, Orleans, California. 35 pp.	WQ16	Kann, J. and S. Corum	Water Quality
2/23/2006	2006	Stocking, 2006. Distribution of Ceratomyxa shasta (Myxozoa) and habitat preference of the polychaete host, Manayunkia speciosa in the Klamath River. Thesis submitted to Oregon State University, April 2006.	WQ17	Stocking, R.W.	Water Quality
9/21/2006	2006	PacifiCorp. 2006. Postings at Copco and Iron Gate Reservoirs. Letter Cory Scott (PacifiCorp) to Catherine Kuhlman (RWQCB) dated September 21, 2006.	WQ18	PacifiCorp	Water Quality
Sep-06	2006	Watercourse Engineering (Watercourse). 2006. Characterization of Organic Matter Fate and Transport in the Klamath River below Link Dam to Assess Treatment/Reduction Potential. Prepared for the United States Bureau of Reclamation, Klamath Area Office. September 30.	WQ19	Watercourse Engineering	Water Quality
Nov-06	2006	PacifiCorp. 2006. Causes and Effects of Nutrient Conditions in the Upper Klamath River. Klamath Hydroelectric Project (FERC Project No. 2082). PacifiCorp, Portland, Oregon. November 2006.	WQ20	PacifiCorp	Water Quality
12/30/2008	2007	EPA. 2007. Lost River, California Total Maximum Daily Loads. Nitrogen and Biochemical Oxygen Demand to Address Dissolved Oxygen and pH Impairment.	WQ21	EPA	Water Quality
Mar-07	2007	Fetcho, K. 2006. Klamath River Blue-Green Algae Summary Report. Yurok Tribe Environmental Program. March 2007. 34 pp.	WQ22	Fetcho, K.	Water Quality
3/9/2007	2007	Ellison, Schneider, & Harris. 2007. Response of PacifiCorp Energy to Karuk Tribe et al. Petition to the California Regional Water Quality Control Board, North Coast Region to 1) Order PacifiCorp to Submit a Report of Waste Discharge, and/or 2) to Issue Waste Discharge Requirements, Including Prohibitions. Before the California Regional Water Quality Control Board, North Coast Region. March 9, 2007.	WQ23	PacifiCorp	Water Quality
3/9/2007	2007	Siskiyou County. 2007. Discrepancy in analysis of Microcystin samples from Copco and Iron Gate reservoirs. Letter from Terry Barber (Siskiyou County) to Charlene Walden (citizen activist) dated March 9, 2007.	WQ24	Siskiyou County	Water Quality
Jun-07	2007	State Water Resources Control Board (SWRCB). 2007. Cyanobacteria in California Recreational Water Bodies. Providing Voluntary Guidance about Harmful Algal Blooms, Their Monitoring, and Public Notification. Blue Green Algae Work Group of the State Water Resources Control Board and Office of Environmental Health and Hazard Assessment. DRAFT. June 2007	WQ25	State Water Resources Control Board	Water Quality
2/22/2008	2008	401 Water Quality Certification Application for Oregon	WQ26	PacifiCorp	Water Quality
4/8/2008	2008	Dioxin in sediments behind the dams in the Klamath River. A memo from Joe Dillion, Water Quality Program Coordinator to Brian Clure and Steve Edmondson. 6p.	WQ27	NOAA NMFS	Water Quality
9/26/2008	2008	401 Water Quality Certification Application for California	WQ28	PacifiCorp	Water Quality

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1/1/2009	2009	In Press. Physiological Development and Vulnerability to Ceratomyxa shasta of Fall-run Chinook Salmon in the Upper Klamath River Watershed. North American Journal of Fisheries Management.	WQ29	Maule et al. In Press A.G. Maule, S.P. VanderKooi, J.B. Hamilton, R. Stocking, and J. Bartholemew.	Water Quality
2/1/2010	2009	ODEQ Draft Klamath River TMDL	WQ30	Oregon Department of Environmental Quality	Water Quality
4/30/2009	2009	2009 Plan For Water Quality Management Actions For Copco And Iron Gate Reservoirs	WQ31	PacifiCorp	Water Quality
6/1/2009	2009	NCRWQCB Draft TMDL	WQ32	North Coast Regional Water Quality Control Board	Water Quality
8/14/2009	2009	Backer, L.C., et al., Recreational exposure to microcystins during algal blooms in two California lakes, <i>Toxicon</i> (2009), doi:10.1016/j.toxicon.2009.07.006	WQ33	Centers for Disease Control, California Department of Public Health, and others	Water Quality
8/27/2009	2009	Comments on Draft Staff Report for the TMDL	WQ34	PacifiCorp	Water Quality
12/1/2009	2009	NCRWQCB Revised Draft TMDL	WQ35	North Coast Regional Water Quality Control Board	Water Quality
2/9/2010	2010	Comments on Revised Draft TMDL	WQ36	PacifiCorp	Water Quality
2009	2009	Review of Klamath River Total Maximum Daily Load Models from Link River Dam to Keno Dam, Oregon	WQ37	USGS, prepared in cooperation with the Bureau of Reclamation	Water Quality

